

**SENATE BILL 5108**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** Senators von Reichbauer, McCaslin, Moore, Vognild, Matson, Rasmussen, Pelz and Owen; by request of Attorney General.

Read first time January 21, 1991. Referred to Committee on Financial Institutions & Insurance.

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 made:

1 (a) By a person in Washington; or

2 (b) To a person in Washington.

3 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
4 otherwise, the definitions in this section apply throughout this  
5 chapter.

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

9 (2) "Prize" means a gift, award, travel coupon or certificate, free  
10 item, or any other item offered in a promotion that is different and  
11 distinct from the goods, service, or property promoted by a sponsor.

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

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

16 (5) "Offer" means a written notice delivered by hand, mail, or  
17 other print medium offering goods, services, or property or a chance to  
18 obtain goods, services, or property made to a person based on a  
19 representation that the person has been awarded, or will be awarded, a  
20 prize.

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

24 (7) "Simulated check" means a document that is not currency or a  
25 check, draft, note, bond, or other negotiable instrument but has the  
26 visual characteristics thereof. "Simulated check" does not include a  
27 nonnegotiable check, draft, note, or other instrument that is used for  
28 soliciting orders for the purchase of checks, drafts, notes, bonds, or

1 other instruments and that is clearly marked as a sample, specimen, or  
2 nonnegotiable.

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

10 (9) "Verifiable retail value" means:

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

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

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

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

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

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

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

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

6 (4) The verifiable retail value and odds for each prize must be  
7 stated in immediate proximity on the same page with the first listing  
8 of each prize in type at least as large as the predominant typeface  
9 used in the offer or in ten-point, boldface type.

10 (5) If a person is required or invited to view, hear, or attend a  
11 sales presentation in order to claim a prize that has been awarded, may  
12 have been awarded, or will be awarded, the requirement or invitation  
13 must be conspicuously disclosed to the person in the offer in at least  
14 ten-point, boldface type on the first page of the offer.

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

25 (7) If the receipt of the prize is contingent upon certain  
26 restrictions or qualifications that the recipient must meet, or if the  
27 use or availability of the prize is restricted or qualified in any way,  
28 including, but not limited to restrictions on travel dates, travel  
29 times, classes of travel, airlines, accommodations, travel agents, or  
30 tour operators, the restrictions or qualifications must be disclosed on

1 the offer in immediate proximity on the same page with the first  
2 listing of the prize in type at least as large as the predominant  
3 typeface used in the offer or in ten-point, boldface type or, in place  
4 thereof, the following statement printed in direct proximity to the  
5 prize or prizes awarded in type at least as large as the predominant  
6 typeface used in the offer or in ten-point, boldface type:

7 "Major restrictions may apply to the use, availability, or receipt  
8 of the prize(s) awarded that could significantly reduce the  
9 apparent value of the award."

10 This statement must be followed by a disclosure, in the same size  
11 type as the statement, indicating where in the offer the restrictions  
12 may be found. The restrictions must be printed in type at least as  
13 large as the predominant typeface used in the offer or in ten-point,  
14 boldface type.

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

20 (9) Only subsection (6) of this section applies to a promotion that  
21 is limited to books, records, videotapes, discs, or other merchandise  
22 when the recipient has the right to review the merchandise without  
23 obligation for at least seven days and has a right to obtain a refund  
24 for the return of undamaged merchandise.

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

28 (2) A prize or a voucher, certificate, or other evidence of  
29 obligation given instead of a prize shall be given to a person at the

1 time the person is informed of the prize, if any, the person will  
2 receive.

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

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

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

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

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

20 (7) The offer shall include a clear and conspicuous statement of  
21 recipients' rights as enumerated in this section.

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

24 NEW SECTION. **Sec. 5.** (1) No person may produce, advertise, offer  
25 for sale, sell, distribute, or otherwise transfer for use in this state  
26 a simulated check unless the document bears the phrase "THIS IS NOT A  
27 CHECK," diagonally printed in type at least as large as the predominant  
28 typeface in the simulated check or in ten-point, boldface type on the  
29 front of the check itself.

1 (2) No person may produce, advertise, offer for sale, sell,  
2 distribute, or otherwise transfer for use in this state a continuing  
3 obligation check unless the document bears the phrase "THIS IS A LOAN"  
4 or "CASHING THIS REQUIRES REPAYMENT," diagonally printed in type at  
5 least as large as the predominant typeface in the continuing obligation  
6 check or in ten-point, boldface type on the front of the check itself.

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

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

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

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

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

25 (1) It is unlawful for a camping resort operator or other person,  
26 in connection with an advertisement or offer for sale of a camping

1 resort contract in this state, to promise or offer a free gift, award,  
2 prize, or other item of value if the operator or person knows or has  
3 reason to know that the offered item is unavailable in a sufficient  
4 quantity based upon the reasonably anticipated response to the  
5 advertisement or offer.

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

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



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

6 (5) Operators or other registrants or persons promising gifts,  
7 prizes, awards, or other items of consideration as part of a membership  
8 referral program shall be considered to be offering or selling  
9 promotional programs.

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

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

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

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

26 (3) Persons promised but not receiving gifts, prizes, awards, or  
27 other items of consideration covered under this section, shall be  
28 entitled in any cause of action in the courts of this state in which

1 their causes prevail, to be awarded treble the stated value of the  
2 gifts, prizes, or awards, court costs, and reasonable attorney fees.

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

8 (5) The director may require commercial promotional programs to be  
9 registered and require the provision of whatever information, including  
10 financial information, the department deems necessary for protection of  
11 purchasers.

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

15 (7) Registrants or their agents or other persons shall not take  
16 possession of promotional materials covered under this section and RCW  
17 64.36.310, from recipients who have received the materials for  
18 attending a sales presentation or touring a project, unless the  
19 permission of the recipient is received and the recipient is provided  
20 with an accurate signed copy describing such promotional materials.  
21 The department shall adopt rules enforcing this subsection.

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

25 NEW SECTION. Sec. 11. If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 remainder of the act or the application of the provision  
28 to other persons or circumstances is not affected.

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