

Sweepstakes and Giveaways, Rules, and Best Practices (NBI CLE Presentation)

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I. SWEEPSTAKES AND PROMOTIONS LEGAL OVERVIEW

The three classic elements that must be present to constitute an illegal lottery are: (1) a prize, (2) chance (i.e., luck, not skill), and (3) consideration (i.e., that is required to participate).

Each of these three elements will be discussed. If a purported promotion has all three elements, it is an illegal lottery, and one of the elements must be eliminated to keep it from being characterized as such. Please keep in mind that so long as one element is missing, a contest is not an illegal lottery. By definition, a promotion based primarily on skill (i.e., a contest) will eliminate the "chance" element, while a promotion not requiring the payment of consideration (i.e., a sweepstakes) will eliminate the "consideration" element.

All states prohibit private lotteries. For instance, see N.Y. Penal Law § 225.00 et seq., or Fla. Stat. § 849.09. Many of them have passed statutory restrictions with respect to sweepstakes and contests used as promotional tools, such as those enacted in connection with retail gasoline sales or sales of vacation properties, by way of example. Many states have registration requirements with respect to contests (such as Rhode Island pursuant to RI Gen. Laws tit. 11, Ch. 50, and Arizona, pursuant to A.R.S. § 13-3311); some have bonding requirements (such as New York, per NY Gen. Bus. Law § 369-e, and Florida, per FL Statutes, Title XLVI, Ch. 849); and others regulate what may or may not be awarded as a prize.

All jurisdictions are *generally* in agreement as to the definition of a private lottery. See, e.g., TEX. GOV'T CODE ANN. § 466.002(5): "Lottery means the procedures operated by the state under this chapter through which prizes are awarded or distributed by chance among persons who have paid, or unconditionally agreed to pay, for a chance or other opportunity to receive a prize." But the states differ in their interpretation of the individual elements of an illegal lottery (for example, there is considerable difference as to what constitutes sufficient consideration).

A closer look at the elements of an illegal lottery is important to understanding this area:

- ***Prize***

The first element, the prize, is anything of tangible value offered as an inducement to participate in a scheme of chance. It can be money, a car, a trip, a household gadget, or an infinite number of other things. A prize may consist of the opportunity to obtain a loan on favorable terms. The prize is the *sine qua non* of the contest – the enticement that makes it worthwhile – and it is the one element of the aforementioned three that will not, as a practical matter, be eliminated to keep a contest from being classified as an illegal lottery. Thus, either consideration or the chance element must be eliminated.

- ***Chance***

The second element that turns a contest into an illegal lottery is the presence of chance; specifically, if chance is the dominant factor in determining a winner. Chance involves the absence of skill. A classic definition is found in *United States v. Rich*, 90 F. Supp. 624, 627 (E.D. Ill. 1950):

... the word has reference to the attempt to attain certain ends, not by skill or any known or fixed rules, but by the happening of a subsequent event, incapable of ascertainment or accomplishment by means of human foresight or ingenuity. . . . The most common illustration of . . . chance . . . is the drawing of a number from a container holding many numbers, by a blindfolded person.

Similarly, pursuant to N.Y. Penal Law § 225.00(1), a game of chance is one in which "the outcome depends in a material degree upon an element of chance, notwithstanding that the skill of the contestants may also be a factor therein."

A promoter can eliminate chance as an element by structuring a promotion as a skill contest, such as a musical composition challenge. See, for example, *Faircloth v. Cent. Fla. Fair, Inc.*, 202 So. 2d 608 (Fla. 4th DCA 1967).

The element of chance is discussed in greater detail below in connection with contests, which generally are lawful when run pursuant to applicable law.

- ***Consideration***

The third element that turns a contest into an illegal lottery is the presence of consideration. There is much litigation over what constitutes consideration when identifying an illegal lottery, and the rules, noted below, are complicated.

Definition: What is "consideration" for purposes of discerning if the contest is an illegal lottery? To understand the answer to this, it is important to set aside the definition of "consideration" learned in first year contracts law class because the "consideration" required in the lottery milieu is somewhat more restrictive.

Consideration need not involve the payment of money. Any cost to participate as well as any substantial effort above and beyond registering (in a relatively easy manner) and playing may constitute consideration. Completing lengthy surveys, disclosing proprietary or confidential information beyond name and address, making multiple trips to a store, referring a friend to the sponsor (the entity who is conducting the contest, or on whose behalf the contest is being conducted), or generally devoting a substantial amount of time to participate in a contest – all of these typically qualify as sufficient consideration. Many states review promotions on a case-by-case basis to see how much the entry requirement benefits the sponsor. The greater the benefit to the sponsor, the more likely there will be a determination that there is consideration.

What is ***not*** consideration for the purpose of discerning whether a contest is an illegal lottery? When a television game show awards prizes to viewers who are called by phone at random, this is not considered to be a lottery because the act of tuning in a program is too insignificant to qualify as the kind of consideration the law requires.

Likewise, merely paying for the postage to send in a card in order to compete is similarly insufficient consideration.

Other examples of acts that probably require too little effort to constitute consideration:

- Filling out a short online form
- Texting a short message to a phone number (absent unusual or uncommon per-message fees)
- Posting a photo or short message to a social media account

Right to participate cannot be conditioned solely on purchasing merchandise: Even when it appears that consideration is not present because the effort expended to participate is minimal, the right to participate in a sweepstakes cannot be tied to purchasing merchandise. Assuming that the winner is determined by chance, a sweepstakes that requires the mailing of a box top or label in order to have a chance to win a prize is considered an illegal lottery by the U.S. Postal Service because the opportunity to compete is only procured by purchasing merchandise. The opportunity to compete, therefore, is not "free."

Free Alternative Method of Entry: If consideration is present because a consumer is expected to buy something to participate in a sweepstakes, or if there is a *possibility* that consideration is present, a promoter generally can avoid having the promotion characterized as an illegal lottery by offering participants a *free*

alternative method of entry (often referred to as "AMOE"). That is, by allowing consumers who did not purchase the merchandise to still participate.

Note, however, that when using an AMOE, the organizer should always:

- Advertise the AMOE clearly and as conspicuously as the primary means of entry (i.e., purchasing an item)
- Provide easy and free access to the AMOE
- Not offer any advantage to paid entrants over AMOE entrants. In other words, the likelihood of winning must be same no matter the form of entry. For instance, the court in *Black N. Assocs. v. Kelly*, 722 N.Y.S.2d 666 (4th Dep't. 2001) held that a game where consumers could purchase multiple paid entries at once while simultaneously being restricted to one entry per day using the AMOE violated N.Y. gambling law. Additionally, in 2006, the New York Attorney General's office reached a settlement with CVS over their use of an AMOE, holding that it was not made available at every location and therefore, insufficient and not as "equally prominent" as the opportunity to enter the promotion by purchasing a product.

One should also note that when a promoter uses entry fees and an AMOE, the collected fees cannot be used to provide the prizes. The fees must remain separate and distinct from whatever is awarded to the sweepstake's winner(s).

