

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5108

52nd Legislature
1991 Regular Session

Passed by the Senate April 23, 1991
Yeas 46 Nays 0

President of the Senate

Passed by the House April 9, 1991
Yeas 97 Nays 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5108** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5108

AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators von Reichbauer, McCaslin, Moore, Vognild, Matson, Rasmussen, Pelz and Owen; by request of Attorney General).

Read first time February 18, 1991.

1 AN ACT Relating to the regulation of promotional advertising of
2 prizes; amending RCW 19.105.365 and 64.36.320; creating a new chapter
3 in Title 19 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that deceptive
6 promotional advertising of prizes is a matter vitally affecting the
7 public interest for the purpose of applying the Consumer Protection
8 Act, chapter 19.86 RCW.

9 (2) Deceptive promotional advertising of prizes is not reasonable
10 in relation to the development and preservation of business. A
11 violation of this chapter is an unfair or deceptive act in trade or
12 commerce for the purpose of applying the Consumer Protection Act,
13 chapter 19.86 RCW, and constitutes an act of deceptive promotional
14 advertising.

15 (3) This chapter applies to a promotion offer:

1 (a) Made to a person in Washington;

2 (b) Used to induce or invite a person to come to the state of
3 Washington to claim a prize, attend a sales presentation, meet a
4 promoter, sponsor, sales person, or their agent, or conduct any
5 business in this state; or

6 (c) Used to induce or invite a person to contact by any means a
7 promoter, sponsor, sales person, or their agent in this state.

8 NEW SECTION. **Sec. 2.** Unless the context clearly requires
9 otherwise, the definitions in this section apply throughout this
10 chapter.

11 (1) "Person" means an individual, corporation, the state or its
12 subdivisions or agencies, business trust, estate, trust, partnership,
13 association, cooperative, or any other legal entity.

14 (2) "Prize" means a gift, award, travel coupon or certificate, free
15 item, or any other item offered in a promotion that is different and
16 distinct from the goods, service, or property promoted by a sponsor.
17 "Prize" does not include an item offered in a promotion where all of
18 the following elements are present:

19 (a) No element of chance is involved in obtaining the item offered
20 in the promotion;

21 (b) The recipient has the right to review the merchandise offered
22 for sale without obligation for at least seven days, and has a right to
23 obtain a full refund in thirty days for the return of undamaged
24 merchandise;

25 (c) The recipient may keep the item offered in the promotion
26 without obligation; and

27 (d) The recipient is not required to attend any sales presentation
28 or spend any sum in order to receive the item offered in the promotion.

29 (3) "Promoter" means a person conducting a promotion.

1 (4) "Promotion" means an advertising program, sweepstakes, contest,
2 direct giveaway, or solicitation directed to specific named
3 individuals, that includes the award of or chance to be awarded a
4 prize.

5 (5) "Offer" means a written notice delivered by hand, mail, or
6 other print medium offering goods, services, or property made as part
7 of a promotion to a person based on a representation that the person
8 has been awarded, or will be awarded, a prize.

9 (6) "Sponsor" means a person on whose behalf a promotion is
10 conducted to promote or advertise goods, services, or property of that
11 person.

12 (7) "Simulated check" means a document that is not currency or a
13 check, draft, note, bond, or other negotiable instrument but has the
14 visual characteristics thereof. "Simulated check" does not include a
15 nonnegotiable check, draft, note, or other instrument that is used for
16 soliciting orders for the purchase of checks, drafts, notes, bonds, or
17 other instruments and that is clearly marked as a sample, specimen, or
18 nonnegotiable.

19 (8) "Continuing obligation check" means a document that is a check,
20 draft, note, bond, or other negotiable instrument that, when cashed,
21 deposited, or otherwise used, imposes on the payee an obligation to
22 enter into a loan transaction. This definition does not include
23 checks, drafts, or other negotiable instruments that are used by
24 consumers to take advances on revolving loans, credit cards, or
25 revolving credit accounts.

