

HOUSE BILL REPORT

HB 2785

As Reported By House Committee On:

Commerce & Labor

Title: An act relating to disclosures made for prize promotions.

Brief Description: Prescribing disclosures required for prize promotions.

Sponsors: Representatives Van Luven, McMorris, Honeyford, Gardner, Cairnes, Sheahan and Morris.

Brief History:

Committee Activity:

Commerce & Labor: 1/29/98, 2/5/98 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives McMorris, Chairman; Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Boldt; Clements; Hatfield and Lisk.

Minority Report: Do not pass. Signed by 1 member: Representative Cole.

Staff: Pam Madson (786-7166).

Background: Businesses that use promotional advertising to attract customers must comply with certain disclosure requirements when making a promotional offer. A promotional offer involves a program, sweepstakes, direct giveaway or solicitation. The offer may be in the form of a written notice that offers products, services or property based on a representation that the individual has been or will be awarded a prize. The person may need to attend a sales presentation or meet with a salesperson to claim a prize.

The offer to the consumer must contain information about the promoter and the value of the prize offered. If a sales presentation is required to receive a prize, that fact must be conspicuously displayed on the same page as the first listing of the prize. If the prize involves travel and is contingent on restrictions or qualifications, including restriction on travel dates, accommodations or travel times, any restrictions must be disclosed on the same page.

The sale and promotion of timeshares is regulated under laws administered by the Department of Licensing. Timeshare offers must be registered before any advertising may take place. Advertisements must be filed with and approved by the director of the department at least a week before advertising begins.

Summary of Substitute Bill: For promotional offers made by a person promoting timeshares and where the offer consists of more than one communication to a person, the required disclosures need not be made in each communication if certain conditions are met. The disclosure must be made in a single writing at least once before a person travels to participate in a sales presentation. All references, including telephone voice recordings, computer transmission and written advertisements, that include the offer must be filed with the director of the Department of Licensing as required under the law governing promotion of timeshares. A limited disclosure statement must be included in the first written communication from the promoter to a particular person that states "Restrictions may apply to the use, availability or receipt of the prize(s) awarded. You may request further information on these restrictions at any time."

Substitute Bill Compared to Original Bill: A promotional offer made by a promoter of timeshares using more than one communication, need not include the required disclosures in each communication if an additional condition is met. A limited disclosure statement must be included in the first written communication from the promoter to a particular person that states "Restrictions may apply to the use, availability or receipt of the prize(s) awarded. You may request further information on these restrictions at any time."

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: As a timeshare product developer, Trendwest has been using a process of communication with potential customers that includes, for example, a letter to a person in a key market area that offers the option to receive a gift. The person may call a number to hear a recorded message that further explains the qualifications of the offer with a request to call back at a time convenient to the customer. At that point an appointment may be scheduled to hear a presentation. Recently, Trendwest had to change this marketing plan and provide in the first written communication to the customer, certain required disclosures. By including all disclosures in the first written communication, the response to the letter has been much lower. The company has had to use direct telephone solicitation which is less effective. Significant oversight is provided under the laws governing timeshare promotions. The company's earlier

practice allowed disclosures to occur at a time when the consumer was motivated to be attentive to such disclosures.

Testimony Against: Since 1953, federal law has required that when goods or services are promoted by offering a prize, gift or something free, all the strings must be disclosed with the prize when the offer is made. To not disclose when the offer is made is a deceptive practice. No false advertising would be prohibited if the rule was that a misimpression may be created and then corrected with a disclosure before the consumer pays money. This kind of advertising places an unfair burden on consumers. To make informed decisions and to be able to shop around for the best product, consumers need accurate information and they need it up front. If it is harder to get the whole truth up front, it makes it harder for other businesses to compete who do make disclosures up front. This bill allows time share sellers to put up barriers to a consumer's ability to obtain this information. By creating this exception to federal law in Washington law, this state law would permit a practice that is prohibited by federal trade law.

Testified: (In favor) Representative Steve Van Luven, prime sponsor; Michael Moyer, Trendwest Resorts; Charlene Whitener, Trendwest Resorts; J. Thomas Richardson, Trendwest Resorts. (Opposed) Dave Horn, Attorney General's Office.