

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senator Malone

A Bill

SENATE BILL 381

For An Act To Be Entitled

8 "AN ACT TO CREATE THE ARKANSAS PRIZE PROMOTION ACT; TO
9 REQUIRE CERTAIN DISCLOSURES IN ALL PRIZE PROMOTIONS; TO
10 PROVIDE CERTAIN EXEMPTIONS; TO PROVIDE PENALTIES AND
11 REMEDIES FOR VIOLATION OF THE ACT; AND FOR OTHER
12 PURPOSES."

Subtitle

15 "THE ARKANSAS PRIZE PROMOTION ACT"

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Definitions. As used in this act, unless the context
20 otherwise requires:

21 (1) "Prize" means a gift, award, or other item or service that is
22 offered or awarded to a participant in a real or purported contest,
23 competition, sweepstakes, puzzle, drawing, scheme, plan, or other selection
24 process.

25 (2) "Retail value" of a prize means:

26 (A) A price at which the sponsor can substantiate that a
27 substantial number of the prizes have been sold to the public in Arkansas in
28 the preceding year; or

29 (B) If the sponsor is unable to satisfy the requirement in
30 clause (A), then no more than 1.5 times the amount the sponsor paid for the
31 prize in a bona fide purchase from an unaffiliated seller.

32 (3) "Sponsor" means a corporation, partnership, limited liability
33 company, sole proprietorship, or natural person that offers a prize to a
34 person in Arkansas in conjunction with the sale or lease of any product or
35 service, or in conjunction with any real or purported contest, competition,

1 sweepstakes, puzzle, drawing, scheme, plan, or other selection process that
2 requires, or creates the reasonable impression of requiring, or allows the
3 person to pay any money as a condition of receiving, or in conjunction with
4 allowing the person to receive, use, compete for, or obtain a prize, or
5 information about a prize.

6

7 SECTION 2. Disclosures required.

8 (a) No sponsor shall offer a prize, nor shall a sponsor use any
9 solicitation, whether written or oral, and however communicated, that offers
10 a prize unless the person to whom such offer is made has first received a
11 written prize notice containing the information required in paragraphs (b)
12 and (c).

13 (b) A written prize notice must contain each of the following:

14 (1) The true name or names of the sponsor and the address of the
15 sponsor_s actual principal place of business;

16 (2) The retail value of each prize the person receiving the
17 notice has been selected to receive or may be eligible to receive;

18 (3) A statement of the person_s odds of receiving each prize
19 identified in the notice;

20 (4) Any requirement that the person pay shipping or handling
21 fees or any other charges in order to obtain or use a prize, or any fees
22 required to obtain information about a prize, including the nature and amount
23 of such charges;

24 (5) If the receipt of the prize is subject to a restriction, a
25 statement that a restriction applies, and a description of the restrictions;

26 (6) Any limitations on eligibility for the prize;

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

33 (c) The information required by paragraph (b) must be presented in the
34 following form:

35 (1) The retail value and statement of odds required under

1 paragraph (b), clauses (2) and (3), must be stated in immediate proximity to
2 each identification of a prize on the written notice, and must be in the same
3 size and boldness of type as the reference to the prize;

4 (2) The statement of odds must include, for each prize, the
5 total number of prizes to be given away and the total number of written
6 prizes to be distributed. The number of prizes and written prize notices
7 must be stated in Arabic numerals. The statement of odds must be in the
8 following form:

9 "...(number of prizes) out of ...(notices distributed)"; if a person is
10 required to pay shipping or handling fees or any other charges in order to
11 obtain a prize, to be eligible to obtain a prize, to obtain information about
12 a prize, or to otherwise participate in the contest, the following statement
13 must appear in immediate proximity to each listing of the prize in the
14 written prize notice, in not less than 10 point bold face type: "YOU MUST
15 PAY \$..... TO RECEIVE THIS ITEM" or "YOU MUST PAY \$..... TO COMPETE FOR THIS
16 ITEM," or "YOU MUST PAY \$..... TO OBTAIN INFORMATION ABOUT THIS ITEM,"
17 whichever is applicable; and a statement required under paragraph (b), clause
18 (7), must appear in immediate proximity to each representation that the
19 person is among a group of persons with an enhanced likelihood of receiving a
20 prize, and must be in the same size and boldness of type as the
21 representation.