26 (9) "Verifiable retail value" means:

27 (a) A price at which a promoter or sponsor can demonstrate that a
28 substantial number of prizes have been sold at retail in the local
29 market by a person other than the promoter or sponsor; or

1 (b) If the prize is not available for retail sale in the local
2 market, the retail fair market value in the local market of an item
3 substantially similar in each significant aspect, including size,
4 grade, quality, quantity, ingredients, and utility; or

5 (c) If the value of the prize cannot be established under (a) or
6 (b) of this subsection, then the prize may be valued at no more than
7 three times its cost to the promoter or sponsor.

8 (10) "Financial institution" means any bank, trust company, savings
9 bank, savings and loan association, credit union, industrial loan
10 company, or consumer finance lender subject to regulation by an
11 official agency of this state or the United States, and any subsidiary
12 or affiliate thereof.

13 NEW SECTION. **Sec. 3.** (1) The offer must identify the name and
14 address of the promoter and the sponsor of the promotion.

15 (2) The offer must state the verifiable retail value of each prize
16 offered in it.

17 (3)(a) If an element of chance is involved, each offer must state
18 the odds the participant has of being awarded each prize. The odds
19 must be expressed in Arabic numerals, in ratio form, based on the total
20 number of prizes to be awarded and the total number of offers
21 distributed.

22 (b) If the promotion identified in the offer is part of a
23 collective promotion with more than one participating sponsor, that
24 fact must be clearly and conspicuously disclosed.

25 (c) The odds must be stated in a manner that will not deceive or
26 mislead a person about that person's chance of being awarded a prize.

27 (4) The verifiable retail value and odds for each prize must be
28 stated in immediate proximity on the same page with the first listing

1 of each prize in type at least as large as the typeface used in the
2 standard text of the offer.

3 (5) If a person is required or invited to view, hear, or attend a
4 sales presentation in order to claim a prize that has been awarded, may
5 have been awarded, or will be awarded, the requirement or invitation
6 must be conspicuously disclosed to the person in the offer in type at
7 least as large as the typeface used in the standard text of the offer
8 on the first page of the offer.

9 (6) No item in an offer may be denominated a prize, gift, award,
10 premium, or similar term that implies the item is free if, in order to
11 receive the item or use the item for its intended purpose the intended
12 recipient is required to spend any sum of money, including but not
13 limited to shipping fees, deposits, handling fees, payment for one item
14 in order to receive another at no charge, or the purchase of another
15 item or the expenditure of funds in order to make meaningful use of the
16 item awarded in the promotion. The payment of any applicable state or
17 federal taxes by a recipient directly to a government entity is not a
18 violation of this section.

19 (7) If the receipt of the prize is contingent upon certain
20 restrictions or qualifications that the recipient must meet, or if the
21 use or availability of the prize is restricted or qualified in any way,
22 including, but not limited to restrictions on travel dates, travel
23 times, classes of travel, airlines, accommodations, travel agents, or
24 tour operators, the restrictions or qualifications must be disclosed on
25 the offer in immediate proximity on the same page with the first
26 listing of the prize in type at least as large as the typeface used in
27 the standard text of the offer or, in place thereof, the following
28 statement printed in direct proximity to the prize or prizes awarded in
29 type at least as large as the typeface used in the standard text of the
30 offer:

1 "Major restrictions may apply to the use, availability, or receipt
2 of the prize(s) awarded."

3 This statement must be followed by a disclosure, in the same size
4 type as the statement, indicating where in the offer the restrictions
5 may be found. The restrictions must be printed in type at least as
6 large as the typeface used in the standard text of the offer.

7 (8) If a prize will not be awarded or given unless a winning
8 ticket, the offer itself, a token, number, lot, or other device used to
9 determine winners in a particular promotion is presented to a promoter
10 or a sponsor, this fact must be clearly stated on the first page of the
11 offer.

12 NEW SECTION. **Sec. 4.** (1) Before a demonstration, seminar, or
13 sales presentation begins, the promoter shall inform the person of the
14 prize, if any, the person will receive.

