

By: Little

To: Judiciary

SENATE BILL NO. 2727

1 AN ACT TO PROHIBIT MISLEADING AND DECEPTIVE PRIZE PROMOTIONS;
2 TO DEFINE CERTAIN TERMS; TO PROHIBIT CERTAIN PRACTICES BY SPONSORS
3 OF PRIZES; TO PROVIDE CERTAIN EXEMPTIONS FROM THE PROVISIONS OF
4 THIS ACT; TO PROVIDE THAT NO SPONSOR SHALL OFFER A PRIZE UNLESS
5 THE PERSON TO WHOM SUCH OFFER IS MADE HAS FIRST RECEIVED A WRITTEN
6 PRIZE NOTICE CONTAINING CERTAIN DISCLOSURES; TO REQUIRE THE
7 SPONSOR WHO REPRESENTS TO A PERSON THAT HE HAS BEEN AWARDED A
8 PRIZE TO PRESENT THAT PERSON WITH THE PRIZE WITHIN A CERTAIN
9 PERIOD OF TIME; TO PROVIDE THAT ALL PROVISIONS OF THIS ACT APPLY
10 TO PRIZE OFFERS MADE BY WAY OF TELEPHONE COMMUNICATION; AND FOR
11 RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 SECTION 1. (1) The Legislature has become aware of the
14 avalanche of sweepstakes, contests, and prize promotions that have
15 been and are being directed at Mississippi consumers, and
16 recognizes that consumers are often misled by these sweepstakes,
17 contests, and prize promotions. The Legislature also recognizes
18 that Mississippi consumers have paid hundreds of thousands of
19 dollars to sweepstakes, contests, and prize promoters based upon
20 misrepresentations by those promoters to consumers. These
21 sweepstakes, contests, and prize promoters prey particularly upon
22 elderly consumers.

23 (2) It is the intent of the Legislature through the
24 enactment of this act to require that Mississippi consumers be
25 provided with all relevant information necessary to make an
26 informed decision concerning sweepstakes, contests, and prize
27 promotions. It is also the intent of the Legislature to prohibit
28 misleading and deceptive prize promotions. This act shall be
29 construed liberally in order to achieve this purpose.

30 SECTION 2. As used in this act, unless the context otherwise

31 requires:

32 (a) "Prize" means a gift, award, or other item or
33 service that is offered or awarded to a participant in a real or
34 purported contest, competition, sweepstakes, puzzle, drawing,
35 scheme, plan, or other selection process;

36 (b) "Retail value" of a prize means:

37 (i) A price at which the sponsor can substantiate
38 that a substantial number of the prizes have been sold to the
39 public in Mississippi in the preceding year; or

40 (ii) If the sponsor is unable to satisfy the
41 requirement in subdivision (b)(i) of this section, then no more
42 than one and one-half (1.5) times the amount the sponsor paid for
43 the prize in a bona fide purchase from an unaffiliated seller; and

44 (c) "Sponsor" means a corporation, partnership, limited
45 liability company, sole proprietorship, or natural person that
46 offers a prize to a person in Mississippi in conjunction with the
47 sale or lease of any product or service, or in conjunction with
48 any real or purported contest, competition, sweepstakes, puzzle,
49 drawing, scheme, plan, or other selection process that requires,
50 or creates the reasonable impression of requiring, or allows the
51 person to pay any money as a condition of receiving, or in
52 conjunction with allowing the person to receive, use, compete for,
53 or obtain a prize or information about a prize.

54 SECTION 3. (1) Nothing in this act shall be construed to
55 permit an activity otherwise prohibited by law.

56 (2) (a) Each prize offer made in violation of this act, as
57 to each separate person to whom such offer is made, shall
58 constitute a separate violation of this act.

59 (b) A violation of this act is also a violation of the
60 Mississippi Consumer Protection Act, Section 75-24-1 et seq., and
61 is subject to all of the enforcement provisions of that act.

62 (c) For the purposes of the assessment of penalties
63 pursuant to the Mississippi Consumer Protection Act, Section

64 75-24-1 et seq., each separate violation of this act will
65 constitute a separate violation of the Mississippi Consumer
66 Protection Act, Section 75-24-1 et seq.

67 (3) (a) Any person suffering a pecuniary loss because of an
68 intentional violation of this act may bring an action in any court
69 of competent jurisdiction and shall recover:

70 (i) Costs;

71 (ii) Reasonable attorney's fees; and

72 (iii) The greater of Five Hundred Dollars

73 (\$500.00) or twice the amount of the pecuniary loss.

74 (b) It is evidence of intent if the violation occurs
75 after the Office of the Attorney General has notified a sponsor
76 that the sponsor is in violation of this act.