Examples of cases where problems arose in this area are instructive:

Allied Treatment: An example of an instance where a sponsor did not require a purchase in exchange for a chance to win but the contest was still deemed to be an illegal lottery is *United States Postal Service v. Allied Treatment, Inc.*, 730 F. Supp. 738 (N.D. Tex. 1990). In that case, Allied sent unsolicited letters by United States mail to out-of-state consumers which contained certificates captioned "Official Notification Certificate of Guarantee." The consumer was directed to call a number, and a telemarketer pressured the consumer to buy a water purifier. Allied contended that its business operation was not a lottery because, strictly speaking, no consideration was required to obtain a prize. The court conceded that Allied was technically correct: the letter received by the consumer does not state that the consumer must buy something to obtain a prize. Moreover, the court found that if the consumer "pushes a telemarketer hard enough, the telemarketer will disclose that the consumer need not make a purchase to receive a prize." But that was not good enough, the court held. "Allied is making every effort to skirt the law," the court explained, "under a facade of compliance." How? "Throughout the presentation, the telemarketer pressures the consumer to buy a water purifier or a test kit package. The overall tone and content of the exchange would lead an ordinary consumer to believe that he must buy before he can receive his prize. . . . Only when a consumer specifically presses a telemarketer will the fact be disclosed that the consumer may receive a prize without paying any money. Under these circumstances, the court concludes that there is probable cause to believe that Allied's business practices are, in effect, a lottery." *Id.* at 740. To avoid a similar result, the best practice is to be as transparent as possible as to what is required for entry, and to disclose up front and in clear terms any free alternate method of entry.

A&P: In 2004, the New York Attorney General announced a settlement with the Great Atlantic & Pacific Tea Company, Inc., d/b/a A&P Food Stores regarding its sweepstakes practices. A&P had conducted a sweepstakes in which consumers who purchased products using their A&P Bonus Savings Card were automatically entered in the sweepstakes. Again, the sweepstakes provided for a free alternative method of entry via a mail-in official entry form, but the official entry forms were not available at most retail stores. In addition, the official rules were not posted in the retail stores so consumers were unaware of the free mail-in option. Accordingly, A&P effectively barred consumers from entering the sweepstakes for free. See *Hudson Valley Supermarkets to Reform Sweepstakes*, May 3rd, 2004. Again, you must make the free alternative method of entry easily accessible to participants in order to avoid disadvantaging those who enter via the free alternative method compared to those who enter via making a purchase. Also, the Official Rules must make it abundantly clear how to utilize the free alternative method of entry.

Tylenol: Also in 2004, the New York Attorney General (NYAG) entered into a settlement with the McNeil Consumer & Specialty Pharmaceuticals Division of McNeil-PPC, Inc. over sweepstakes violations. The NYAG alleged that McNeil conducted a sweepstakes which offered a grand prize of a trip to the season finale of the television program "Survivor." An entry could be made either via purchase of Tylenol or via the advertiser's website. Advertisements for the sweepstakes contained large bold print indicating that to enter consumers should "Buy Tylenol." Note that, again, a free method of entry was available to enter the sweepstakes but the "No Purchase Necessary" aspect of the sweepstakes was only disclosed in the legal copy at the bottom of the advertisements and was "contradictory" to the purchase message in the ad. See Tylenol Manufacturer to Amend Sweepstakes Ad, September 10th, 2004. Similar to the above cases, you cannot bury the free alternative method of entry in the "fine print."

The lessons from these cases are clear. Promoters need not only to comply with the law regarding consideration, but they must make sure that *would-be participants* understand the law. A theme that permeates the rules governing contests is the law's vigilance against deception. ***"No Purchase Necessary" and an explanation of the "Alternate Means of Entry" must be prominently disclosed.***

These consideration cases underscore that there are several important legal jobs with respect to contests:

- First, one must draft, or review, all of the text that a consumer will see or hear regarding a contest. We further need to ensure that the text comports with the applicable law, and this includes the conspicuousness of the text.
- Second, we need to ensure that the people charged with implementing the contest, including those who will be dealing with customers and would-be participants, fully understand the rules and know both what they are supposed to do and also what they are not allowed to do in order to encourage participation.
- Third, we need to implement a process to monitor that the rules are being implemented as written by the client's employees. The job is not completed after the text has been approved. As illustrated above, sometimes the problem lies in the way the employees at the retail outlet actually carry out the plan.

Texting: Courts are being forced to deal with modern technology in resolving the question of whether consideration is present. Promotional sweepstakes run by television programs allow participating viewers to win money or prizes by sending the show a text message (with the standard text messaging charges and an additional premium fee) or logging on to an internet site. Whether the text message charge constitutes sufficient consideration to transform the contest into an illegal lottery is a question that has been litigated but has not produced a consensus among the courts. That said, class-action cases where text messages were charged at a higher "premium" rate, rather than the standard text message charge, have resulted in multimillion-dollar settlements. It is therefore advised to tread lightly in this area. Additional federal advertising and marketing laws may apply to the use of a text message (e.g., the TCPA) during a contest.

Benefit to sponsor: As mentioned above in the consideration section, some definitions of consideration place an emphasis not on the effort expended by the participant but on the benefit to the sponsor of the contest. [See 1995 Fla. AG LEXIS 1, Op. Att'y Gen. Fla. 1995-21(Mar. 21, 1995) (stating that consideration may exist where there is a benefit to the promoter, i.e., the sponsor).]

After-the-fact consideration: Finally, promoters need to be cautious in requiring after-the-fact or "post consideration" that requires a participant who has won a contest to give consideration in order to claim a prize. Such efforts are illegal in various states, and other states carefully regulate such activities. Some examples are: requiring a winner to submit to a sales presentation, make a purchase, or pay a fee, before being awarded a prize.

Exception to Lotteries

Among the exceptions to the rules about lotteries is a narrow one (and states vary on this): if a lottery is conducted as a promotional activity by a commercial enterprise, it is acceptable so long as the promotional activity is "occasional and ancillary to the primary business" of the commercial enterprise. An example of a promotion likely to qualify as an exception is a local travel agency conducting a raffle (where the consumer is required to purchase a ticket) for a free trip. Michigan is one of the states that provides for this exception. See MCL § 750.372(2). However, for substantial commercial enterprises and/or well-publicized promotions, one should not rely on this exception. Better practice would be to, as discussed above, omit one of the three elements of a lottery.

Skill Contest (Games of Skill)

Generally, skill contests award prizes based on something other than random chance alone. Many states allow participants to submit consideration as a condition of entering a skills contest (usually in the form of an entry fee). The following states restrict or prohibit the requirement to make a payment or purchase in order to enter into a skill-based promotion: Arizona, Colorado, Connecticut, Florida, Illinois, Iowa, Maryland, Nebraska, North Dakota, Tennessee, Vermont, and Washington.

For a skill contest to be legal in most states, chance must not predominate over skill. If chance, not skill, determines the outcome of the skill contest – that is, if skill does not control the final result – the skill contest is essentially a sweepstakes, and the presence of consideration means that the skill contest is, in actuality, an illegal lottery. For example, if a skill contest ends in a tie, and the winner is determined by the flip of a coin (thus materially introducing chance), the skill contest will be considered a sweepstakes.

