
SUBSTITUTE SENATE BILL 5108

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

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

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

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

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

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

15 (9) "Verifiable retail value" means:

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

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

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

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

1 NEW SECTION. **Sec. 3.** (1) The offer must identify the name and

2 address of the promoter and the sponsor of the promotion.

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

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

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

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

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

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

25 (6) No item may be denominated a prize, gift, award, premium, or
26 similar term that implies the item is free if, in order to receive the
27 item or use the item for its intended purpose the intended recipient is
28 required to spend any sum of money, including but not limited to
29 shipping fees, deposits, handling fees, payment for one item in order
30 to receive another at no charge, or the purchase of another item or the

1 expenditure of funds in order to make meaningful use of the item
2 awarded in the promotion. The payment of any applicable state or
3 federal taxes by a recipient directly to a government entity is not a
4 violation of this section.

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

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

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

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

1 NEW SECTION. **Sec. 4.** (1) Before a demonstration, seminar, or

2 sales presentation begins, the promoter shall inform the person of the
3 prize, if any, the person will receive.

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

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

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

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

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

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

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

28 "If you receive a rain check in lieu of the prize, you are
29 entitled by law to receive the prize, an item of equal or

1 greater value, or the cash equivalent of the offered prize
2 within thirty days of the date on which you claimed the prize."

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

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

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

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

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

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

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

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

7 (1) It is unlawful for a camping resort operator or other person,
8 in connection with an advertisement or offer for sale of a camping
9 resort contract in this state, to promise or offer a free gift, award,
10 prize, or other item of value if the operator or person knows or has
11 reason to know that the offered item is unavailable in a sufficient
12 quantity based upon the reasonably anticipated response to the
13 advertisement or offer.

14 (2) A person who responds to an advertisement or offer in the
15 manner specified, who performs all stated requirements, and who meets
16 the qualifications disclosed shall ((promptly)) receive the offered
17 item ((offered)) subject to ((the following exception. If the camping
18 resort operator fails to provide the item because of insufficient
19 supply or unacceptable quality not reasonably foreseeable by the
20 camping resort operator, the operator shall provide, at the operator's
21 option, a rain check for the item offered, its cash equivalent, a
22 substitute item of greater retail value, or a rain check for such
23 substitute item. If a rain check is provided, the camping resort
24 operator shall, within thirty days, deliver the item, its cash
25 equivalent, or a substitute item to the recipient's address without
26 additional cost or requirement to the recipient)) chapter 19.-- RCW
27 (sections 1 through 8 of this act).

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

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

16 (5) Operators or other registrants or persons promising gifts,
17 prizes, awards, or other items of consideration as part of a membership
18 referral program shall be considered to be offering or selling
19 promotional programs.

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

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

24 (1) No person, including a promoter, may advertise, sell, contract
25 for, solicit, arrange, or promise a free gift, an award, a prize, or
26 other item of value in this state as a condition for attending a sales
27 presentation, touring a facility, or performing other activities in
28 connection with the offer or sale of a timeshare under this chapter,
29 without first providing the director with a bond, letter of credit,

1 cash depository, or other security arrangement that will assure
2 performance by the promisor and delivery of the promised gift, award,
3 sweepstakes, prize, or other item of value.

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

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

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

17 (5) The director may require commercial promotional programs to be
18 registered and require the provision of whatever information, including
19 financial information, the department deems necessary for protection of
20 purchasers.

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

24 (7) Registrants or their agents or other persons shall not take
25 possession of promotional materials covered under this section and RCW
26 64.36.310, from recipients who have received the materials for
27 attending a sales presentation or touring a project, unless the
28 permission of the recipient is received and the recipient is provided
29 with an accurate signed copy describing such promotional materials.
30 The department shall adopt rules enforcing this subsection.

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

4 NEW SECTION. Sec. 11. If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

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