77 (4) The relief provided in this section is in addition to
78 remedies or penalties otherwise available in regard to the same
79 conduct under law or under other statutes of this state.

80 SECTION 4. (1) **Advertising Media Exempt.** Nothing in this
81 act creates liability for the acts by the publisher, owner, agent,
82 or employee of a newspaper, periodical, radio station, television
83 station, cable television station system, or other advertising
84 medium arising out of the publication or dissemination of a
85 solicitation, notice, or promotion governed by this act, unless
86 the publisher, owner, agent, or employee had knowledge that the
87 solicitation, notice, or promotion violated the requirements of
88 this act, or had a financial interest in the solicitation, notice,
89 or promotion.

90 (2) **Free Prize Promotions.** (a) This act does not apply to
91 sponsors of prize promotions where all prizes are awarded
92 absolutely for free and there is no opportunity for the payment of
93 money from the person to the sponsor or any agent of the sponsor.

94 (b) The fact that a prize promotion makes provision for
95 entry into the contest or eligibility for the prize without any
96 payment does not exempt the prize promotion or its sponsor from

97 the provisions of this act where the prize promotion requires, or
98 creates the reasonable impression of requiring, or allows the
99 person to pay, any money as a condition of receiving, or in
100 conjunction with allowing the person to receive, use, compete for,
101 or obtain a prize or information about a prize.

102 (c) If the prize promotion provides any opportunity for
103 any payment by the person to the sponsor for any reason,
104 regardless of whether such payment is required, and regardless of
105 how such payment is denominated, this exemption shall not apply.

106 (3) **Loss of Exemption.** Any willful failure of a seller
107 claiming exemption under subsection (3) of this section to comply
108 with all of the terms of the exemption shall render a claim of
109 exemption void, and such seller shall be bound to fully comply
110 with the provisions of this act.

111 (4) **Exemption for Gaming Activity.** This act does not apply
112 to gaming activities permitted and regulated by the Gaming Control
113 Act, Section 75-76-199 et seq., and the Charitable Bingo Law,
114 Section 97-33-50 et seq.

115 SECTION 5. A sponsor shall not do any of the following:

116 (a) Offer a prize to any person except in accordance
117 with the requirements of this act;

118 (b) (i) Deliver a written prize notice, or an envelope
119 containing a written prize notice, that contains language, or is
120 designed in a manner, that would have the tendency or capacity to
121 mislead intended recipients as to the source of the written prize
122 notice;

123 (ii) This prohibition includes, but is not limited
124 to, a written prize notice or envelope which indicates that the
125 notice or envelope originates from a government agency, public
126 utility, insurance company, consumer reporting agency, debt
127 collector, or law firm, unless the written prize notice or
128 envelope originates from such source;

129 (c) Represent directly or by implication that the

130 number of persons eligible for the prize is limited or that a
131 person has been selected to receive a particular prize, unless the
132 representation is true;

133 (d) Represent that a person is a winner or finalist,
134 has been specially selected, is in first place, or is otherwise
135 among a limited group of persons with an enhanced likelihood of
136 receiving a prize, or that a person is entering a contest,
137 sweepstakes, drawing, or other competitive enterprise from which a
138 single winner or select group of winners will receive a prize,
139 when in fact the enterprise is a promotional scheme designed to
140 make contact with prospective customers and all or a substantial
141 number of those receiving the notice are awarded the same prize;

142 (e) (i) Represent directly or by implication that a
143 person will have an increased chance of receiving a prize by
144 making multiple or duplicate purchases, payments, or donations, or
145 by entering a game, drawing, sweepstakes, or other contest more
146 than one (1) time, unless the representation is true;

147 (ii) A sponsor is deemed to have made such
148 representation if the sponsor delivers one (1) or more prize
149 notices to a person after the person has already made a purchase,
150 payment, or donation to the sponsor for the same promotion, or has
151 already entered the same game, drawing, sweepstakes, or other
152 contest, unless the sponsor can demonstrate a bona fide error even
153 though the sponsor has implemented procedures reasonably designed
154 to prevent such duplication;

155 (f) Represent directly or by implication that a person
156 is being notified a second or final time of the opportunity to
157 receive or compete for a prize, unless the representation is true;

158 (g) Represent directly or by implication that a prize
159 notice is urgent, or otherwise convey an impression of the urgency
160 by use of description, narrative copy, phrasing on an envelope, or
161 similar method, unless there is a limited time period in which the
162 recipient must take some action to claim or be eligible to receive

163 a prize, and the date by which such action is required appears in
164 immediate proximity to each representation of urgency and in the
165 same type size and boldness as each representation of urgency;

166 (h) (i) Knowingly sell, rent, exchange, transfer, or
167 otherwise furnish to or purchase from other persons, financial
168 data regarding Mississippi consumers disclosed in connection with
169 a prize promotion not in compliance with this act;

170 (ii) For purposes of this act, financial data
171 includes credit card numbers, bank account numbers, other payment
172 device numbers, and dollars spent on prize promotions which are
173 not in compliance with this act; or

174 (i) Request an individual to disclose the individual's
175 phone number, age, birthdate, credit card ownership, or financial
176 data in connection with a prize promotion which is not in
177 compliance with this act.

