

HOUSE BILL REPORT

SSB 5108

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to the regulation of promotional advertising of prizes.

Brief Description: Regulating promotional advertising of prizes.

Sponsor(s): 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).

Brief History:

Reported by House Committee on:
Commerce & Labor, March 26, 1991, DPA.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *Do pass as amended.* Signed by 10 members: Representatives Heavey, Chair; Cole, Vice Chair; Fuhrman, Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; Vance; and Wilson.

Staff: Jim Kelley (786-7166).

Background: Some businesses and lenders have used simulated or real checks in their advertising. Simulated checks look like actual checks except they may contain the phrase "nonnegotiable" or "nontransferable." Other businesses, in their advertising, have used real checks that impose continuing financial obligations upon the casher. Another method of promotional advertising is to require potential customers to attend a sales presentation in order to claim a prize.

Summary of Amended Bill: Restrictions are placed on the content of written notices and procedures associated with the use of prizes in advertising.

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, in the

immediate proximity of the listing of the prize, the retail value and any odds associated with receiving a prize. This disclosure 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, such as shipping or handling fees.

At the beginning of any sales presentation, the consumer is to be informed of the prize to be received. A promoter may not include a prize in an offer unless the prize will be available in a sufficient quantity to meet the reasonably anticipated response to the offer. 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.

Amended Bill Compared to Substitute Bill: The definition of "prize" is made consistent with Federal Trade Commission rules. When there is no element of chance in obtaining an

item, when the recipient has the right to review the merchandise offered for sale, when the recipient may keep the promotional item, and when attendance at a sales presentation is not required, then the promotional gift is not a prize. The amendments also make technical clarifications.

Fiscal Note: Not requested.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill addresses a major problem. Often, the offers are too restrictive or nonexistent. There are always scam operations, but this approach has been very successful in restricting them in Indiana.

Testimony Against: The bill needs to be amended to make it clear that a gift is not a prize.

Witnesses: John C. Martin, Washington Membership Resort Association (in favor); Ron Rudy, Trade Products, Inc. (neutral); Becky Bogard, McDonald's Corporation (in favor as amended); Joe Daniels, Direct Marketing Association (in favor as amended); Vito Chiechi, Washington State Coalition of Travel (in favor); Paula Selis, Attorney General's Office (in favor); Richard Ross, concerned citizen (in favor); Richard Huggins, Lynnwood Police (in favor); and Jan Gee, Washington Retail Association (in favor).