

1                                    AMENDMENT TO SENATE BILL 797

2            AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 797 by replacing  
3 the title with the following:

4            "AN ACT concerning prizes and gifts."; and

5 by replacing everything after the enacting clause with the  
6 following:

7            "Section 1. Short title. This Act may be cited as the  
8 Prizes and Gifts Act.

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

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

13           "Catalog seller" means an entity (and its subsidiaries)  
14 or a person at least 50% of whose annual revenues are derived  
15 from the sale of products sold in connection with the  
16 distribution of catalogs of at least 24 pages, which contain  
17 written descriptions or illustrations and sale prices for  
18 each item of merchandise and which are distributed in more  
19 than one state with a total annual distribution of at least  
20 250,000.

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

3 "Prize" means a gift, award, or other item or service of  
4 value that is offered or awarded to a participant in a real  
5 or purported contest, competition, sweepstakes, scheme, plan,  
6 or other selection process.

7 "Retail value" of a prize means:

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

11 (2) if the sponsor is unable to satisfy the  
12 requirement in subdivision (1), no more than 3 times the  
13 amount the sponsor paid for the prize in a bona fide  
14 purchase from an unaffiliated seller.

15 "Sponsor" means a person that requires payment of money  
16 as a condition of awarding another person a prize, or as a  
17 condition of allowing another person to receive, use, compete  
18 for, or obtain information about a prize, or that creates the  
19 reasonable impression that such a payment is required.

20 Section 15. Application of Act. Except as otherwise  
21 provided in this Act, this Act applies only to a written  
22 promotional offer that is:

23 (1) made to a person in this State;

24 (2) used to induce or invite a person to come to  
25 this State to claim a prize, attend a sales presentation,  
26 meet a promoter, sponsor, salesperson, or agent, or  
27 conduct any business in this State; or

28 (3) used to induce or invite a person to contact by  
29 any means a promoter, sponsor, salesperson, or agent in  
30 this State.

31 Section 20. No payment required. No sponsor may require  
32 a person in this State to pay the sponsor money as a

1 condition of awarding the person a prize, or as a condition  
2 of allowing the person to receive, use, compete for, or  
3 obtain information about a prize.

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

7 (1) the true name or names of the sponsor and the  
8 address of the sponsor's actual principal place of  
9 business;

10 (2) the retail value of each prize the person  
11 receiving the notice has been selected to receive or may  
12 be eligible to receive;

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

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

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

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

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

24 (8) any limitations on eligibility; and

25 (9) if a sponsor represents that the person is a  
26 "winner", is a "finalist," has been "specially selected",  
27 is in "first place," or is otherwise among a limited  
28 group of persons with an enhanced likelihood of receiving  
29 a prize, the written prize notice must contain a  
30 statement of the maximum number of persons in the group  
31 or purported group with this enhanced likelihood of  
32 receiving a prize.

1           Section 30. Prize award required. A sponsor who  
2 represents that a person has been awarded a prize shall, not  
3 later than 30 days after making the representation, provide  
4 the person with:

5                 (1) the prize;

6                 (2) a voucher, certificate, or other document  
7 giving the person the prize; or

8                 (3) the retail value of the prize, as stated in the  
9 written prize notice, in the form of cash, a money order,  
10 or a certified check.

11           Section 32. Advertising media exempt. Nothing in this  
12 Act creates liability for acts by the publisher, owner,  
13 agent, or employee of a newspaper, periodical, radio station,  
14 television station, cable television system, or other  
15 advertising medium arising out of the publication or  
16 dissemination of a solicitation, notice, or promotion  
17 governed by this Section unless the publisher, owner agent,  
18 or employee had knowledge that the solicitation, notice, or  
19 promotion violated the requirements of this Section, or had a  
20 financial interest in the solicitation, notice, or promotion.

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

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

29                 (2) the sale or purchase of goods ordered through a  
30 contractual plan or arrangement such as a continuity  
31 plan, subscription arrangement, or a single sale or  
32 purchase series arrangement under which the seller ships

1 goods to a consumer who has consented in advance to  
2 receive the goods and after the receipt of the goods is  
3 given the opportunity to examine the goods and to receive  
4 a full refund of charges for the goods upon return of the  
5 goods in an undamaged condition;

6 (3) sales by a catalog seller;

7 (4) the State lottery created and regulated under  
8 the Illinois Lottery Law;

9 (5) the sale or purchase of membership camping  
10 contracts in accordance with the Illinois Membership  
11 Campground Act; or

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

14 Section 40. Violations.

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

17 (b) A consumer who suffers loss by reason of any  
18 intentional violation of any provision of this Act may bring  
19 a civil action to enforce that provision. A consumer who is  
20 successful in such an action shall recover the greater of  
21 \$500 or twice the amount of the pecuniary loss, reasonable  
22 attorney's fees, and court costs incurred by bringing such  
23 action.

24 (c) If the Attorney General or State's Attorney has  
25 reason to believe that any person is using, has used, or is  
26 about to use any method, act, or practice that violates this  
27 Act, and that proceedings would be in the public interest, he  
28 or she may bring an action in the name of the People of the  
29 State of Illinois against the person to restrain by  
30 preliminary or permanent injunction the use of the method,  
31 act, or practice. The court, in its discretion, may exercise  
32 all powers necessary, including but not limited to:  
33 injunction; revocation, forfeiture, or suspension of license

1 or other authority of any person to do business in this  
2 State; appointment of a receiver; dissolution of a domestic  
3 corporation or association; suspension or termination of the  
4 right of a foreign corporation or association to do business  
5 in this State; and restitution. In addition to other  
6 remedies, the Attorney General or State's Attorney may  
7 request and the court may impose a civil penalty in a sum not  
8 to exceed \$50,000 against any person found by the court to  
9 have engaged in any method, act, or practice that violates  
10 this Act. If the court finds the method, act, or practice to  
11 have been entered into with the intent to defraud, the court  
12 may impose a civil penalty in a sum not to exceed \$50,000 per  
13 violation.

14 Section 90. Severability. If any provision of this Act  
15 or the application thereof to any person or circumstance is  
16 held invalid, the invalidity shall not affect other  
17 provisions or applications of the Act which can be given  
18 effect without the invalid provision or application and to  
19 this end the provisions of this Act are severable."