178 SECTION 6. (1) No sponsor shall offer a prize, nor shall a
179 sponsor use any solicitation, whether written or oral, and however
180 communicated, that offers a prize, unless the person to whom such
181 offer is made has first received a written prize notice containing
182 the information required in subsections (2) and (3) of this
183 section.

184 (2) A written prize notice must contain each of the
185 following:

186 (a) The true name or names of the sponsor and the
187 address of the sponsor's actual principal place of business;

188 (b) The retail value of each prize the person receiving
189 the notice has been selected to receive or may be eligible to
190 receive;

191 (c) A statement of the person's odds of receiving each
192 prize identified in the notice;

193 (d) Any requirement that the person pay shipping or
194 handling fees or any other charges in order to obtain or use a
195 prize, or any fees required to obtain information about a prize,

196 including the nature and amount of such charges;

197 (e) If the receipt of the prize is subject to a
198 restriction, a statement that a restriction applies, and a
199 description of the restrictions;

200 (f) Any limitations on eligibility for the prize; and

201 (g) If a sponsor represents that the person is a
202 "winner", is a "finalist", has been "specially selected", is in
203 "first place", or is otherwise among a limited group of persons
204 with an enhanced likelihood of receiving a prize, the written
205 prize notice must contain a statement of the maximum number of
206 persons in the group or purported group with this enhanced
207 likelihood of receiving a prize.

208 (3) The information required by subsection (2) of this
209 section must be presented in the following form:

210 (a) The retail value and statement of odds required
211 under subdivisions (2)(b) and (c) of this section must be stated
212 in immediate proximity to each identification of a prize on the
213 written notice, and must be in the same size and boldness of type
214 as the reference to the prize;

215 (b) The statement of odds must include, for each prize,
216 the total number of prizes to be given away and the total number
217 of written prizes to be distributed;

218 (c) The number of prizes and written prize notices must
219 be stated in arabic numerals;

220 (d) The statement of odds must be in the following
221 form: "___ (number of prizes) out of ___ (notices distributed)";

222 (e) If a person is required to pay shipping or handling
223 fees or any other charges in order to obtain a prize, to be
224 eligible to obtain a prize, to obtain information about a prize,
225 or to otherwise participate in the contest, the following
226 statement must appear in immediate proximity to each listing of
227 the prize in the written prize notice, in not less than ten (10)
228 point bold face type: "YOU MUST PAY \$ ____ TO RECEIVE THIS ITEM"

229 or "YOU MUST PAY \$ ____ TO COMPETE FOR THIS ITEM" or "YOU MUST PAY
230 \$ ____ TO OBTAIN INFORMATION ABOUT THIS ITEM", whichever is
231 applicable; and

232 (f) A statement required under subdivision (2)(g) of
233 this section must appear in immediate proximity to each
234 representation that the person is among a group of persons with an
235 enhanced likelihood of receiving a prize, and must be in the same
236 size and boldness of type as the representation.

237 SECTION 7. A sponsor who represents to a person that the
238 person has been awarded a prize shall, not later than thirty (30)
239 days after making a representation, provide the person with the
240 prize, or with a voucher, certificate, or other document giving
241 the person the unconditional right to receive the prize, or shall
242 provide the person with either of the following items selected by
243 the person:

244 (a) Any other prize listed in the written prize notice
245 that is available and that is of equal or greater value; or

246 (b) The retail value of the prize, as stated in the
247 written notice, in the form of cash, a money order, or a certified
248 check.

249 SECTION 8. (1) All provisions of this act apply to prize
250 offers made by way of telephone communication.

251 (2) Sponsors of such offers shall not solicit or accept the
252 payment of any money from any person unless that person has first
253 received the written prize notice as required by this act.

254 (3) No sponsor shall solicit or utilize in any fashion any
255 credit card or bank account information from any person unless
256 that person has first received a written prize notice as required
257 by this act.

258 (4) If a sponsor contacts a person by telephone after that
259 person has first received a written prize notice as required by
260 this act, the sponsor shall specifically identify the written
261 prize notice and shall by oral disclosure communicate all

262 disclosures required by Section 6 of this act prior to soliciting
263 or accepting any money from any person and prior to soliciting or
264 accepting any credit card or bank account information from any
265 person.

266 SECTION 9. This act shall take effect and be in force from
267 and after July 1, 2000.