

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

400A0351

HOUSE JUDICIARY COMMITTEE
ENGROSSED NO. **SB43** - 2/24/97

Introduced by: The Committee on Judiciary at the request of the Attorney General

1 FOR AN ACT ENTITLED, An Act to establish certain requirements and to prohibit certain

2 practices regarding sweepstake prizes and to provide a penalty for certain violations thereof.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Prize," any gift, award, or other item or service of value that is different and distinct
6 from the goods, service, or property promoted by a sponsor and requires payment to
7 the sponsor for the prize. Prize does not include an item offered in a promotion if all
8 of the following elements are present:

9 (a) No element of chance is involved in obtaining the item offered in the
10 promotion;

11 (b) The recipient has the right to review the merchandise or services for at least
12 seven days and has a right to obtain a full refund in thirty days for the return
13 of unused and undamaged merchandise or cancellation of unused services;

14 (c) The recipient may keep the item offered in the promotion without obligation;
15 and

1 (d) The recipient is not required to attend any sales presentation or spend any
2 money in order to receive the item offered in the promotion.

3 Prize does not include an item offered in a promotion for a book, recording, video,
4 multimedia, or similar club in compliance with 16 CFR 425 or a continuity plan or
5 single sale of merchandise where there is no minimum purchase required;

6 (2) "Prize notice," any notice given to an individual in this state that contains a
7 representation that the individual has won or will receive a prize and conditions
8 receipt of such prize on payment to the sponsor for the prize and conditions. A prize
9 notice also includes a notice which requires or invites the individual to make a contact
10 by telephone or in-person interview to learn how to receive the prize or to obtain
11 other information related to the notice. Prize notice does not include a notice
12 informing the individual that the individual has been awarded a prize as a result of the
13 individual's actual prior entry in a game, drawing, sweepstakes or other contest, if the
14 individual is awarded the prize stated in the notice;

15 (3) "Solicitor," any person who represents to an individual that the individual has won or
16 will receive a prize;

17 (4) "Sponsor," any person on whose behalf a solicitor gives a prize notice;

18 (5) "Verified retail value," the price at which the solicitor or sponsor can demonstrate that
19 a substantial number of the prizes have been sold by a person other than the solicitor
20 in the trade area in which the prize notice is given, or no more than one and one-half
21 times the amount the solicitor or sponsor paid for the prize.

22 Section 2. If a solicitor represents to an individual that the individual has won or will receive
23 a prize, the solicitor may not request, and the solicitor or sponsor may not accept, a payment
24 from the individual in any form before the individual receives a written prize notice that contains
25 all of the information required by this Act.

1 Section 3. A written prize notice shall contain all of the following information:

- 2 (1) The true name, address, and telephone number of the solicitor and sponsor;
- 3 (2) The verifiable retail value of each prize the individual has been selected or may be
4 eligible to receive;
- 5 (3) If the notice lists more than one prize that the individual has won or will receive, a
6 statement of the odds the individual has of receiving each prize;
- 7 (4) Any requirement or invitation for the individual to view, hear, or attend a sales
8 presentation in order to claim a prize, the approximate length of the sales
9 presentation, and a description of the property or service that is the subject of the
10 sales presentation;
- 11 (5) Any requirement that the individual pay shipping or handling fees or any other charges
12 to obtain or use a prize;
- 13 (6) If receipt of the prize is subject to a restriction, a statement that a restriction applies,
14 a description of the restriction, and a statement containing the location in the notice
15 where the restriction is described;
- 16 (7) Any limitations on eligibility; and
- 17 (8) If the individual is invited or required to telephone the solicitor or sponsor to enter or
18 claim a prize, a statement disclosing the average length of such a call, any toll charges
19 beyond normal long distance charges that the individual has to pay, and any other
20 methods available to the individual to enter or claim a prize.

21 Section 4. The verifiable retail value and the statement of odds required in a written prize
22 notice shall be stated in immediate proximity to each listing of the prize in each place the prize
23 appears on the written prize notice and shall be in the same size and boldness of type as the prize.
24 The statement of odds shall include, for each prize, the total number of prizes to be given away
25 and the total number of written prize notices to be delivered. The number of prizes and written

1 prize notices shall be stated in Arabic numerals. The statement of odds shall be in the following
2 form: "___ (number of prizes) out of ___ written prize notices." The verifiable retail value shall
3 be in the following form: "verifiable retail value: \$___."

4 Section 5. If an individual is required to pay shipping or handling fees or any other charges
5 to obtain or use a prize, the following statement shall appear in immediate proximity to each
6 listing of the prize in each place the prize appears in the written prize notice and may not be in
7 less than 12-point boldface type: "YOU MUST PAY \$___ IN ORDER TO RECEIVE OR USE
8 THIS ITEM."

9 Section 6. The information required in a written prize notice under subdivision 4 of section
10 3 of this Act shall be on the first page of the written prize notice in not less than 12-point
11 boldface type. The information required by subdivisions (6), (7), and (8) of section 3 of this Act
12 may not be in less than 12-point boldface type.

