CHAPTER 15

Prizes and Gifts

**SECTION 37‑15‑10.** Short title.

This chapter may be cited as the Prizes and Gifts Act.

HISTORY: 1994 Act No. 483, Section 1.

**SECTION 37‑15‑20.** Definitions.

As used in this chapter:

(1) "Anything of value", "item of value", or "item" means an item or service with monetary value.

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

(3) "Person" means an individual, corporation, trust, partnership, association, and any other legal entity.

HISTORY: 1994 Act No. 483, Section 1.

**SECTION 37‑15‑30.** Restrictions on representation that a person has won a prize or contest.

(A) No person, in connection with the sale, lease, or solicitation for the sale or lease of goods, property, or service, may represent that another person has won anything of value or is the winner of a contest, unless these conditions are met:

(1) The recipient of the prize, gift, or item of value must be given the prize, gift, or item of value without monetary obligation.

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

(B) The use of language that may lead a reasonable person to believe that the person 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 considered a representation of the type governed by this section.

(C) This section does not apply to a promotion or contest meeting the requirements or one of the stated exceptions to applicability set forth in Section 37‑15‑40.

HISTORY: 1994 Act No. 483, Section 1.

**SECTION 37‑15‑40.** Form and content of disclosures required as prerequisites to representation that person has chance to win something; exceptions; publisher of violative material not liable.

(A) No person, in connection with the sale, lease, or solicitation for sale or lease of goods, property, or service, may represent that another person 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 and all material conditions that a participant must satisfy. In an oral solicitation all material conditions must be disclosed before requesting the consumer to enter into the sale or lease. In written material, immediately adjacent to the first identification of the prize, gift, or item of value to which it relates; or in a separate section entitled "Award Rules" with the title printed in no less than ten‑point bold face type and the section containing a description of the prize, gift, or item of value; and these disclosures must be stated:

(a) the actual retail value of each item or prize, which for purposes of this section are:

(i) the price at which substantial sales of the item were made in the area in which the offer was received within the last one hundred and eighty days; or

(ii) the actual cost of the item of value, gift, or prize to the person on whose behalf the contest or promotion is conducted plus no more than seven hundred percent, but in no case may the cost exceed the person's good faith estimate of the appraised retail value;

(b) the actual number of each item, gift, or prize to be awarded;

(c) the odds of receiving an item, gift, or prize; and

(d) a limitation on eligibility of participation in the contest or promotion.

(B) All disclosures required by this chapter to be in writing must comply with the following:

(1) all dollar values must be stated in Arabic numerals and be preceded by a dollar sign.

(2) the number of each item, gift, or prize to be awarded and the odds of receiving an item, gift, or prize must be stated in Arabic numerals and must be written in a manner that is clear and understandable.

(C) It is unlawful to notify a person that the person will receive a gift, prize, or item of value that has as a condition of receiving the gift, prize, or item of value the requirement that the person pay for or purchase, lease, or rent any goods or services, unless the nature of the charges to be incurred including, but not limited to, a shipping charge or handling charge, have been clearly and conspicuously disclosed. The disclosure must be given:

(1) on the face of written materials; or

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

(D) This section does not apply if:

(1) a participant is 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 the entry by telephone; or

(2) a participant at no time is required to listen to a sales presentation in order to receive the prize or gift or at no time is required to pay for any merchandise, service, or item of value other than as disclosed in the Award Rules.

(E) Nothing in this section creates liability for an act by the publisher, owner, agent, or employee of a newspaper, periodical, radio station, television station, cable‑television system, or other advertising medium arising out of the publication or dissemination of an advertisement or promotion governed by this section, when the publisher, owner, agent, or employee did not know that the advertisement or promotion violated this section.

HISTORY: 1994 Act No. 483, Section 1.

**SECTION 37‑15‑50.** Restriction of representation that person has been specially selected.

(A) No person may represent that another person has been specially selected in connection with the sale, lease, or solicitation for sale or lease of goods, property, or service, unless the selection process is designed to reach particular persons.

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

HISTORY: 1994 Act No. 483, Section 1.

**SECTION 37‑15‑60.** Use of simulated checks or invoices restricted.

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

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

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

HISTORY: 1994 Act No. 483, Section 1.

**SECTION 37‑15‑70.** Payment of excessive shipping or handling charges as precondition of receipt of gift or prize prohibited.

(A) It is unlawful to notify a person that the person will receive a gift, prize, or item of value and that as a condition of receiving the gift, prize, or item of value the person will be required to pay for or purchase or lease, including rent, any goods or services, if:

(1) the shipping charges exceed:

(a) the cost of postage or the charge of a delivery 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

(b) the exact amount for shipping the gift, prize, or item of value 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; or

(2) the handling charge exceeds the lesser of five dollars or the actual cost of handling.

(B) This section applies to all offers of prizes, gifts, or items of value covered by this chapter.

HISTORY: 1994 Act No. 483, Section 1.

**SECTION 37‑15‑80.** Civil actions to enforce chapter; costs.

A consumer who suffers loss by reason of a violation of this chapter may bring a civil action to enforce the provisions and, if successful in the action, shall recover reasonable attorney's fees and court costs incurred by bringing the action.

HISTORY: 1994 Act No. 483, Section 1.

**SECTION 37‑15‑90.** Violation of this chapter is unfair trade practice.

A violation of this chapter constitutes a prohibited practice under the provisions of the Unfair Trade Practices Act and is subject to any of the enforcement provisions of that act.

HISTORY: 1994 Act No. 483, Section 1.

**SECTION 37‑15‑100.** Procedures exempted from application of sections 37‑15‑40 through 37‑15‑70.

Sections 37‑15‑40 through 37‑15‑70 do not apply to the sale, 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 that is regulated by the Federal Trade Commission concerning the 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 the goods, and after examination of the goods, the recipient of the goods is given the opportunity to receive a full refund of charges for the goods or a proportionate refund for an unused portion of the goods, upon return of the goods or the unused portion, undamaged.

HISTORY: 1994 Act No. 483, Section 1.