The court in *In re Glendinning Cos.*, 1987 FTC LEXIS 56 (Jan. 13, 1987), defined a skill contest as "any promotional contest or device in which the award of a prize or anything of value to the participants is determined on the basis of the winning answers or solutions submitted by participants through the exercise of a substantial degree of skill in determining the winning answers or solutions to the questions or problems which are the subject of the contest or device."

But often, the line separating sweepstakes and skill contests is difficult to determine. For example, a skill contest that simulates a game of five card draw poker does involve some element of skill (i.e., knowledge of the laws of probabilities regarding the hands that will be drawn improves the odds of winning); however, a court has determined that it is, in fact, a game of chance, i.e., a sweepstakes, since, ultimately, the random dealing of the cards dominates the outcome.

Illustrative of the difficulty in finding a bright line between games of skill and chance: courts are split on hole-in-one contests. Clearly, skill is involved in being able to accurately drive a ball toward a hole, but getting a hole-in-one can also be said to depend on fortuity.

Similarly without consensus among the courts are fantasy sports leagues. Please note that fantasy sports leagues also differ in that often, the league is the core business of the company running it, rather than a mere promotional activity for other products/sports. As such, courts and regulators arguably have better reason to view a fantasy sports league as more akin to the gambling industry. More detailed discussion is beyond the scope of this practice note, but one must be wary of entering the fantasy sports league industry, as it is an area where litigation and legislative efforts are both active.

Other contests are much easier: skill largely determines the outcome of sporting events involving physical prowess and intellectual contests such as spelling bees.

But to be a lawful skill contest, it must be based on objectively verifiable criteria. For example, an essay contest can pick a winner based on originality, but not on whether it is the "best" essay since the contours for selecting "the best" essay are too fuzzy. Judging criteria can be any reasonable allocation of criteria, but the best practice

is often to create a scoring rubric that assigns a concrete percentage or points value to each criterion. An example would be: 15 total points possible, with up to 5 points awarded for creativity, 5 points for presentation, and 5 points for adherence to the theme. However, regardless of how the criteria are allocated, it should be articulated as clearly as possible so as to distinguish that it is indeed a skill contest and not a sweepstakes. It should also be clearly stated as to what will occur in the event of a tie. One should remember that a tie in a skill contest should never be resolved by a random drawing, thus introducing an element of chance. Instead, you should set out ahead of time a tie-breaking method that relies on objectively verifiable criteria. For example, taking the above rubric, a tie-breaker could look to who had the higher number of points in the theme adherence category.

In addition, the judges for skill contests must be competent in the subject matter that they are judging. While there is no specific standard for determining a judges' competence, and formal qualifications are generally not required, the best practice would be to ensure judges are picked who at least have knowledge of the subject matter they are judging. For example, an acceptable judge for a newspaper's essay contest does not have to be a world-renowned author or book critic; an experienced editor on the newspaper's staff will probably suffice. A common method of running a contest allows voting to determine the contest winner. Voters can be limited to a specific group, such as all contest participants, or may embrace the public at large. Such a contest is generally treated as a skill contest, although naturally the "judges" may not all be qualified in the subject matter. Skill contests which allow voting present additional risks in terms of ensuring a fair judging process, and not allowing the vote to devolve into a mere popularity contest, or to succumb to vote-inflation fraud. It would be advised to carefully design and present the judging criteria and voting process to be as transparent as possible.

Since voters may also choose a submission that may be ineligible, inappropriate, or otherwise undesirable, it is advised to consider having a preliminary screening step before presenting voters with the eligible submissions. In this way, you will avoid the potentially messy situation of having to disqualify a highly-voted submission for reasons such as use of third-party intellectual property, defamatory content, etc.

Sweepstakes Reforms Stemming from Abuses

In the early 1990s, the word "sweepstakes" came to have a negative connotation due to widespread abuses by sweepstakes sponsors. Magazine publishers and others made "increasingly outrageous promises and [used] brown envelopes with green windows and eagles stamped on them, designed to look like letters from the government." See *Magazines: Sweeping changes*, The Economist, Apr. 29th, 1999, available [here](#). Gullible consumers, especially, the elderly, were duped into incurring debt they could not afford by buying things they did not want because they thought it would increase their chances of winning or allow them to claim a prize they erroneously thought they had already won. The situation cried out for reform. The U.S. Congress and attorney generals in various states cracked down, and the Magazine Publishers of America embarked on a campaign to self-regulate. In the wake of the attention to sweepstakes schemes, many companies abandoned the use of sweepstakes altogether in their marketing efforts.

In response to the abuses, the Deceptive Mail Prevention and Enforcement Act became law in 2000 and gave the Postal Authority significant power to enforce rules designed to prevent deception. One treatise aptly summarized the changes:

The Act requires the following disclosures for sweepstakes mailings:

- A statement that "no purchase is necessary" in the solicitation material, on the entry or order form, and in the official rules. This statement must be disclosed "clearly and conspicuously," that is "presented in a manner that is readily noticeable, readable, and understandable to the group to whom the applicable matter is disseminated";
- A statement that "a purchase will not improve [one's] chances of winning" in the solicitation material, on the entry or order form, and in the official rules. This statement must also be clear and conspicuous;

- A clear and conspicuous disclosure of the name of the sponsor or mailer and the principal place of business or contact address; and
- A clear and conspicuous disclosure of the official rules and entry procedures.

The rules must disclose the estimated odds of winning each prize; the quantity, estimated retail value, and nature of each prize; and the schedule of prize payments, if it is to be made over time.

The Act prohibits the following disclosures in sweepstakes mailings:

- Any representation that individuals who do not purchase products or services may be disqualified from receiving future sweepstakes mailings;
- Any representation that an individual purchase a product or service previously ordered as a condition of entering the sweepstakes;
- Any representation that an individual is a prize winner, unless true; and
- Any representation that contradicts or is inconsistent with sweepstakes rules or any other disclosures required under the Act.

The Act requires the following disclosures for mailings containing skill contest materials:

- A clear and conspicuous disclosure of the name of the sponsor or mailer and the principal place of business or contact address;
- A clear and conspicuous disclosure of the official rules and entry procedures; and
- The number of rounds or levels of the contest and the cost to enter each round or level; that subsequent rounds or levels are more difficult, if applicable; the maximum cost to enter all rounds or levels; the estimated number or percentage of entrants who may correctly solve the skill contest or the approximate number or percentage of entrants correctly solving the past three skill contests conducted by the sponsor; the identity or description of the qualifications of the judges; the method used in judging; the date the winners will be determined and the date prizes will be awarded; the quantity, estimated retail value, and nature of each prize; and the schedule of any payments made over time.

In addition to imposing mandatory disclosure requirements, the Act requires sponsors to establish a name removal notification system permitting individuals to have their name and address removed from mailing lists. See The Law of Advertising, Marketing and Promotions § 7.05 – Subsections [1][a]-[c].

Sponsors must include a toll-free phone number or a physical address for processing requests to have contact information removed, and clearly and conspicuously identify that a name removal notification system is available. When such a request is received, the sponsor must comply within sixty days of receipt, and must maintain records of all such "opt-outs" for five years; the opt-out list may not be rented, sold, or otherwise transferred by the sponsor for any commercial purpose. An individual may only be removed from these records, i.e., can once again be sent contest mailings, after that individual submits a written request for such.