15 (2) A prize or a voucher, certificate, or other evidence of
16 obligation given instead of a prize shall be given to a person at the
17 time the person is informed of the prize, if any, the person will
18 receive.

19 (3) A copy of the offer shall be returned to the person receiving
20 the prize at the time the prize is awarded.

21 (4) It is a violation of this chapter for a promoter or sponsor to
22 include a prize in an offer when the promoter or sponsor knows or has
23 reason to know that the prize will not be available in a sufficient
24 quantity based upon the reasonably anticipated response to the offer.

25 (5)(a) If the prize is not available for immediate delivery to the
26 recipient, the recipient shall be given, at the promoter or sponsor's
27 option, a rain check for the prize, the verifiable retail value of the
28 prize in cash, or a substitute item of equal or greater verifiable
29 retail value.

1 (b) If the rain check cannot be honored within thirty days, the
2 promoter or sponsor shall mail to the person a valid check or money
3 order for the verifiable retail value of the prize described in this
4 chapter.

5 (6) A sponsor shall fulfill the rain check within thirty days if
6 the person named as being responsible fails to honor it.

7 (7) The offer shall contain the following clear and conspicuous
8 statement of recipients' rights printed in type at least as large as
9 the typeface used in the standard text of the offer:

10 "If you receive a rain check in lieu of the prize, you are
11 entitled by law to receive the prize, an item of equal or
12 greater value, or the cash equivalent of the offered prize
13 within thirty days of the date on which you claimed the prize."

14 (8) It is a violation of this chapter to misrepresent the quality,
15 type, value, or availability of a prize.

16 NEW SECTION. **Sec. 5.** (1) No person may produce, advertise, offer
17 for sale, sell, distribute, or otherwise transfer for use in this state
18 a simulated check unless the document bears the phrase "THIS IS NOT A
19 CHECK," diagonally printed in type at least as large as the predominant
20 typeface in the simulated check on the front of the check itself.

21 (2) No person, other than a financial institution, may produce,
22 advertise, offer for sale, sell, distribute, or otherwise transfer for
23 use in this state a continuing obligation check unless the document
24 bears the phrase "THIS IS A LOAN" or "CASHING THIS REQUIRES REPAYMENT,"
25 diagonally printed in type at least as large as the predominant
26 typeface in the continuing obligation check on the front of the check
27 itself.

1 NEW SECTION. **Sec. 6.** (1) A person who suffers damage from an act
2 of deceptive promotional advertising may bring an action against the
3 sponsor or promoter of the advertising, or both. Damages include, but
4 are not limited to, fees paid in violation of section 3(6) of this act
5 and the dollar value of a prize represented to be awarded to a person,
6 but not received by that person.

7 (2) In an action for deceptive promotional advertising, the court
8 may award the greater of five hundred dollars or three times the actual
9 damages sustained by the person, not to exceed ten thousand dollars;
10 equitable relief, including, but not limited to an injunction and
11 restitution of money and property; attorneys' fees and costs; and any
12 other relief that the court deems proper.

13 NEW SECTION. **Sec. 7.** A person who knowingly violates any
14 provision of this chapter is guilty of a gross misdemeanor.

15 NEW SECTION. **Sec. 8.** The remedies prescribed in this chapter do
16 not limit or bar any existing remedies at law or equity.

17 **Sec. 9.** RCW 19.105.365 and 1988 c 159 s 12 are each amended to
18 read as follows:

19 (1) It is unlawful for a camping resort operator or other person,
20 in connection with an advertisement or offer for sale of a camping
21 resort contract in this state, to promise or offer a free gift, award,
22 prize, or other item of value if the operator or person knows or has
23 reason to know that the offered item is unavailable in a sufficient
24 quantity based upon the reasonably anticipated response to the
25 advertisement or offer.