22

23 SECTION 3. Prize award required.

24 A sponsor who represents to a person that the person has been awarded a
25 prize shall, not later than thirty (30) days after making a representation,
26 provide the person with the prize, or with a voucher, certificate, or other
27 document giving the person the unconditional right to receive the prize, or
28 shall provide the person with either of the following items selected by the
29 person:

30 (1) Any other prize listed in the written prize notice that is
31 available and that is of equal or greater value; or

32 (2) The retail value of the prize, as stated in the written notice, in
33 the form of cash, a money order, or a certified check.

34

35 SECTION 4. Telephonic prize offers.

1 (a) All provisions of this act apply to prize offers made by way of
2 telephone communication. Sponsors of such offers shall not solicit, nor
3 accept the payment of any money from any person unless that person has first
4 received the written prize notice as required by this act. No sponsor shall
5 solicit, nor utilize in any fashion any credit card or bank account
6 information from any person unless that person has first received a written
7 prize notice as required by this act.

8 (b) If a sponsor contacts a person by telephone after that person has
9 first received a written prize notice as required by this act, the sponsor
10 shall specifically identify the written prize notice, and shall by oral
11 disclosure communicate all disclosures required by Section 2 of this act
12 prior to soliciting or accepting any money from any person and prior to
13 soliciting or accepting any credit card or bank account information from any
14 person.

15

16 SECTION 5. Application of the Home Solicitation Act.

17 All prize offers, including telephone prize offers, in which the
18 sponsor has initiated contact regardless of his location and the consumer_s
19 agreement to pay is made at the consumer_s home, and is an agreement to pay
20 more than twenty-five dollars (\$25.00) is a "Home Solicitation Sale" within
21 the meaning of Arkansas Code Annotated § 4-89-102.

22

23 SECTION 6. Exemptions.

24 (a) Advertising Media Exempt. Nothing in this *act* creates liability
25 for the acts by the publisher, owner, agent, or employee of a newspaper,
26 periodical, radio station, television station, cable television station
27 system, or other advertising medium arising out of the publication or
28 dissemination of a solicitation, notice, or promotion governed by this *act*,
29 unless the publisher, owner, agent, or employee had knowledge that the
30 solicitation, notice, or promotion violated the requirements of this *act*, or
31 had a financial interest in the solicitation, notice, or promotion.

32 (b) Free Prize Promotions. This *act* does not apply to sponsors of
33 prize promotions where all prizes are awarded absolutely for free and there
34 is no opportunity for the payment of money from the person to the sponsor, or
35 any agent of the sponsor. The fact that a prize promotion makes provision

1 for entry into the contest, or eligibility for the prize, without any payment
2 does not exempt the prize promotion, nor its sponsor, from the provisions of
3 this act where the prize promotion requires, or creates the reasonable
4 impression of requiring, or allows the person to pay any money as a condition
5 of receiving, or in conjunction with allowing the person to receive, use,
6 compete for, or obtain a prize of information about a prize. If the prize
7 promotion provides any opportunity for any payment by the person to the
8 sponsor for any reason, regardless of whether such payment is required, and
9 regardless how such payment is denominated, this exemption shall not apply.

10 (c) *Other Exemptions. This act does not apply to solicitations or*
11 *representations, in connection with:*

12 (1) *the sale or purchase of books, recordings, videocassettes,*
13 *periodicals, and similar goods through:*

14 (A) *a membership group or club which is regulated by the*
15 *Federal Trade Commission pursuant to Code of Federal Regulations, title 16,*
16 *part 425.1, concerning use of negative option plans by sellers in commerce,*
17 *or*

