

Chapter 19.170 RCW
PROMOTIONAL ADVERTISING OF PRIZES

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RCW 19.170.010 Finding—Violations—Consumer protection act—Application. (1) The legislature finds that deceptive promotional advertising of prizes is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) Deceptive promotional advertising of prizes is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW, and constitutes an act of deceptive promotional advertising.

(3) This chapter applies to a promotion offer:

(a) Made to a person in Washington;

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

(c) Used to induce or invite a person to contact by any means a promoter, sponsor, salesperson, or their agent in this state. [1991 c 227 § 1.]

RCW 19.170.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

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

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

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

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

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

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

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

(6) "Promoter" means a person conducting a promotion.

(7) "Promotion" means an advertising program, sweepstakes, contest, direct giveaway, or solicitation directed to specific named individuals, that includes the award of or chance to be awarded a prize, but does not include a promotional contest of chance under RCW 9.46.0356(1) (b).

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

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

(10) "Verifiable retail value" means:

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

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

(c) If the value of the prize cannot be established under (a) or (b) of this subsection, then the prize may be valued at no more than three times its cost to the promoter or sponsor. [2011 c 303 § 3; 1991 c 227 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2) (k).

Findings—Intent—2011 c 303: See note following RCW 9.46.0356.

RCW 19.170.030 Disclosures required. (1) The offer must identify the name and address of the promoter and the sponsor of the promotion.

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

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

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

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

(4) The verifiable retail value and odds for each prize must be stated in immediate proximity on the same page with the first listing of each prize in type at least as large as the typeface used in the standard text of the offer.

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

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

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

"Details and qualifications for participation in this promotion may apply."

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

(8) If a prize will not be awarded or given unless a winning ticket, the offer itself, a token, number, lot, or other device used to determine winners in a particular promotion is presented to a promoter or a sponsor, this fact must be clearly stated on the first page of the offer. [1999 c 31 § 1; 1991 c 227 § 3.]

RCW 19.170.040 Disclosures—Prizes awarded—Rain checks. (1)

Before a demonstration, seminar, or sales presentation begins, the promoter shall inform the person of the prize, if any, the person will receive.

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

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

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

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

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

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

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

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

(8) It is a violation of this chapter to misrepresent the quality, type, value, or availability of a prize. [1991 c 227 § 4.]

RCW 19.170.050 Simulated checks—Continuing obligation checks—

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

(2) No person, other than a financial institution, may produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state a continuing obligation check unless the document bears the phrase "THIS IS A LOAN" or "CASHING THIS REQUIRES REPAYMENT," diagonally printed in type at least as large as the predominant typeface in the continuing obligation check on the front of the check itself. [1991 c 227 § 5.]

RCW 19.170.060 Damages—Penalties. (1) A person who suffers

damage from an act of deceptive promotional advertising may bring an

action against the sponsor or promoter of the advertising, or both. Damages include, but are not limited to, fees paid in violation of RCW 19.170.030(6) and the dollar value of a prize represented to be awarded to a person, but not received by that person.

(2) In an action for deceptive promotional advertising, the court may award the greater of five hundred dollars or three times the actual damages sustained by the person, not to exceed ten thousand dollars; equitable relief, including, but not limited to an injunction and restitution of money and property; attorneys' fees and costs; and any other relief that the court deems proper. [1991 c 227 § 6.]

RCW 19.170.070 Violation—Penalty. A person who knowingly violates any provision of this chapter is guilty of a gross misdemeanor. [1991 c 227 § 7.]

RCW 19.170.080 Remedies not exclusive. The remedies prescribed in this chapter do not limit or bar any existing remedies at law or equity. [1991 c 227 § 8.]