26 (2) A person who responds to an advertisement or offer in the
27 manner specified, who performs all stated requirements, and who meets

1 the qualifications disclosed shall ((promptly)) receive the offered
2 item ((offered)) subject to ((the following exception. If the camping
3 resort operator fails to provide the item because of insufficient
4 supply or unacceptable quality not reasonably foreseeable by the
5 camping resort operator, the operator shall provide, at the operator's
6 option, a rain check for the item offered, its cash equivalent, a
7 substitute item of greater retail value, or a rain check for such
8 substitute item. If a rain check is provided, the camping resort
9 operator shall, within thirty days, deliver the item, its cash
10 equivalent, or a substitute item to the recipient's address without
11 additional cost or requirement to the recipient)) chapter 19.-- RCW
12 (sections 1 through 8 of this act).

13 (3) The director may, upon making a determination that a violation
14 of subsection (1) or (2) of this section has occurred, require any
15 person, including an operator or other registrant found in violation,
16 who continues, or proposes to continue, offering a free gift, award,
17 prize, or other item of value in this state for purposes of advertising
18 a camping resort or inducing persons to purchase a camping resort
19 contract, to provide evidence of the ability to deliver on promised
20 gifts, prizes, or awards by means such as bonds, irrevocable letters of
21 credit, cash deposits, or other security arrangements acceptable to the
22 director.

23 (4) The director may require that any fees or funds of any
24 description collected in advance from persons for purposes of obtaining
25 promised gifts, awards, prizes, or other items of value, be placed in
26 trust in a depository in this state until after delivery of the
27 promised gift, prize, award, or other item of value.

28 (5) Operators or other registrants or persons promising gifts,
29 prizes, awards, or other items of consideration as part of a membership

1 referral program shall be considered to be offering or selling
2 promotional programs.

3 (6) Chapter 19.-- RCW (sections 1 through 8 of this act) applies to
4 free gifts, awards, or prizes regulated under this chapter.

5 **Sec. 10.** RCW 64.36.320 and 1987 c 370 s 13 are each amended to
6 read as follows:

7 (1) No person, including a promoter, may advertise, sell, contract
8 for, solicit, arrange, or promise a free gift, an award, a prize, or
9 other item of value in this state as a condition for attending a sales
10 presentation, touring a facility, or performing other activities in
11 connection with the offer or sale of a timeshare under this chapter,
12 without first providing the director with a bond, letter of credit,
13 cash depository, or other security arrangement that will assure
14 performance by the promisor and delivery of the promised gift, award,
15 sweepstakes, prize, or other item of value.

16 (2) Promoters under this chapter shall be strictly liable for
17 delivering promised gifts, prizes, awards, or other items of value
18 offered or advertised in connection with the marketing of timeshares.

19 (3) Persons promised but not receiving gifts, prizes, awards, or
20 other items of consideration covered under this section, shall be
21 entitled in any cause of action in the courts of this state in which
22 their causes prevail, to be awarded treble the stated value of the
23 gifts, prizes, or awards, court costs, and reasonable attorney fees.

24 (4) The director may require that any fees or funds of any
25 description collected from persons in advance, in connection with
26 delivery by the promisor of gifts, prizes, awards, or other items of
27 value covered under this section, be placed in a depository in this
28 state, where they shall remain until performance by the promisor.

1 (5) The director may require commercial promotional programs to be
2 registered and require the provision of whatever information, including
3 financial information, the department deems necessary for protection of
4 purchasers.

5 (6) Persons offering commercial promotional programs shall sign and
6 present to the department a consent to service of process, in the
7 manner required of promoters in this chapter.

8 (7) Registrants or their agents or other persons shall not take
9 possession of promotional materials covered under this section and RCW
10 64.36.310, from recipients who have received the materials for
11 attending a sales presentation or touring a project, unless the
12 permission of the recipient is received and the recipient is provided
13 with an accurate signed copy describing such promotional materials.
14 The department shall adopt rules enforcing this subsection.

15 (8) Chapter 19.-- RCW (sections 1 through 8 of this act) applies to
16 free gifts, awards, prizes, or other items of value regulated under
17 this chapter.

18 NEW SECTION. Sec. 11. If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. Sec. 12. Sections 1 through 8 of this act shall
23 constitute a new chapter in Title 19 RCW.