18 (B) *the sale or purchase of such goods through a*
19 *contractual plan or arrangements such as a continuity plan, subscription*
20 *arrangement, or a single sale or purchase series arrangement under which the*
21 *seller ships such goods to a consumer who has consented in advance to receive*
22 *the goods and after the receipt of the goods is given the opportunity to*
23 *examine the goods and to receive a full refund of charges for the goods upon*
24 *return of the goods undamaged within a reasonable period of time; provided*
25 *that, the return and refund privilege shall be clearly and conspicuously*
26 *disclosed to the consumer in the original contact with the consumer, whether*
27 *oral or written; if the consumer elects to return the product for a refund,*
28 *the seller shall process the refund within thirty (30) days after the receipt*
29 *of the returned merchandise by the consumer; in addition to the return and*
30 *refund privilege, the consumer may cancel the plan, arrangement,*
31 *subscription, or purchase series at any time by notifying the seller. After*
32 *the seller receives the cancellation notice, any further products, not*
33 *already in transit, sent to the consumer shall be considered a gift to the*
34 *consumer which the consumer may keep without further obligation, and for*
35 *which gift the seller shall not bill the consumer;*

1 (2) sales by a catalog seller. For purposes of this section
2 catalog seller shall mean any entity (and its subsidiaries) or person at
3 least fifty percent (50%) of whose annual revenues are derived from the sale
4 of products sold in connection with the distribution of catalogs of at least
5 twenty-four (24) pages, which contain written descriptions or illustrations
6 and sale prices for each item of merchandise and which are distributed in
7 more than one state with a total annual distribution of at least two hundred
8 fifty thousand (250,000).

9 (d) Loss of Exemption. Any willful failure of a seller claiming
10 exemption under subsection (c) of this section to comply with all of the
11 terms of the exemption shall render a claim of exemption void, and such
12 seller shall be bound to fully comply with the provisions of this act.

13 (e) Exemption for Pari-mutuel Wagering. This act does not apply to
14 pari-mutuel wagering on horse racing and greyhound racing permitted and
15 regulated by Arkansas law.

16

17 SECTION 7. Prohibited Practices.

18 A sponsor shall not do any of the following:

19 (1) Offer a prize to any person except in accordance with the
20 requirements of this act.

21 (2) Deliver a written prize notice, or an envelope containing a
22 written prize notice, that contains language, or is designed in a manner,
23 that would have the tendency or capacity to mislead intended recipients as to
24 the source of the written prize notice. This prohibition includes, but is
25 not limited to, a written prize notice or envelope which indicates that the
26 notice or envelope originates from a government agency, public utility,
27 insurance company, consumer reporting agency, debt collector, or law firm,
28 unless the written prize notice or envelope originates from such source.

29 (3) Represent directly or by implication that the number of persons
30 eligible for the prize is limited or that a person has been selected to
31 receive a particular prize, unless the representation is true.

32 (4) Represent that a person is a winner or finalist, has been
33 specially selected, is in first place, or is otherwise among a limited group
34 of persons with an enhanced likelihood of receiving a prize, or that a person
35 is entering a contest, sweepstakes, drawing, or other competitive enterprise,

1 from which a single winner or select group of winners will receive a prize,
2 when in fact the enterprise is a promotional scheme designed to make contact
3 with prospective customers and all or a substantial number of those receiving
4 the notice are awarded the same prize.

5 (5) Represent directly or by implication that a person will have an
6 increased chance of receiving a prize by making multiple or duplicate
7 purchases, payments or donations, or by entering a game, drawing,
8 sweepstakes, or other contest more than one time, unless the representation
9 is true. A sponsor is deemed to have made such representation if the sponsor
10 delivers one or more prize notices to a person after the person has already
11 made a purchase, payment, or donation to the sponsor for the same promotion,
12 or has already entered the same game, drawing, sweepstakes, or other contest,
13 unless the sponsor can demonstrate a bona fide error even though the sponsor
14 has implemented procedures reasonably designed to prevent such duplication.

15 (6) Represent directly or by implication that a person is being
16 notified a second or final time of the opportunity to receive or compete for
17 a prize, unless the representation is true.