One should also note that for any contest involving electronic or text communications, other federal laws such as the TCPA and the CAN-SPAM Act may require similar opt-out procedures.

FTC Actions Against Deception

In administrative actions, the Federal Trade Commission has issued many decisions regarding contests that can fairly be summed up as ferreting out deception in the description of the contest. The FTC has held that it is an unfair trade practice to misrepresent the nature of a contest, the odds of winning, or the nature of or manner of awarding the prize; a sales scheme cannot be advertised as a "contest"; the value of a prize cannot be valued greatly in excess of the usual price charged for it; cash prizes cannot be promised unless they are actually given; and prizes cannot be distributed without regard to the contest rules.

Social Media and User-Generated Content (UGC) as Submission Materials

Due to the ease of set-up and administration, and the low associated costs, online channels such as social media platforms are being increasingly used to run contests. Social media platforms in particular have become popular to use as free alternative methods of entry. However, the same analysis discussed above applies to contests run in this way. You should still minimize any effort required for entry in order to ensure it is truly "free" of consideration. In addition, when using a social media platform, you should carefully review the platform's Terms of Service to make sure the contest conforms; several of the most popular social media platforms have sections of their Terms of Service specifically devoted to promotional activity such as contests. You should also consider the applicability of the social media platform's privacy policy, as well as the privacy policies of any other entity involved in running the contest.

A popular type of contest, especially on social media platforms, is the user-generated content (UGC) contest, in which an entrant creates and submits material to be considered as the method of entry. Such contests are generally structured as skill contests, and must comply with the laws discussed above. They also present an additional legal challenge with respect to rights clearance, usage, and ownership of the submitted UGC.

To address this issue, the official rules should contain an eligibility section that clearly describes what content an eligible UGC submission must contain, and must not contain. As starting points, it should specify that the UGC submission: must be an original creation; must not infringe the rights of any third party (including any participants whose personal information—which includes physical appearance—is included in the submission, or who helped create the submission); does not contain any harmful or illegal activity or content; and does not in any way violate any federal, state, or local laws or regulations. The official rules should also state that any UGC submission not conforming to the eligibility requirements will be disqualified.

You must decide prior to drafting the official rules whether submission of UGC will result in transfer of ownership from the participant who created the UGC to the contest sponsor (or other entity). The official rules should specifically address this point. If participants will retain ownership of any UGC they submit, the official rules should specify that submissions are subject to a worldwide, non-exclusive, transferable, perpetual, irrevocable license for any and all rights in all media now known or hereinafter invented that is granted to the sponsor (and any other relevant entities). As part of this license, you should specify in broad language all potential uses for which the UGC may be used, either during the contest or after the conclusion. It is also recommended that you obtain a separate written, signed release from any participant prior to using the UGC as part of post-contest advertising, marketing, or other public activities.

If participants will transfer ownership of submitted UGC as part of entering the contest, the official rules must specify that all rights, including intellectual property and publicity rights, will be assigned to the sponsor (and any other relevant entity) using broad language similar to that discussed above for a license. However, as a practical matter, you should not rely on assignment language in the official rules alone and should always follow up with a separate written, signed release by each relevant participant. The official rules are useful for providing ample notice to participants of an impending assignment, but remember that official rules constitute an adhesion contract where acceptance is via an action. For legal enforceability of an assignment with respect to most types of rights, you will need a written, signed agreement.

The Official Rules and Related Text

The official rules governing a contest are contractual in nature. They constitute an offer that creates a power of acceptance in any willing and eligible participant to engage in the contest. Aside from the statutory and regulatory frameworks applicable to sweepstakes, these contests are enforced as contracts.

Official rules need to be carefully drafted in conformity with applicable federal and state law. In every text where the promotion is referenced—in entry forms, ads, the rules, and anywhere else that possible participants might read about it—it needs to be stated in letters so conspicuous that no one could dispute it: **"NO PURCHASE NECESSARY"** and **"A PURCHASE DOES NOT IMPROVE YOUR CHANCE OF WINNING."** In any mailing, the full text of the rules need to be spelled out.

States have all manner of different requirements for official rules. Some of the more common areas where states have rules: in the retail area where promotions are presented, some states require posting of the rules and a description or value of prizes and the geographic area (including Florida and New York). Some states have disclosure requirements if a certain dollar threshold for the value of the prize is reached. Promotions where the consumer wins a prize by making a purchase or a visit to a location are subject to special considerations in numerous states.

For broadcast advertisements, which are regulated by the FCC, the material terms of the contest (defining contest operation or affecting participation) should be stated. Common material terms are: 1) that no purchase is necessary; 2) where to obtain rules (such as the mailing address, or if the promotion is being conducted via a website, the broadcast should provide the URL and any necessary website navigation instructions); 3) the free Alternate Means of Entry; 4) start and end dates; 5) eligibility; and, of course, 6) "void where prohibited." In general, the best practice is to conspicuously include all of this information on screen as well as having an audio disclosure.

If emailing is involved in the promotion, the CAN-SPAM Act must be adhered to. That Act establishes requirements for commercial messages, gives recipients the right to have a sponsor stop emailing them, and spells out tough penalties for violations. The FTC has written a compliance guide that should be followed.¹

Note that, as explained above, games of *skill* generally require more extensive rules than games of chance. Promotions that involve products under the regulation of the alcohol, tobacco, dairy, banking and insurance industries require special rules.

Entry Method

The official rules must clearly and simply describe the entry method. Entry methods are where contest rules most often fail to comply with laws and regulations, and improper execution of the entry method is likely to attract the attention of regulating bodies. A properly-drafted entry method section can be an invaluable guide, both to contest participants and to the employees or vendors who are running the contest.

To begin, the entry window should be clearly stated. When listing start and end times for the contest, you should provide the month, day, year, and time down to the minute. You should also provide the time zone. Entry information is often broken out into a separate section for more prominence.

Example: March 31, 2022, 12:01 EST.

You should state in a separate sentence the time by which entries must be received in order to be valid; if your contest requires people to mail in a submission, you should clearly state whether the post office's mailed-by date or the date of receipt of the submission determines entry validity. Best practice is to always state that the official timekeeping clock shall be sponsor's clock (or list your client's vendor, if the vendor is the one actually receiving the entries). The timeline varies as to how long the contest could be open for by state, etc. as further delineated later below.

One must clearly describe every step required to validly enter the contest. Types of information commonly included:

- How many entries can be submitted per individual per set time period.
- Where and by whom submissions will be accepted, especially if submissions are limited to specific physical locations.
- Any additional information or materials, such as proof of purchase, that must be included with the entry form. If you can enter by purchasing a product, you should specifically identify which products

are eligible. In addition to the product name, include an identifier will not change if the product packaging/name changes, such as the UPC.

- Any alternative methods of entry.
- Any charges associated with an entry method, such as standard text messaging charges or postage.

The entry method section should also state that the sponsor is not responsible for entries made but not received and/or accepted, and that such entries are void. Common situations where this arises, and which the official rules should address, are:

- Lost entries
- Late entries
- Incomplete, damaged, or otherwise impossible to process entries
- Technical failures in the entry process (*e.g.*, website crash)
- Fraudulent interference with the entry process (*e.g.*, sending in multiple entries under pseudonyms)

Please note the following tips when conducting sweepstakes, skills contests, online contests, and contests involving UGC.

