

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1287

BY: COX

AS INTRODUCED

AN ACT RELATING TO CRIMES AND PUNISHMENTS; CREATING
THE CONSUMERS DISCLOSURE OF PRIZES AND GIFTS ACT;
PROVIDING SHORT TITLE; PROVIDING DEFINITIONS;
PROVIDING CERTAIN PROHIBITIONS CONCERNING PRIZES
AND GIFTS; PROVIDING EXCEPTIONS THERETO; PROVIDING
FINES AND PENALTIES; PROVIDING FOR INJUNCTIVE
RELIEF; PROVIDING FOR CODIFICATION; AND PROVIDING
AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 996.1 of Title 21, unless there
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Consumers
Disclosure of Prizes and Gifts Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 996.2 of Title 21, unless there
is created a duplication in numbering, reads as follows:

As used in the Consumers Disclosure of Prizes and Gifts Act:

1. "Marketing channel" means a method of retail distribution,
including but not limited to, catalog sales, mail order, telephone
sales, and in-person sales at retail outlets; and

2. "Retail merchant" means any person or entity regardless of the form of organization that has continuously offered for sale or lease more than one hundred different types of goods or services to the public in the State of Oklahoma throughout a period exceeding three (3) years.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 996.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person to use the term "prize" or "gift" or other similar term in any manner that would be untrue or misleading.

B. It is unlawful to notify any person by any means, as a part of an advertising plan or program, that the person has won a prize and that as a condition of receiving such prize the person must pay any money or rent any goods or services.

C. It is unlawful to notify any person by any means that the person will receive a gift and that as a condition of receiving the gift the person must pay any money, or purchase, lease or rent any goods or services, if any one or more of the following exists:

1. The shipping charge, depending on the method of shipping used, exceeds:

a. the average cost of postage or the average charge of a delivery service in the business of delivering goods of like size, weight, and kind for shippers other than the offeror of the gift for the geographic area in which the gift is being distributed, or

b. the exact amount for shipping paid to an independent supplier, who is in the business of shipping goods for shippers other than the offeror of the gift.

2. The handling charge:

a. is not reasonable, or

b. exceeds the actual cost of handling, or

- c. exceeds the greater of Three Dollars (\$3.00) in any transaction or eighty percent (80%) of the actual cost of the gift item to the offeror or its agent, or
- d. in the case of a merchandise retailer, exceeds the actual amount for handling paid to an independent supplier, who is in the business of handling goods for businesses other than the offeror of the gift.

3. Any goods or services which must be purchased or leased by the offeree of the gift in order to obtain the gift could have been purchased through the same marketing channel in which the gift was offered for a lower price without the gift items at or proximate to the time the gift was offered.

4. The majority of the gift offeror's sales or leases within the preceding year, through the marketing channel in which the gift is offered or through in-person sales at retail outlets, of the type of goods or services which must be purchased or leased in order to obtain the gift item was made in conjunction with the offer of a gift. This paragraph does not apply to a gift offer made by a retail merchant in conjunction with the sale or lease through mail order of goods or services if:

- a. the goods or services are of a type unlike any other type of goods or services sold or leased by the retail merchant at any time during the period beginning six (6) months before and continuing six (6) months after the gift offer,
- b. the gift offer does not extend for a period more than two (2) months, and
- c. the gift offer is not untrue or misleading in any manner.

5. The gift offeror represents that the offeree has been specially selected in any manner unless:

- a. the representation is true, and

b. the offeree made a purchase from the gift offeror within a six-month period before the gift offer was made or has a credit card issued by, or a retail installment account with, the gift offeror.

D. 1. Each violation of the provisions of this section is a misdemeanor and, upon conviction, shall be punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), or by both.

2. The Attorney General or the district attorney of the county in which the violation has occurred may enjoin the violating party from continuing an unlawful prize or gift offer.

SECTION 4. This act shall become effective September 1, 1991.

43-1-5084

MMS