

1 AN ACT concerning prizes and gifts.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the
5 Prizes and Gifts Act.

6 Section 5. Legislative intent. The General Assembly
7 finds that deceptive promotional advertising of prizes is a
8 matter vitally affecting the public interest in this State.

9 Section 10. Definitions. As used in this Act:

10 "Catalog seller" means an entity (and its subsidiaries)
11 or a person at least 50% of whose annual revenues are derived
12 from the sale of products sold in connection with the
13 distribution of catalogs of at least 24 pages, which contain
14 written descriptions or illustrations and sale prices for
15 each item of merchandise and which are distributed in more
16 than one state with a total annual distribution of at least
17 250,000.

18 "Person" means a corporation, partnership, limited
19 liability company, sole proprietorship, or natural person.

20 "Prize" means a gift, award, or other item or service of
21 value that is offered or awarded to a participant in a real
22 or purported contest, competition, sweepstakes, scheme, plan,
23 or other selection process.

24 "Retail value" of a prize means:

25 (1) a price at which the sponsor can substantiate
26 that a substantial quantity of the item or service
27 offered as a prize has been sold to the public; or

28 (2) if the sponsor is unable to satisfy the
29 requirement in subdivision (1), no more than 3 times the
30 amount the sponsor paid for the prize in a bona fide

1 purchase from an unaffiliated seller.

2 "Sponsor" means a person that requires payment of money
3 as a condition of awarding another person a prize, or as a
4 condition of allowing another person to receive, use, compete
5 for, or obtain information about a prize, or that creates the
6 reasonable impression that such a payment is required.

7 Section 15. Application of Act. Except as otherwise
8 provided in this Act, this Act applies only to a written
9 promotional offer that is:

- 10 (1) made to a person in this State;
- 11 (2) used to induce or invite a person to come to
12 this State to claim a prize, attend a sales presentation,
13 meet a promoter, sponsor, salesperson, or agent, or
14 conduct any business in this State; or
- 15 (3) used to induce or invite a person to contact by
16 any means a promoter, sponsor, salesperson, or agent in
17 this State.

18 Section 20. No payment required. No sponsor may require
19 a person in this State to pay the sponsor money as a
20 condition of awarding the person a prize, or as a condition
21 of allowing the person to receive, use, compete for, or
22 obtain information about a prize.

23 Section 25. Disclosures required. A written promotional
24 offer must contain each of the following in a prominent
25 statement at the onset of the offer:

- 26 (1) the true name or names of the sponsor and the
27 address of the sponsor's actual principal place of
28 business;
- 29 (2) the retail value of each prize the person
30 receiving the notice has been selected to receive or may
31 be eligible to receive;

1 (3) a disclosure that no purchase is necessary to
2 enter such written promotional offer;

3 (4) a disclosure that a purchase will not improve
4 the person's chances of winning with an entry;

5 (5) a statement of the person's odds of receiving
6 each prize identified in the notice;

7 (6) any requirement that the person pay shipping or
8 handling fees or any other charges to obtain or use a
9 prize, including the nature and amount of the charges;

10 (7) if receipt of the prize is subject to a
11 restriction, a description of the restriction;

12 (8) any limitations on eligibility; and

13 (9) if a sponsor represents that the person is a
14 "winner", is a "finalist", has been "specially selected",
15 is in "first place", or is otherwise among a limited
16 group of persons with an enhanced likelihood of receiving
17 a prize, the written prize notice must contain a
18 statement of the maximum number of persons in the group
19 or purported group with this enhanced likelihood of
20 receiving a prize.

21 Section 30. Prize award required. A sponsor who
22 represents that a person has been awarded a prize shall, not
23 later than 30 days after making the representation, provide
24 the person with:

25 (1) the prize;

26 (2) a voucher, certificate, or other document
27 giving the person the prize; or

28 (3) the retail value of the prize, as stated in the
29 written prize notice, in the form of cash, a money order,
30 or a certified check.

31 Section 32. Advertising media exempt. Nothing in this
32 Act creates liability for acts by the publisher, owner,

1 agent, or employee of a newspaper, periodical, radio station,
2 television station, cable television system, or other
3 advertising medium arising out of the publication or
4 dissemination of a solicitation, notice, or promotion
5 governed by this Section unless the publisher, owner agent,
6 or employee had knowledge that the solicitation, notice, or
7 promotion violated the requirements of this Section, or had a
8 financial interest in the solicitation, notice, or promotion.

9 Section 35. Exemptions. This Act does not apply to
10 solicitations or representations in connection with:

11 (1) the sale or purchase of books, recordings,
12 video cassettes, periodicals, and similar goods through
13 a membership group or club that is regulated by the
14 Federal Trade Commission under Code of Federal
15 Regulations, Title 16, part 425.1, concerning the use of
16 negative option plans by sellers in commerce;

17 (2) the sale or purchase of goods ordered through a
18 contractual plan or arrangement such as a continuity
19 plan, subscription arrangement, or a single sale or
20 purchase series arrangement under which the seller ships
21 goods to a consumer who has consented in advance to
22 receive the goods and after the receipt of the goods is
23 given the opportunity to examine the goods and to receive
24 a full refund of charges for the goods upon return of the
25 goods in an undamaged condition;

26 (3) sales by a catalog seller;

27 (4) the State lottery created and regulated under
28 the Illinois Lottery Law;

29 (5) the sale or purchase of membership camping
30 contracts in accordance with the Illinois Membership
31 Campground Act; or

32 (6) the sale or purchase of time-shares created and
33 regulated under the Illinois Real Estate Time-Share Act.

1 Section 40. Violations.

2 (a) Nothing in this Act may be construed to permit an
3 activity otherwise prohibited by law.

4 (b) A consumer who suffers loss by reason of any
5 intentional violation of any provision of this Act may bring
6 a civil action to enforce that provision. A consumer who is
7 successful in such an action shall recover the greater of
8 \$500 or twice the amount of the pecuniary loss, reasonable
9 attorney's fees, and court costs incurred by bringing such
10 action.

11 (c) If the Attorney General or State's Attorney has
12 reason to believe that any person is using, has used, or is
13 about to use any method, act, or practice that violates this
14 Act, and that proceedings would be in the public interest, he
15 or she may bring an action in the name of the People of the
16 State of Illinois against the person to restrain by
17 preliminary or permanent injunction the use of the method,
18 act, or practice. The court, in its discretion, may exercise
19 all powers necessary, including but not limited to:
20 injunction; revocation, forfeiture, or suspension of license
21 or other authority of any person to do business in this
22 State; appointment of a receiver; dissolution of a domestic
23 corporation or association; suspension or termination of the
24 right of a foreign corporation or association to do business
25 in this State; and restitution. In addition to other
26 remedies, the Attorney General or State's Attorney may
27 request and the court may impose a civil penalty in a sum not
28 to exceed \$50,000 against any person found by the court to
29 have engaged in any method, act, or practice that violates
30 this Act. If the court finds the method, act, or practice to
31 have been entered into with the intent to defraud, the court
32 may impose a civil penalty in a sum not to exceed \$50,000 per
33 violation.

1 Section 90. Severability. If any provision of this Act
2 or the application thereof to any person or circumstance is
3 held invalid, the invalidity shall not affect other
4 provisions or applications of the Act which can be given
5 effect without the invalid provision or application and to
6 this end the provisions of this Act are severable.