Sweepstakes: If your method of entry requires consideration (and remember consideration is not limited to solely monetary transactions), then you must also have an alternate free method of entry (AMOE). You should describe the AMOE as clearly as possible, in order to avoid appearing as though you are favoring the other method of entry over the AMOE. You should also state clearly and prominently that the odds of winning are the same for either method. AMOE is one of the most common areas where regulators sanction contest sponsors.

Skill contests: If you require an entry fee, you must disclose the entry fee in the official rules. Be sure that participants will clearly understand the total entry fee cost to them, inclusive of any additional charges such as taxes or shipping charges.

Online contests: If you are allowing any form of online entry, you should consider the impact of the FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255.0 et seq. (Endorsement Guides), which requires advertisers to disclose material connections between endorsers and advertisers. A material connection is any information that could potentially lead to an endorser's bias if consumers would not be generally aware of the possible bias. In addition to the Endorsements Guides, the FTC issued a 2017 question-and-answer document. See FTC, Disclosures 101 for Social Media Influencers (Nov. 2019). For additional guidance, see Endorsements and Testimonials in Advertising and Online Advertising Regulation and Compliance.

Some online entry methods, such as asking users to "like" or "favorite" a webpage, or to include a hashtag with an online post, may require that you ask participants to make additional disclosures. Here, the online entry may appear to be a promotion of a product/service, while the chance to enter a sweepstakes constitutes an incentive. In addition, some social media platforms disallow this kind of incentive in their Terms of Service.

UGC in contests: You should clearly state any formatting and length requirements, and any elements that must be included and/or addressed by the submission, such as a required theme. You should discuss ahead of time with your client any IT concerns such as acceptable file formats.

Prize Description

The official rules must clearly describe the prizes available. Generally, this includes:

- Prize identity. You should avoid any appearance of deceiving or misleading participants into thinking that they are receiving a different prize than is actually on offer.

- Quantity available of each prize.
- Estimated retail value. If a prize consists of multiple items, you should list each item's estimated retail value separately.
- Number of winners for each prize. If your contest allows for multiple winners who can each receive a prize, you should indicate which winner will receive which prize(s) (*e.g.*, "the second-place winners will each receive two (2) ...").

In describing the prize, be sure to keep intellectual property considerations in mind. Unless you already have, or will receive, approval to name another company's brands, product names, and/or trademarks, you should be careful in using these terms. Including them as part of the official rules' prize description section is not trademark infringement, but any use besides that, even in other parts of the official rules, may constitute unauthorized use of another company's intellectual property in violation of laws including the U.S. Copyright Act, 17 U.S.C. §§ 101-810. It is usually safer to seek permission from the rights-holder ahead of time to include the rights-holder's products/services in the contest prizing. However, many rights-holders will want approval rights over the official rules and associated materials, at least to ensure that their trademarks and similar intellectual property are used/displayed properly and the correct credit line is included. You should account for the extra approval process in your planning timeline.

You should also clearly describe any limitations on the use of a prize. For example, if you are awarding plane tickets that require the person to report to certain airports, or to book their trip within a certain time window, such information should be clearly stated. If the person will be responsible for any costs reasonably associated with a prize, such as income taxes or shipping fees, you should disclose them. All disclosures should be made in a clear and conspicuous manner to support their enforceability. For guidance, see General Advertising Disclosures and Disclaimers Issues Checklist.

The rules must indicate a value for each prize. You should specify that the prize value is given as an "average" or "estimated" retail value, rather than using language such as "standard" value or prize, to avoid antitrust pricing concerns. With prizes where the retail value is not easy to determine or is not reflective of true market value, you should provide a value that has a reasonable basis and is not misleading, in order to avoid tax concerns. For example, the original retail price for a collector's item that is no longer manufactured and/or widely available, such as a vintage car, often is far lower than the actual market value of the item. Note that a winner is required to pay taxes on prizes valued at \$600 or more.

Lastly, you should state that prizes are awarded "as-is" and without any warranties or guarantees beyond warranties such as a manufacturer's standard warranty. You can even include express warranty disclaimers. For guidance, see Warranty and Disclaimer of Warranty Drafting. You should also state that prizes may not be transferred, assigned, or substituted. You also should carve-out an exception allowing only the sponsor the right to substitute a prize of "equal or greater value" for any reason, to protect against a situation where a listed prize is not available. Related to this, you should counsel your client that any substitute prize truly must be of equal or greater value, as otherwise you risk a fraud claim.

Indemnity

The official rules should require participants to give a broad indemnity to the sponsor and any other companies associated with the contest, including any vendors or marketing agencies, and any third parties who have provided prizing. The indemnity should cover all claims made not only by potential winners, but also by anyone participating in the contest. Furthermore, the indemnity should cover both claims arising out of the contest itself, and claims arising from any use of the prizes.

Please note that some areas of law will not allow for indemnities, such as product liability arising from a defective prize. You do not need to carve-out an explicit exception to these areas, but you may want to discuss them with your client and/or your insurer before using certain types of prizing in a contest. For example,

providing a prototype or experimental product as a prize will likely raise your chances of a product liability claim. For information about product liability claims, see *Product Liability Claims, Defenses, and Remedies*. Indemnification provisions are permitted under federal law if they do not transfer liability from a responsible party to a non-responsible one. See 33 U.S.C. § 2710. While such provisions are most always enforced in court, there are exceptions. For example, indemnities that require one party to indemnify the other party for any claim irrespective of fault (also known as "no-fault" or "broad form" indemnifications) are typically held unenforceable by most states for public policy reasons. As such, most states deny recovery for damages arising out of an indemnified party's own wrongful actions or inactions. Additionally, not all states permit indemnities that include punitive damages. Furthermore, courts often deny recovery for damages that arise out of an improbable and unforeseeable result stemming from the other party's actions, other than in situations where the indemnifying party clearly had knowledge of the circumstances. Counsel must understand and ensure compliance with all applicable state laws, paying close attention to the agreement's governing law. For additional guidance, see *Indemnification Provisions in Commercial Contracts*.

Winner Selection

The official rules must make clear how the winner(s) is selected. In keeping with the caution to not mislead people as to their chances of winning, this section should refer to "potential winners" rather than "winners." For example, "we will select three (3) potential winners on March 1, 2016."

You should state the following about the winner selection process:

- The date upon which potential winner(s) will be determined;
- How the potential winner(s) will be determined;
- When the potential winner(s) will receive their prizes;
- How the potential winner(s) will be informed and the medium of communication. For example, "we will inform potential winners via email by March 7, 2022, and will send a second email by March 14, 2022 if no response is received;"
- Any paperwork that the potential winner will be required to complete in order to be awarded the prize (common examples: publicity release, tax documentation, and/or liability release). You should state that failure to do so will render the potential winner ineligible. If you have allowed entrants who are under the legal age of majority, you should state that the entrants' parent or guardian must complete the paperwork;
- Any process for selecting alternate winner(s) in the case that a winner is deemed ineligible. Here you also should state that the sponsor has complete discretion in deciding how potential winner(s) will be contacted and when an alternate potential winner(s) should be selected; and finally
- Contact information for anyone who is interested in receiving a list of the winners, and the dates by which that information will be available.

