

**SENATE BILL REPORT**

**SSB 5108**

**AS PASSED SENATE, MARCH 7, 1991**

**Brief Description:** Regulating promotional advertising of prizes.

**SPONSORS:** 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).

**SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE**

**Majority Report:** That Substitute Senate Bill No. 5108 be substituted therefor, and the substitute bill do pass.

Signed by Senators von Reichbauer, Chairman; Johnson, Vice Chairman; McCaslin, Moore, Pelz, Rasmussen, and Vognild.

**Staff:** Benson Porter (786-7470)

**Hearing Dates:** January 24, 1991; February 14, 1991

**HOUSE COMMITTEE ON COMMERCE & LABOR**

**BACKGROUND:**

Current state law sets forth various provisions concerning deceptive, false, or misleading advertisements. For example, no person may knowingly make, publish, or disseminate any such advertisements in the insurance business. Similarly, state-chartered industrial loan companies and consumer finance companies are prohibited from disseminating false or deceptive representations regarding loan transactions. Certain provisions also govern the advertisement and offering of gifts by camping resort and timeshare promoters.

Concern has been expressed that some businesses may be using promotional advertisements involving the use of prizes or other promotions in a deceptive manner. Some businesses and lenders have used simulated or real checks in their solicitation campaigns. Simulated checks look like actual checks except they may contain the phrase "nonnegotiable" or "nontransferable." However, because these documents resemble actual checks, concern has been expressed that consumers, bank employees, and retail store employees may be misled into thinking that the checks are bona fide negotiable instruments.

Similarly, real checks that when cashed impose continuing financial obligations upon the casher also have been used in various solicitation campaigns. Concern has been expressed that these type of checks may not contain adequate disclosures to inform the consumer of his or her future obligations.

**SUMMARY:**

Various provisions governing the content of written notices and procedures associated with the use of prizes in promotional advertising are set forth.

Any written notice offering goods or services to an individual based upon a representation that the person will receive a prize must contain the name and address of the promoter and sponsor. The notice must disclose the retail value and any odds associated with receiving a prize in the immediate proximity of the first listing of the prize. This disclosure also must be at least as large as the standard text of the offer. Further, if the offer is part of a collective promotion with more than one sponsor, this fact must be disclosed.

If an individual is required or invited to attend a sales presentation in order to claim the prize, this fact must be disclosed along with any other restrictions or qualifications to receive or use a prize. No prize may be represented as being free if the individual must pay a sum of money to receive the prize (i.e., shipping or handling fees).

At the beginning of any sales presentation, the consumer is to be informed of the prize or prize voucher to be received. Provisions governing the availability or replacement of prizes are also set forth. The offer must include a clear statement of the consumer's rights concerning the substitution of prizes.

The use of any document that is nonnegotiable but has the visual characteristics of a negotiable instrument must contain the following disclosure: "THIS IS NOT A CHECK." However, if the document is an actual negotiable instrument that imposes a financial obligation upon the casher of the check, a conspicuous disclosure that "THIS IS A LOAN" or "CASHING THIS REQUIRES REPAYMENT" must be diagonally printed on the front of the check. The provisions governing a continuing obligation check do not apply to financial institutions.

A person is authorized to bring an action against a sponsor or a promoter for damages. Damages may include the value of the prize and any fees paid. A court also may award the greater of \$500 or three times the actual damages sustained by the person (up to \$10,000), equitable relief, attorney's fees, and any other remedy deemed proper.

A knowing violation of this act is a gross misdemeanor, which is punishable by a fine up to \$5,000 or imprisonment for one year, or both.

The provisions of this chapter are applicable to certain offers by camping resorts and timeshares.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

The regulation of certain promotional offerings is necessary to prevent any misrepresentations or deceptive practices involving these materials.

**TESTIMONY AGAINST:**

Provisions governing continuing obligation checks should not apply to financial institutions. Moreover, all of the regulations on promotional offerings should apply to certain offerings involving books, records and videotapes where a right to review the merchandise is present.

**TESTIFIED:** Attorney General Ken Eikenberry (pro); John Ellis, Deputy Attorney General (pro); Paula L. Selis, Attorney General's Office (pro); Richard A. Huggins (pro); Michelle Goldberg (pro); Richard Ross (pro); Joe Daniels, Direct Marketing Association; Lew McMurrin, Mike Meyer, Household Finance Corporation (con); John C. Martin, Washington Membership Resort Association (pro); Robert A. Klein, Leisure Time Resorts; Jan Gee, Washington Retail Association (pro)

**HOUSE AMENDMENT(S):**

Certain items offered in promotions are exempt from the provisions of the bill. In order to be exempt, there must be (1) no element of chance in obtaining the item; (2) a merchandise review period to return undamaged merchandise for a full refund; (3) the ability to keep the item offered in the promotion without obligation; and (4) no required sales presentation or payment to receive an offered item.