

## **Chapter 28**

### **Prize Notices Regulation Act**

#### **13-28-1 Title.**

This chapter shall be known as the "Prize Notices Regulation Act."

Enacted by Chapter 196, 1995 General Session

#### **13-28-2 Definitions.**

For the purpose of this part:

- (1) "Division" means the Division of Consumer Protection in the Department of Commerce.
- (2) "Prize" means a gift, award, or other item or service of value.
- (3)
  - (a) "Prize notice" means a notice given to an individual in this state that satisfies all of the following:
    - (i) is or contains a representation that the individual has been selected or may be eligible to receive a prize; and
    - (ii) conditions receipt of a prize on a payment or donation from the individual or requires or invites the individual to make a contact to learn how to receive the prize or to obtain other information related to the notice.
  - (b) "Prize notice" does not include:
    - (i) a notice given at the request of the individual; or
    - (ii) a notice informing the individual that he or she has been awarded a prize as a result of his actual prior entry in a game, drawing, sweepstakes, or other contest if the individual is awarded the prize stated in the notice.
- (4) "Solicitor" means a person who represents to an individual that the individual has been selected or may be eligible to receive a prize.
- (5) "Sponsor" means a person on whose behalf a solicitor gives a prize notice.
- (6) "Verifiable retail value" of a prize means:
  - (a) a price at which the solicitor or sponsor can demonstrate that a substantial number of the prizes have been sold by a person other than the solicitor or sponsor in the trade area in which the prize notice is given; or
  - (b) if the solicitor or sponsor is unable to satisfy Subsection (6)(a), no more than 1.5 times the amount the solicitor or sponsor paid for the prize.

Amended by Chapter 324, 2010 General Session

#### **13-28-3 Notice requirement.**

If a solicitor represents to an individual that he has been selected or may be eligible to receive a prize, the solicitor may not request, and the solicitor or sponsor may not accept, a payment from the individual in any form before the individual receives a written prize notice that contains all of the information required under Subsection 13-28-4(1) presented in the manner required under Subsections 13-28-4(2) through (6).

Amended by Chapter 131, 2003 General Session

#### **13-28-4 Contents of notices.**

- (1) A written prize notice shall contain all of the following information presented in the manner required under Subsections (2) through (6):
  - (a) the name and address of the solicitor and sponsor;
  - (b) the verifiable retail value of each prize the individual has been selected or may be eligible to receive;
  - (c) if the notice lists more than one prize that the individual has been selected or may be eligible to receive, a statement of the odds the individual has of receiving each prize;
  - (d) any requirement or invitation for the individual to view, hear, or attend a sales presentation in order to claim a prize, the approximate length of the sales presentation and a description of the property or service that is the subject of the sales presentation;
  - (e) any requirement that the individual pay shipping or handling fees or any other charges to obtain or use a prize;
  - (f) if receipt of the prize is subject to a restriction, a statement that a restriction applies, a description of the restriction, and a statement containing the location in the notice where the restriction is described; and
  - (g) any limitations on eligibility.
- (2)
  - (a) The verifiable retail value and the statement of odds required in a written prize notice under Subsections (1)(b) and (c) shall be stated in immediate proximity to each listing of the prize in each place the prize appears on the written prize notice and shall be in the same size and boldness of type as the prize.
  - (b) The statement of odds shall include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be delivered. The number of prizes and written prize notices shall be stated in Arabic numerals. The statement of odds shall be in the following form: "... (number of prizes) out of... written prize notices".
  - (c) The verifiable retail value shall be in the following form: "verifiable retail value: \$...".
- (3) If an individual is required to pay shipping or handling fees or any other charges to obtain or use a prize, the following statement shall appear in immediate proximity to each listing of the prize in each place the prize appears in the written prize notice and shall be in not less than 10-point boldface type: "YOU MUST PAY \$.... IN ORDER TO RECEIVE OR USE THIS ITEM."
- (4) The information required in a written prize notice under Subsection (1)(d) shall be on the first page of the written prize notice in not less than 10-point boldface type. The information required under Subsections (1)(f) and (g) shall be in not less than 10-point boldface type.
- (5) If a written prize notice is given by a solicitor on behalf of a sponsor, the name of the sponsor shall be more prominently and conspicuously displayed than the name of the solicitor.
- (6) A solicitor or sponsor may not do any of the following:
  - (a) place on an envelope containing a written prize notice any representation that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize;
  - (b) deliver a written prize notice that contains language, or is designed in a manner that would lead a reasonable person to believe that it originates from a government agency, public utility, insurance company, consumer reporting agency, debt collector, accounting or law firm unless the written prize notice originates from that source; or
  - (c) represent directly or by implication that the number of individuals eligible for the prize is limited or that an individual has been separately selected to receive a particular prize unless the representation is true.

Enacted by Chapter 196, 1995 General Session

**13-28-5 Sales presentations.**

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

- (1) informs the individual of the prize, if any, that has been selected to be received by or awarded to the individual; and
- (2) if the individual has been awarded a prize, delivers to the individual the prize or the item selected by the individual under Section 13-28-6 if the prize is not available.

Enacted by Chapter 196, 1995 General Session

**13-28-6 Prize awards -- Options if unavailable.**

- (1) A solicitor who represents to an individual in a written prize notice that the individual has been awarded a prize shall provide the prize to the individual unless the prize is not available. If the prize is not available, the solicitor shall provide the individual with any one of the following items selected by the individual:
  - (a) any other prize listed in the written prize notice that is available and that is of equal or greater value;
  - (b) the verifiable retail value of the prize in the form of cash, a money order, or a certified check; or
  - (c) a voucher, certificate, or other evidence of obligation stating that the prize will be shipped to the individual within 30 days at no cost to the individual.
- (2) If a voucher, certificate, or other evidence of obligation delivered under Subsection (1)(c) is not honored within 30 days, the solicitor shall deliver to the individual the verifiable retail value of the prize in the form of cash, a money order, or a certified check. The sponsor shall make the payment to the individual if the solicitor fails to do so.

Enacted by Chapter 196, 1995 General Session

**13-28-7 Penalties -- Administrative and criminal.**

- (1) Any person who violates this chapter shall be subject to:
  - (a) a cease and desist order; and
  - (b) an administrative fine of not less than \$100 or more than \$5,000 for each separate violation.
- (2) All administrative fines shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.
- (3) Any person who intentionally violates this part is guilty of a class A misdemeanor and may be fined up to \$10,000. A person intentionally violates this part if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that he is in violation of this chapter.

Enacted by Chapter 196, 1995 General Session

**13-28-8 Enforcement.**

- (1) The division shall investigate and assess administrative fines for violations of this chapter.
- (2) Upon referral from the division, the attorney general or any district or county attorney may:
  - (a) bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this part. The court may, upon entry of final judgment, award

restitution when appropriate to any person suffering loss because of a violation of this part if proof of loss is submitted to the satisfaction of the court;

- (b) bring an action in any court of competent jurisdiction for the collection of penalties authorized under Subsection 13-28-7(1); or
- (c) bring an action under Subsection 13-28-7(3).

Enacted by Chapter 196, 1995 General Session

**13-28-9 Private action.**

In addition to any other remedies, a person suffering pecuniary loss because of a violation by another person of this chapter may bring an action in any court of competent jurisdiction and may recover:

- (1) the greater of \$500 or twice the amount of the pecuniary loss; and
- (2) court costs and reasonable attorney's fees as determined by the court.

Enacted by Chapter 196, 1995 General Session