WEST VIRGINIA CODE CHAPTER 46A ARTICLE 6D

WV Legislature

§46A-6D-1. Short title.

This article may be cited as the "Prizes and Gifts Act".

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§46A-6D-2. Definitions.

As used in this article:

(a) "Anything of value", "item of value" or "item" means any item or service with monetary value.

(b) "Handling charge" means any charge, fee or sum of money which is paid by a consumer to receive a prize, gift or any item of value, including, but not limited to, promotional fees, redemption fees, registration fees or delivery costs.

(c) "Person" means any natural person, corporation, trust, partnership, association and any other legal entity.

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§46A-6D-3. Representation of having won a prize, gift or any item of value.

(a) Unless otherwise provided by article six of this chapter, a person may not, in connection with the sale or lease or solicitation for the sale or lease of goods, property or service, represent that another person has won anything of value or is the winner of a contest, unless all of the following conditions are met:

(1) The recipient of the prize, gift or item of value is given the prize, gift or item of value without obligation; and

(2) The prize, gift or item of value is delivered to the recipient at no expense to him or her, within ten days of the representation.

(b) The use of language that may lead a reasonable person to believe he or she has won a contest or anything of value, including, but not limited to, "Congratulations", or "You have won", or "You are the winner of", is a representation of the type governed by this section.

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§46A-6D-4. Representation of eligibility to win or to receive a prize, gift or item of value.

(a) A person may not represent that another person is eligible or has a chance to win or to receive a prize, gift or item of value without clearly and conspicuously disclosing on whose behalf the contest or promotion is conducted, as well as all material conditions which a participant must satisfy. In an oral solicitation all material conditions shall be disclosed prior to requesting the consumer to enter into the sale or lease. Additionally, in any written material covered by this section, each of the following shall be clearly and prominently disclosed:

(1) Immediately adjacent to the first identification of the prize, gift or item of value to which it relates; or

(2) In a separate section entitled "Consumer Disclosure" which title shall be printed in no less than ten-point bold-face type and which section shall contain only a description of the prize, gift or item of value and the disclosures outlined in paragraphs (i), (ii) and (iii) of this subdivision:

(i) The true retail value of each item or prize;

(ii) The actual number of each item, gift or prize to be awarded; and

(iii) The odds of receiving each item, gift or prize.

(b) All disclosures required by this article to be in writing shall comply with the following:

(1) All dollar values shall be stated in arabic numerals and be preceded by a dollar sign ($); and

(2) The number of each item, gift or prize to be awarded and the odds of receiving each item, gift or prize shall be stated in arabic numerals and shall be written in a manner which is clear and understandable.

(c) It is unlawful to notify a person that upon acceptance or response he or she will receive a gift, prize or item of value in connection with a promotion or otherwise that has as a condition of receiving the gift, prize or item of value the requirement that he or she pay any money, or purchase, lease or rent any goods or services, unless there has been clearly and conspicuously disclosed the nature of the charges to be incurred, including, but not limited to, any shipping charge and handling charges. Such disclosure shall be given:

(1) On the face of any written materials; or

(2) Prior to requesting or inviting the person to enter into the sale or lease in any oral notification.

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(d) The provisions of this section do not apply where to be eligible:

(1) Participants are asked only to complete and mail, or deposit at a local retail commercial establishment, an entry blank obtainable locally or by mail, or to call in their entry toll free by telephone or other free or local calling option; or

(2) Participants are never required to listen to a sales presentation and never requested or required to pay any sum of money for any merchandise, service or item of value.

(e) Nothing in this section creates any liability for acts by the publisher, owner, agent or employee of a newspaper, periodical, radio station, telecommunications company, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent or employee did not know that the advertisement or promotion violated the requirements of this section.

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§46A-6D-5. Representation of being specially selected.

(a) A person may not represent that another person has been specially selected in connection with the sale or lease or solicitation for sale or lease of goods, property or service, unless the selection process is designed to reach a particular type or types of persons.

(b) The use of any language that may lead a reasonable person to believe he has been specially selected, including, but not limited to, "Carefully Selected", or "You have been selected to receive", or "You have been chosen", is a representation of the type governed by this section.

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§46A-6D-6. Simulation of checks and invoices.

In connection with a consumer transaction, no person may issue any writing which simulates or resembles:

(a) A check unless the writing clearly and conspicuously disclosed its true value and purpose, and the writing would not mislead a reasonable person; or

(b) An invoice unless the intended recipient of the invoice has actually contracted for goods, property or services for which the issuer seeks proper payment.

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§46A-6D-7. Conditions for handling charges and shipping charges.

(a) It is unlawful to notify a person that he or she may or will receive a gift, prize or item of value and that as a condition of receiving the gift, prize or item of value he or she will be required to pay any money, or purchase or lease, including rent, any goods or services, if any one or more of the following conditions exist:

(1) The shipping charges exceeds:

(i) The cost of postage or the charge of a shipping service in the business of delivering goods of like size, weight and kind for shipping the gift, prize or item of value from the geographic area in which the gift, prize or item of value is being distributed; or

(ii) The exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offeror of the gift, prize or item of value.

(2) The handling charge exceeds the lesser of $5 or the actual cost of handling.

(b) This section applies to all offers of prizes, gifts or items of value covered by this article where such charges are permitted.

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§46A-6D-8. Action to enforce the provisions of article.

Any consumer who suffers loss by reason of a violation of any provision of this article may bring a civil action to enforce such provisions. Any consumer who is successful in an action shall recover reasonable attorney's fees and court costs incurred by bringing the action.

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§46A-6D-9. Enforcement; penalties.

Any violation of this article constitutes an unlawful act or practice under the provisions of article six of this chapter, regarding fraudulent acts or practices committed by a supplier in connection with a consumer transaction and shall be subject to the enforcement provisions of article seven of this chapter.

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§46A-6D-10. Exemptions.

The provisions of sections four through seven of this article do not apply to the sale or purchase, or solicitation or representation in connection therewith, of goods from a catalog or of books, recordings, videocassettes, periodicals and similar goods through a membership group or club which is regulated by the federal trade commission trade regulation rule concerning use of negative option plans by sellers in commerce or through a contractual plan or arrangement such as a continuity plan, subscription arrangement or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive such goods and the recipient of such goods is given the opportunity, after examination of the goods, to receive a full refund of charges for the goods, or unused portion thereof, upon return of the goods, or unused portion thereof, undamaged.

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