The winner selection section should contain two additional legal provisions:

- A disclaimer that the sponsor is not responsible for any kind of printing, technical, or other similar error in the selection process, and should further reserve to the sponsor the right to cancel all or part of the contest and/or to declare a potential winner ineligible in such a situation. This statement guards against the sponsor being held responsible for awarding prizes, for example, in the case where a technical failure results in more winning tickets than planned are issued. Note that all disclaimers should be clear and conspicuous to support their enforceability.
- A statement that the sponsor has the exclusive power to interpret the rules, and the sponsor's decisions regarding any and all matters related to the contest, are final and binding.

Sweepstakes: You must state the odds of winning. Generally, a statement that the odds depend upon the number of eligible entries received will be sufficient. However, specific industries, such as advertising targeted to children or advertising on TV and radio, may require additional disclosures.

Skill contest: You must state the percentage of potential winners. If they will be determined by a judge(s), you must identify the judge(s) and describe the qualifications of the judge(s) in order to comply with federal law. Judging qualifications must be relevant to the contest, but otherwise laws impose no minimum standard for determining what qualifications are acceptable. From a fairness standpoint, you should use judges who at least are knowledgeable in the particular field they're judging.

In addition, you should clearly describe the judging process, including:

- The number of rounds of judging
- Any additional costs or entry requirements associated with each round
- The criteria that the judges will use

It is important to clearly describe the judging criteria, in order to avoid an appearance of unfair and arbitrary decision-making. Ideally, the criteria will be as objective as possible. For skill contests that are highly subjective, such as contests involving UGC, the best practice is to create a scoring rubric that identifies specific criteria and that assigns points to each criterion. The rubric and/or judging panel should be designed to avoid ties, so you should have odd numbers of judges and/or total points. Please keep in mind that a random method of breaking a tie, such as flipping a coin, *will convert the skill contest to a sweepstakes* and you will then have to comply with sweepstakes laws instead.

Public voting in a skill contest: If you allow public voting, you should carefully consider unintended, undesirable outcomes from voting, such as voter fraud, or the winning entry containing undesirable content. For the former, you should take measures to discourage the contest from turning into a mere popularity contest, which often results in ill feelings and bad publicity among entrants. For the latter, you may consider presenting the voters with a pre-screened selection of submissions to vote on, rather than allowing votes on all submitted entries; the eligibility section can be invaluable in this regard. Lastly, the same considerations regarding tie-breaking apply here: do not use a random method to break a tie.

Miscellaneous Provisions

The provisions discussed here are not required by sweepstakes and contest law. However, in light of the fact that the official rules double as a contract between the contest sponsor and the participants, we have found these provisions materially worthwhile to include.

- *Choice of law/jurisdiction:* One should include state or federal court, as most disputes are likely to arise from state laws. Your choice-of-law clause should encompass not only the contest itself, but all aspects pertaining to it, such as awarding, shipping, and subsequent use of prizes. For guidance on state promotions law.
- *Social media:* If you are using a social media or similar online platform to run the contest, you should consult the platform's Terms of Service for any additional legal requirements. Several of the most popular social media platforms have rules specifically governing contests (see, for example, Facebook's rules), and noncompliance with them may result in your client having not just the contest removed from the platform, but also having all of its accounts on that platform removed.
- *Publicity release:* If you include a provision allowing the sponsor to use the name and likeness (and any other personally identifiable information) of a participant, you should limit it to only the winner(s). You also should not rely solely on the official rules as a publicity release, and should include a separate release in the potential winners' paperwork. Remember that this is an adhesion contract; courts are not likely to look favorably on a claim that mere entry for a chance to win constitutes sufficient payment for releasing all publicity rights.

- *Privacy policy:* Your collection of contact and other information from entrants may be governed separately by privacy laws and regulations (such as the California Consumer Privacy Act of 2018 (CCPA), Cal. Civ. Code § 1798.100 et seq.), especially if your contest is conducted online. It is best practice to at least include one clear and conspicuous link to any applicable privacy policy. For a policy, see Mobile Application Privacy Policy (General). In addition, if you plan to repurpose entrant information for communications not directly related to the contest, you may be required to comply with laws such as CAN-SPAM and the TCPA.

Indeed, you should disclose in the rules that you intend to repurpose such information, and you may need to make additional legal disclosures. See CAN-SPAM Act Compliance, Telephone Consumer Protection Act (TCPA) Compliance.

II. STATE SURVEY ANALYSIS

This is a 50-state survey chart that addresses restrictions, conditions, and prohibitions on offers made in a marketing context to entice customers to participate in opportunities to win cash or valuable merchandise, including gifts or prizes. This chart highlights various issues including (1) disclosure requirements, (2) time requirements pertaining to the delivery of prizes, and (3) specific penalties and/or the applicability of state deceptive trade practice laws.

Federal Regulation under the Deceptive Mail Prevention and Enforcement Act

The federal government regulates sweepstakes and contest solicitations delivered via the U.S. Postal Service under the Deceptive Mail Prevention and Enforcement Act (Act). 39 U.S.C.S. §§ 3001 through 3018. The Act defines a sweepstakes as a game of chance for which no consideration is required to enter and defines a skill contest as a puzzle, game, competition, or other contest in which a prize is awarded or offered, the outcome of which is dependent on the skill of the contestant, and a purchase, payment, or donation is required or implied to be required to enter. 39 U.S.C.S. § 3001(j)(1). The Act requires certain disclosures, which must be clearly and conspicuously displayed so that they are presented in a manner that is readily noticeable, readable, and understandable to target group. 39 U.S.C.S. §§ 3001(j)(3), (5).

All entry materials for a sweepstakes must disclose that no purchase is necessary and that a purchase will not improve an individual's chances of winning. 39 U.S.C.S. § 3001(j)(3)(A)(ii). Additionally, the entry materials must contain:

- All the terms and conditions of the promotion, including rules and entry procedures
- The sponsor or mailers contact information
- The estimated odds of winning
- The quantity, estimated retail value, and nature of each prize –and–
- The schedule of any payments made over time

39 U.S.C.S. § 3001(j)(3)(A)(ii).

The sweepstakes materials may not:

- Represent that an individual not purchasing a product or service may be disqualified
- Require that an entry be accompanied by an order or payment
- Represent that an individual is a winner of a prize, unless that individual has actually won such prize –or–
- Contain a representation that contradicts or is inconsistent with the sweepstakes rules or other required disclosures

39 U.S.C.S. §§ 3001(j)(3)(A)(ii)(VI) through (IX).

All entry materials for skill contests must state all terms and conditions of the skill contest, including the rules and entry procedures and disclose the sponsor or mailer of the skill contest and their contact information. 39 U.S.C.S. § 3001(j)(3)(B). The skill contest rules must state, if applicable:

- The number of rounds of the contest and the cost to enter each round
 - That subsequent rounds will be more difficult
 - The maximum cost to enter all rounds
 - The estimated number or percentage of entrants who may correctly solve the skill contest
 - The identity and qualification of the judges
 - The method used in judging
-
- The date by which the winners will be determined and the prizes will be awarded
 - The quantity, estimated value, and nature of each prize –and–
 - The schedule of any payments made over time

The Act also prohibits the distribution of facsimile checks that do not contain a statement on the check that the check is not a negotiable instrument and has no cash value. 39 U.S.C.S. § 3001(j)(3)(C). Finally, certain matter that appears in a magazine or newspaper that is not directed to a named individual or does not include an opportunity to make a payment or order a product or service is exempt from the Act. 39 U.S.C.S. § 3001(j)(4).