13 Section 7. If a written prize notice is given by a solicitor on behalf of a sponsor, the name of
14 the sponsor shall be prominently and conspicuously displayed.

15 Section 8. A solicitor or sponsor may not do any of the following:

- 16 (1) Place on an envelope containing a written prize notice any representation that the
17 person to whom the envelope is addressed has won or will receive a prize;
- 18 (2) Deliver a written prize notice that contains language, or is designed in a manner, that
19 would lead a reasonable person to believe that it originates from a government
20 agency, public utility, insurance company, consumer reporting agency, debt collector,
21 or law firm unless the written prize notice originates from that source; or
- 22 (3) Represent directly or by implication that the number of individuals eligible for the
23 prize is limited or that an individual has won or will receive a particular prize unless
24 the representation is true.

25 Section 9. If a prize notice requires or invites an individual to view, hear, or attend a sales

1 presentation in order to claim a prize, the sales presentation may not begin until the solicitor does
2 all of the following:

- 3 (1) Informs the individual of the prize, if any, that has been awarded to the individual; and
- 4 (2) If the individual has been awarded a prize, delivers to the individual the prize or the
5 item selected by the individual pursuant to section 10 of this Act if the prize is not
6 available.

7 Section 10. A solicitor who represents to an individual in a written prize notice that the
8 individual has won or will receive a prize shall provide the prize to the individual unless the prize
9 is not available. If the prize is not available, the solicitor shall provide the individual with any one
10 of the following items selected by the individual:

- 11 (1) Any other prize listed in the written prize notice that is available and that is of equal
12 or greater value;
- 13 (2) The verifiable retail value of the prize in the form of cash, a money order, or a
14 certified check; or
- 15 (3) A voucher, certificate, or other evidence of obligation stating that the prize will be
16 shipped to the individual within thirty days at no cost to the individual.

17 If a voucher, certificate, or other evidence of obligation delivered pursuant to subdivision (3)
18 is not honored within thirty days, the solicitor shall deliver the verifiable retail value of the prize
19 in the form of cash, a money order, or a certified check. The sponsor shall make the payment to
20 the individual if the solicitor fails to do so.

21 Section 11. If the attorney general or a state's attorney, has reason to believe that any person
22 has violated this Act, the attorney general or state's attorney may bring an action in the name of
23 the state against such person to restrain by temporary or permanent injunction the use of such
24 act or practice.

25 Section 12. The attorney general or a state's attorney, upon petition to the court, may recover

1 on behalf of the state, a civil penalty of at least one hundred dollars and not more than five
2 thousand dollars per violation from any person who violates the terms of an injunction issued
3 under section 11 of this Act.

4 Section 13. In any action brought under section 11 of this Act, if the court finds that a
5 solicitor or sponsor intentionally used an act or practice declared to be unlawful by this Act, the
6 attorney general or state's attorney, upon petition to the court, may recover, on behalf of the
7 state, a civil penalty of not more than two thousand dollars per violation. For purposes of this
8 section, an intentional violation occurs when the party committing the violation knew or should
9 have known that the conduct was a violation of this Act.

10 Section 14. Any individual who claims to have been adversely affected by any act or practice
11 declared to be unlawful by this Act may bring a civil action for the recovery of twice the actual
12 damages suffered or five hundred dollars, whichever is greater, as a result of such act or practice.
13 In addition, the individual may collect the court costs and attorney fees expended to bring an
14 action under this section.

15 Section 15. An action under this Act shall be tried in the circuit court for the county in which
16 the alleged violator resides or, if the action is brought by the Attorney General on behalf of the
17 State, has its place of business, in the circuit court of the county where the victim resides, or in
18 the circuit court for Hughes County, South Dakota, at the election of the plaintiff.

19 Section 16. Any action arising under this Act in no way affects any cause of action arising
20 under other laws of this state or under the common law, whether or not the other cause of action
21 is included within the provisions of this Act.

22 Section 17. Any person who knowingly or intentionally violates this Act with the intent to
23 defraud a consumer is guilty of a Class 1 misdemeanor.

24 Section 18. The provisions of this Act do not apply to a transaction made by a merchant who
25 operates an established business that has a fixed permanent location and who displays or offers

1 consumer goods or services for sale on a continuing basis.

1 **BILL HISTORY**

2 1/14/97 First read in Senate and referred to Judiciary. S.J. 20

3 1/24/97 Scheduled for Committee hearing on this date.

4 1/29/97 Scheduled for Committee hearing on this date.

5 1/29/97 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 234

6 2/3/97 Senate Do Pass Amended, Passed, AYES 32, NAYS 2. S.J. 293

7 2/4/97 First read in House and referred to Judiciary. H.J. 305

8 2/21/97 Scheduled for Committee hearing on this date.

9 2/21/97 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 626