

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

400A0351

SENATE BILL NO. 43

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;

6 (2) "Prize notice," any notice given to an individual in this state that contains a
7 representation that the individual has been selected or may be eligible to receive a
8 prize. The term includes a notice which conditions receipt of a prize on a payment
9 from the individual, requires or invites the individual to make a contact to learn how
10 to receive the prize or to obtain other information related to the notice, or invites the
11 individual to purchase goods or services from the solicitor or sponsor. The term does
12 not include a notice informing the individual that the individual has been awarded a
13 prize as a result of the individual's actual prior entry in a game, drawing, sweepstakes,
14 or other contest, if the individual is awarded the prize stated in the notice;

15 (3) "Solicitor," any person who represents to an individual that the individual has been

1 selected or may be eligible to receive a prize;

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

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

7 Section 2. If a solicitor represents to an individual that the individual has been selected or
8 may be eligible to receive a prize, the solicitor may not request, and the solicitor or sponsor may
9 not accept, a payment from the individual in any form before the individual receives a written
10 prize notice that contains all of the information required by this Act.

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

12 (1) The true name, address, and telephone number of the solicitor and sponsor;

13 (2) The verifiable retail value of each prize the individual has been selected or may be
14 eligible to receive;

15 (3) If the notice lists more than one prize that the individual has been selected or may be
16 eligible to receive, a statement of the odds the individual has of receiving each prize;

17 (4) Any requirement or invitation for the individual to view, hear, or attend a sales
18 presentation in order to claim a prize, the approximate length of the sales
19 presentation, and a description of the property or service that is the subject of the
20 sales presentation;

21 (5) Any requirement that the individual pay shipping or handling fees or any other charges
22 to obtain or use a prize;

23 (6) If receipt of the prize is subject to a restriction, a statement that a restriction applies,
24 a description of the restriction, and a statement containing the location in the notice
25 where the restriction is described;

1 (7) Any limitations on eligibility; and

2 (8) If the individual is invited or required to telephone the solicitor or sponsor to enter or
3 claim a prize, a statement disclosing the average length of such a call, any toll charges
4 beyond normal long distance charges that the individual has to pay, and any other
5 methods available to the individual to enter or claim a prize.

6 Section 4. The verifiable retail value and the statement of odds required in a written prize
7 notice shall be stated in immediate proximity to each listing of the prize in each place the prize
8 appears on the written prize notice and shall be in the same size and boldness of type as the prize.
9 The statement of odds shall include, for each prize, the total number of prizes to be given away
10 and the total number of written prize notices to be delivered. The number of prizes and written
11 prize notices shall be stated in Arabic numerals. The statement of odds shall be in the following
12 form: "___ (number of prizes) out of ___ written prize notices." The verifiable retail value shall
13 be in the following form: "verifiable retail value: \$___."

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

19 Section 6. The information required in a written prize notice under subdivision 4 of section
20 3 of this Act shall be on the first page of the written prize notice in not less than 12-point
21 boldface type. The information required by subdivisions (6), (7), and (8) of section 3 of this Act
22 may not be in less than 12-point boldface type.

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

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

- 1 (1) Place on an envelope containing a written prize notice any representation that the
2 person to whom the envelope is addressed has been selected or may be eligible to
3 receive a prize;
- 4 (2) Deliver a written prize notice that contains language, or is designed in a manner, that
5 would lead a reasonable person to believe that it originates from a government
6 agency, public utility, insurance company, consumer reporting agency, debt collector,
7 or law firm unless the written prize notice originates from that source; or
- 8 (3) Represent directly or by implication that the number of individuals eligible for the
9 prize is limited or that an individual has been selected to receive a particular prize
10 unless the representation is true.

11 Section 9. If a prize notice requires or invites an individual to view, hear, or attend a sales
12 presentation in order to claim a prize, the sales presentation may not begin until the solicitor does
13 all of the following:

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

18 Section 10. A solicitor who represents to an individual in a written prize notice that the
19 individual has been awarded a prize shall provide the prize to the individual unless the prize is
20 not available. If the prize is not available, the solicitor shall provide the individual with any one
21 of the following items selected by the individual:

- 22 (1) Any other prize listed in the written prize notice that is available and that is of equal
23 or greater value;
- 24 (2) The verifiable retail value of the prize in the form of cash, a money order, or a
25 certified check; or

1 (3) A voucher, certificate, or other evidence of obligation stating that the prize will be
2 shipped to the individual within thirty days at no cost to the individual.

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

7 Section 11. If the individual is required to purchase a good or service in order to claim their
8 prize, the solicitor or sponsor shall comply with all of the requirements of a telemarketer as
9 provided by law in addition to the requirements of this Act.

10 Section 12. If the attorney general or a state's attorney, has reason to believe that any person
11 has violated this Act, the attorney general or state's attorney may bring an action in the name of
12 the state against such person to restrain by temporary or permanent injunction the use of such
13 act or practice.

14 Section 13. The attorney general or a state's attorney, upon petition to the court, may recover
15 on behalf of the state, a civil penalty of at least one hundred dollars and not more than five
16 thousand dollars per violation from any person who violates the terms of an injunction issued
17 under section 12 of this Act.

18 Section 14. In any action brought under section 12 of this Act, if the court finds that a
19 solicitor or sponsor intentionally used an act or practice declared to be unlawful by this Act, the
20 attorney general or state's attorney, upon petition to the court, may recover, on behalf of the
21 state, a civil penalty of not more than two thousand dollars per violation. For purposes of this
22 section, an intentional violation occurs when the party committing the violation knew or should
23 have known that the conduct was a violation of this Act.

24 Section 15. Any individual who claims to have been adversely affected by any act or practice
25 declared to be unlawful by this Act may bring a civil action for the recovery of twice the actual

1 damages suffered or five hundred dollars, whichever is greater, as a result of such act or practice.
2 In addition, the individual may collect the court costs and attorney fees expended to bring an
3 action under this section.

4 Section 16. An action under this Act shall be tried in the circuit court for the county in which
5 the alleged violator resides or has its place of business, in the circuit court of the county where
6 the victim resides, or in the circuit court for Hughes County, South Dakota, at the election of
7 the plaintiff.

8 Section 17. Any action arising under this Act in no way affects any cause of action arising
9 under other laws of this state or under the common law, whether or not the other cause of action
10 is included within the provisions of this Act.

11 Section 18. Any person who knowingly or intentionally violates this Act with the intent to
12 defraud a consumer is guilty of a Class 1 misdemeanor.