Additionally, any promoter that mails a skill contest or sweepstakes shall establish and maintain a notification system that provides for an individual to have their name and address excluded from all lists used by that promoter to mail any skill contest or sweepstakes, which must be done no later than 60 days from receiving the request. 39 U.S.C. §§ 3017(c)(2), (d)(2). If an individual receives additional mailings, in violation of this law, the individual may bring an action in the appropriate court to enjoin the violation and/or to recover actual monetary damages, or \$500, whichever is greater. 39 U.S.C. § 3017(e)(1). If the court finds the defendant willfully or knowingly violated the law, the court may, in its discretion, award treble damages. 39 U.S.C. § 3017(e)(1). Additionally, any promoter who recklessly mails nonmailable matter is liable to the United States for \$10,000 per violation. 39 U.S.C. § 3017(h)(1)(A).

In addition to the federal law, most states also regulate promotional contests, sweepstakes, prizes, or gifts and generally will regulate sweepstakes more heavily than contests. State regulations may include required disclosures and/or postings, recordkeeping requirements, the penalties involved, and prohibited and/or permitted actions. Additionally, many states have different regulations pertaining to offers or prizes that require compensation and/or require the consumer to attend a sales presentation. Florida, New York, and Rhode Island require that a sponsor register with the appropriate state agency and provide the agency with a list of winners within a specified amount of time if the total value of the prizes exceeds a certain threshold. See Fla. Stat. Ann. § 849.094; N.Y. Gen. Bus. Law § 369-e; R.I. Gen. Laws § 11-50-1.

States that mandate disclosures may require specific language or require that certain information be printed in no less than 10-point boldface type or be in the same size or larger font as other prize representations. The disclosures may also have to be printed in a specific location within the promotional material. In addition, states may have specific requirements for providing winners with the prizes, disclosing shipping and handling or other charges, representations that an individual has been specially selected, and the simulation of checks and invoices. Most states also prohibit certain representations that may be misleading or false.

These laws are enforced in numerous ways, depending on the jurisdiction. States may provide specific penalties and/or causes of action for violations of the promotional gift/prize laws. Alternatively, a number of states consider any violation of the law pertaining to such promotional activities as a deceptive or unfair trade practice, which may be enforced under the state deceptive trade practice laws, consumer protection laws, and/or false or misleading advertising laws.

State	Statutes and Regulations	Disclosure Requirements	Time Requirements for Delivery of Prize	Specific Penalties and/or Applicability of Deceptive Trade Practice Laws
Alabama	Ala. Code §§ 8-19D-1 through 8-19D-2 ; Ala. Code § 8-19A-13 ; Ala. Code § 2-7-25	If a commercial telephone seller expressly or impliedly represents to any prospective purchaser, directly or through a salesperson, that the purchaser is or may be eligible to receive any gift, premium, bonus, or prize, the commercial telephone seller shall submit to the division a statement setting forth the description, value, and terms and conditions. Ala. Code § 8-19A-13	No statute.	An injured person may bring a civil action against the sponsor and/or promoter of the solicitation and may recover damages which shall not exceed three times the compensatory damages of the party claiming punitive damages or \$500,000 whichever is greater. Ala. Code § 8-19D-2
Alaska	Alaska Stat. § 45.50.474 ; Alaska Stat. § 45.50.471	A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned, featured, or otherwise promoted, unless the person conducting the promotion clearly and fully discloses in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. Alaska Stat. § 45.50.474(a)	No statute.	Each violation of the required disclosures on promotions constitutes an unfair trade practice under Alaska Stat. § 45.50.471 . Alaska Stat. § 45.50.474(d) Offering a check, through the mail or by other means, to promote goods or services, if the cashing or deposit of the check obligates the endorser or payee identified on the check to pay for goods or services constitutes unlawful acts and practices. Alaska Stat. § 45.50.471(b)(53)
Arizona	Ariz. Rev. Stat. § 32-2198.10	The estimated odds of winning and terms of the lottery or drawing shall be disclosed in writing to participants. Ariz.	No statute.	No statute.

		<u>Rev. Stat. § 32-2198.10(D)(6)</u>		
Arkansas	<u>Ark. Code Ann. § 4-70-102; Ark. Code Ann. §§ 4-95-101 through 4-95-108; Ark. Code Ann. §§ 4-102-101 through 4-102-109</u>	No sponsor shall offer a prize or use any solicitation that offers a prize, unless the person to whom such offer is made has first received a written prize notice, which must contain certain information. <u>Ark. Code Ann. § 4-102-106(a)</u>	Within 30 days of making a representation, a sponsor must provide the winner with the prize, a document giving the winner the unconditional right to receive the prize, or at the selection of the winner, any other prize listed in the prize notice of equal or greater value, or the retail value of the prize. <u>Ark. Code Ann. § 4-102107</u>	Any person suffering a pecuniary loss because of an intentional violation of prize promotion law may bring an action and shall recover costs, reasonable attorney's fees, and the greater of \$500 or twice the amount of the pecuniary loss. <u>Ark. Code Ann. § 4-102-103(c)</u>
California	<u>Cal. Bus. & Prof. Code §§ 17534 through 17537.2;</u> <u>Cal. Bus. & Prof. Code §§ 17539 through 17539.6</u>	A person, employee, agent, or independent contractor may not, as part of an advertising plan or program, offer any incentive as an inducement to the recipient to visit a location, attend a sales presentation, or contact a sales agent in person, by telephone, or by mail, unless the offer clearly and conspicuously discloses in writing, in readily understandable language, certain information. <u>Cal. Bus. & Prof. Code § 17537.1(a)</u> Any person operating a contest (<u>Cal. Bus. & Prof. Code § 17539.3</u>) must make certain disclosures. <u>Cal. Bus. & Prof. Code § 17539.1</u> (for disclosures relating to unfair practices); see also <u>Cal. Bus. & Prof. Code § 17539.2</u>	If a rain check is provided, the person making an offer shall, within a reasonable time but not later than 80 days, deliver the agreed incentive to the recipient without additional cost or obligation. If the prize is still not available, the person making the offer shall, not later than 30 days after the expiration of the 80 days, deliver a like incentive of equal or greater retail value or, if an incentive is not reasonably available, a substitute incentive of equal or greater retail value. <u>Cal. Bus. & Prof. Code § 17537.1(e)</u>	Certain acts when used as part of an advertising plan or program are considered deceptive and constitute unfair trade practices. <u>Cal. Bus. & Prof. Code § 17537.2</u> A person who violates the advertising law is guilty of a misdemeanor. <u>Cal. Bus. & Prof. Code § 17534</u> The attorney general or any district attorney, county counsel, city attorney, or city prosecutor may bring an action against a person who violates the advertising law in order to obtain injunctive relief. <u>Cal. Bus. & Prof. Code § 17535</u> A person who violates the advertising law is liable for a civil penalty not to exceed \$2,500 per violation. <u>Cal. Bus. & Prof. Code § 17536(a)</u>