18 (7) Represent directly or by implication that a prize notice is
19 urgent, or otherwise convey an impression of the urgency by use of
20 description, narrative copy, phrasing on an envelope, or similar method,
21 unless there is a limited time period in which the recipient must take some
22 action to claim or be eligible to receive a prize, and the date by which such
23 action is required appears in immediate proximity to each representation of
24 urgency and in the same type size and boldness as each representation of
25 urgency.

26 (8) Knowingly sell, rent, exchange, transfer, or otherwise furnish to
27 or purchase from other persons, financial data regarding Arkansans disclosed
28 in connection with a prize promotion not in compliance with this *act*. For
29 purposes of this chapter, financial data includes credit card numbers, bank
30 account numbers, other payment device numbers, and dollars spent on prize
31 promotions which are not in compliance with this *act*.

32 (9) Request an individual to disclose the individual's phone number,
33 age, birthdate, credit card ownership, or financial data in connection with a
34 prize promotion which is not in compliance with this *act*.

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1 SECTION 8. Violations.

2 (a) Nothing in this *act* shall be construed to permit an activity
3 otherwise prohibited by law.

4 (b) A violation of this *act* is also a violation of the Arkansas
5 Deceptive Trade Practices Act, Arkansas Code Annotated § 4-88-101 et seq.,
6 and is subject to all of the enforcement provisions of that act. Each prize
7 offer made in violation of this act, as to each separate person to whom such
8 offer is made, shall constitute a separate violation of this act. For the
9 purposes of the assessment of penalties pursuant to the Arkansas Deceptive
10 Trade Practices Act, each separate violation of this act will constitute a
11 separate violation of the Deceptive Trade Practices Act.

12 (c) Any person suffering a pecuniary loss because of an intentional
13 violation of this *act* may bring an action in any court of competent
14 jurisdiction and shall recover costs, reasonable attorney_s fees, and the
15 greater of (1) five hundred dollars (\$500) or (2) twice the amount of the
16 pecuniary loss. It is evidence of intent if the violation occurs after the
17 Office of the Attorney General has notified a sponsor that the sponsor is in
18 violation of this act.

19 (d) The relief provided in this section is in addition to remedies or
20 penalties otherwise available in regards to the same conduct under law or
21 under other statutes of this State.

22

23 SECTION 9. Legislative finding, declaration, and intent.

24 (a) The Arkansas General Assembly has become aware of the avalanche of
25 sweepstakes, contests, and prize promotions that have been and are being
26 directed at Arkansas consumers, and recognizes that consumers are often
27 misled by these sweepstakes, contests, and prize promotions. The General
28 Assembly also recognizes that Arkansas consumers have paid hundreds of
29 thousands of dollars to sweepstakes, contests, and prize promoters based upon
30 misrepresentations by those promoters to Arkansas consumers. Many of the
31 sweepstakes, contests, and prize promotions are artfully crafted to lead
32 Arkansas consumers to believe that they have been selected to receive
33 valuable prizes, when such is not the case. The promotions often mislead
34 Arkansas consumers as to the value of the prizes. The promotions often
35 mislead Arkansas consumers as to their chances to receive the prize. The

1 promotions often mislead Arkansas consumers to believe that they must
2 purchase the promoter_s product, or otherwise pay to the promoter sums of
3 money in order to be eligible to receive the prize, or that the likelihood
4 that the prize to be awarded will be increased, or that the consumer_s
5 application for the prize will receive special handling if the consumer
6 purchases the promoter_s product. These sweepstakes, contests and prize
7 promoters prey particularly upon elderly Arkansas consumers.

8 (b) It is the intent of the *General Assembly* through the enactment of
9 this act to require that Arkansas consumers be provided with all relevant
10 information necessary to make an informed decision concerning sweepstakes,
11 contests, and prize promotions; it is also the intent of the *General Assembly*
12 to prohibit misleading and deceptive prize promotions. This act shall be
13 construed liberally in order to achieve this purpose.

14

15 SECTION 10. All provisions of this act of a general and permanent
16 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
17 Code Revision Commission shall incorporate the same in the Code.

18

19 SECTION 11. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

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25 SECTION 12. All laws and parts of laws in conflict with this act are
26 hereby repealed.

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/s/Malone

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