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Senate Committee on Energy, Biotechnology and Consumer Protection
Joint Committee on Audit

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2nd Senate District

MEMBER:
Senate Committee on Workforce Development, Small Business and Tourism
Joint Committee on Information Policy and Technology

TO: **Senate Committee on Judiciary, Utilities, Commerce and Government Operations**
FROM: **State Senator Robert Cowles**
DATE: **October 4, 2011**
RE: **Senate Bill 151**

Chairman Zipperer and Members of the Committee:

Thank you for considering Senate Bill 151 today. Many companies offer employee incentives or rewards for performance, including new sales and customer referrals. One such practice includes rewarding employees for customer referrals by assigning the employees with points that are redeemable for merchandize and/or prepaid debit cards and entering their names into company-wide random drawings for prizes.

The definition of a "lottery" under Wisconsin lottery law includes the element of "consideration", which, in general, is defined as something of value. Under this definition, an employee's referral of a customer was considered to be "consideration", thus depriving Wisconsin-based employees of legal ability to take part in company-wide drawings.

In the case of multistate companies, the effect is to prevent Wisconsin-based employees from the ability to participate in incentive programs to the same extent as fellow employees who are based in other states.

~~Senator Hansen introduced SB 552 during the 2010 session to remedy this problem. The bill passed both houses on voice votes~~ and was signed by the Governor as Act 354. The purpose of Act 354, which added subsection 945.01(5)(b)2.h to the lottery law, was to make it clear that employee referrals of customers do not constitute "consideration", thereby allowing employees located in Wisconsin to participate in prize drawings conducted as part of employer-sponsored customer referral contests.

However, as written, Act 354 did not accomplish its intended purpose because it includes language that prevents an employee from participating in a prize drawing if the employee was "compensated" for the customer referral.

SB 151 will eliminate this problem, and, as result, accomplish the intended purpose of Act 354. It simply amends the language of subsection 945.01(5)(b) 2.h to state that an employee's referral or identification of a customer does not constitute "consideration" "regardless of whether the employee who makes the referral or identification is compensated in any manner for the referral or identification".

As a result of this bill, Wisconsin-based employees will have the same ability to participate in employer-sponsored customer referral incentive programs as employees located in other states.

This bill has no impact on the definition of a lottery law outside the context of employer-sponsored sales and customer referral incentive programs directed to employees.

Once again, thank you for consideration of this bill, and feel free to contact me with and concerns or questions.

Sincerely,

Rob

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Testimony: Senate Bill 151
Committee on Judiciary, Utilities, Commerce and Government Operations
10/4/11

Chairman Zipperer, Members of the Committee,

I am please to provide this testimony in support of Senate Bill 151 authored by Senator Rob Cowles.

During the 2009-10 Session I introduced legislation after hearing from a constituent of mine who worked for a multi-state company that had in place an employee reward program. Like many companies his employer provided performance based employee awards including giving employees points for any customer referrals they obtain. The employee can then redeem those points for merchandize or other rewards.

My constituent was concerned because Wisconsin's lottery law prohibited these kinds of contests meaning he and his fellow employees in Wisconsin could not participate in this rewards program to the same level as the company's employees in other states.

Under the lottery law the element of "consideration" was given the broad meaning "something of value" which included many of the types of employee incentives used by my constituent's employer and many others. In my constituent's case the law considered the referrals and leads he generated as something of value in the same league as purchasing a lottery ticket.

This is not the case in others states where these types of employee rewards and contests are not considered to be gambling.

In response I introduced and passed Senate Bill 552 (2009 WI Act 354) that we had hoped would resolve this problem. SB-552 passed without objection or opposition. Unfortunately, after the bill became law it was concluded that language in the bill incorrectly prevented an employee from participating in a prize drawing if the employee was "compensated" for the customer referral.

I appreciate Senator Cowles' assistance in helping resolve these concerns. I believe SB-151, will help us get to the result that we had intended which is to allow employees in our state the same ability to compete in company incentive and rewards programs like their colleagues in other states are allowed to do.

I hope you will join me in supporting SB-151.

Thank you.

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