		(for duties of persons conducting contest) Solicitation materials must contain certain disclosures in specified forms. <u>Cal. Bus. & Prof. Code § 17539.15</u>		
Colorado	<u>Colo. Rev. Stat. § 6-1-105;</u> <u>Colo. Rev. Stat. §§ 6-1-801 through 6-1-804</u>	No sponsor shall represent that a person may be or may become a winner of a prize, characterize the person as a possible winner of a prize, or represent that the person will, upon the satisfaction of some condition or the occurrence of some event or other contingency, become the winner of a prize, unless certain information is clearly and conspicuously disclosed. <u>Colo. Rev. Stat. § 6-1-803(5)</u>	No statute.	No statute.
Connecticut	<u>Conn. Gen. Stat. §§ 42-295 through 42-301;</u> <u>Conn. Agencies Regs. §§ 42-110b-23, 42-295-1</u>	A person advertising a sweepstakes must make certain required disclosures. <u>Conn. Gen. Stat. § 42-297</u>	No statute.	Certain actions and misrepresentations involving game promotions are considered unfair or deceptive acts or practices. <u>Conn. Agencies Regs. § 42-110b-23</u> A violation of the sweepstakes law is deemed an unfair or deceptive trade practice under

				Conn. Gen. Stat. § 42-110b (a). Conn. Gen. Stat. § 42-300
Delaware	Del. Code Ann. tit. 6, § 2506A; Del. Code Ann. tit. 6, § 2504A; Del. Code Ann. tit. 11, § 906	Disclosure to the customer is required for any material element of a prize promotion. Del. Code Ann. tit. 6, § 2506A(a)(2)(f) Record-keeping is required for prizes represented to have a value of \$25 or more. Del. Code Ann. tit. 6, § 2504A(a)	No statute.	A person is guilty of deceptive business practices when in the course of business the person knowingly or recklessly notifies any other person that the other person has won a prize, received an award or has been selected or is eligible to receive anything of value. Del. Code Ann. tit. 11, § 906(7)
Florida	Fla. Stat. Ann. § 817.415; Fla. Stat. Ann. § 849.094	Advertisements offering free items must clearly and conspicuously disclose all applicable conditions and obligations. Fla. Stat. Ann. § 817.415(5) The operator of a game promotion used in connection with the sale of consumer products or services must conspicuously and legibly post the rules and regulations in every place where the promotion is played or	No statute.	Any violation of the Florida Free Gift Advertising Law is considered a deceptive trade practice. Fla. Stat. Ann. § 817.415(6) Any person, firm, or corporation, or association who engages in any unlawful act or practice, or who violates any of the applicable rules and regulations, is guilty of a misdemeanor of the second degree and may be liable for a



		participated in and must also publish them in all advertising copy. Fla. Stat. Ann. § 849.094(3)		civil penalty of not more than \$1,000 per violation. Fla. Stat. Ann. § 849.094(9)
Georgia	Ga. Code Ann. § 10-1-393	Specific disclosures must be given to a consumer that has been selected, or has purportedly been selected, to participate in a promotion. Ga. Code Ann. § 10-1-393	If the represented prize is unavailable, the participant shall be presented with a certificate which the sponsor shall honor within 30 days, at no cost to the participant. In the event a certificate cannot be honored within 30 days, the sponsor must mail the retail value of the prize to the participant. Ga. Code Ann. § 10-1-393(b)(16)(l)	Any person who participates in a promotion and does not receive an item which conforms with what that person reasonably believed should have been received based upon any representations made may bring a private action under Ga. Code Ann. § 10-1399 and, if that person prevails, shall be awarded a sum which will allow that person to purchase an item at retail which reasonably conforms to the prize which that person reasonably believed that person would receive. Ga. Code Ann. § 10-1-393(b)(16)(O)
Hawaii	Haw. Rev. Stat. Ann. § 481B-1.6	A person who offers a gift, prize, or award with the intent to sell, lease, or rent a consumer product or with the intent of receiving a payment at the time of the offer must clearly and conspicuously disclose all the material terms of the transaction. Haw. Rev. Stat. Ann. § 481B-1.6(b) Any offer of prize by means of a written notice must include information on the odds, a statement that no purchase is necessary and instructions on how to participate. Haw. Rev. Stat. Ann. § 481B-1.6(d)	No statute.	Violations are considered unlawful unfair and deceptive trade practices. Haw. Rev. Stat. Ann. § 481B-1.6



Idaho	Idaho Admin. Code r. 04.02.01.080 through 04.02.01.082	A seller may not offer in writing any goods or services, without obligation, as an inducement to a consumer to attend an inperson sales presentation or contact the seller unless the offer clearly and conspicuously discloses certain information. Idaho Admin. Code r. 04.02.01.081	No statute.	The following are considered unfair and deceptive acts or practices: requiring any kind of entry fee, service charge, purchase, payment, or other obligation in order to participate in the promotion or receive any of the offered awards, prizes, or gifts (Idaho Admin. Code r. 04.02.01.080); failing to make required disclosures (Idaho Admin. Code r. 04.02.01.081); or making a misleading offer (Idaho Admin. Code r. 04.02.01.082).
Illinois	815 Ill. Comp. Stat. Ann. 505/2P ; 815 Ill. Comp. Stat. Ann. 525/1 through 525/90	All material terms and conditions must be clearly and conspicuously disclosed in regard to any offering of free prizes, gifts, or gratuities in the promotion or advertisement of any business, product, or utility or gas service. 815 Ill. Comp. Stat. Ann. 505/2P A written promotional prize offer must contain certain information in a clear and conspicuous statement at the onset of the offer. 815 Ill. Comp. Stat. Ann. 525/25	Within 30 days of making the representation, the sponsor must provide the winner with the prize, a voucher/certificate for the prize, or the retail value of the prize. 815 Ill. Comp. Stat. Ann. 525/30	A consumer who suffers loss by reason of any intentional violation may bring a civil action and if successful in such an action shall recover the greater of \$500 or twice the amount of the pecuniary loss, reasonable attorney's fees, and court costs. Any violation shall be considered an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act (815 Ill. Comp. Stat. Ann. 505/1 through 505/12) and all remedies, penalties, and authority granted to the Attorney General or state's attorney by that Act shall be available to the person so empowered for the enforcement of the Prizes and Gifts Act. 815 Ill. Comp. Stat. Ann. 525/40



Indiana	Ind. Code Ann. §§ 24-8-1-1 through 24-8-6-3	A person offering a gift, award, or other prize during a promotion must clearly disclose certain information to the consumer. Ind. Code Ann. §§ 24-8-3-1 through 24-8-3-10	If the prize is not available, the person who is to receive the prize shall be given the option of choosing a prize of equal or greater value, the retail value of the prize, or a certificate stating that the prize will be shipped within 30 days at no cost; if the certificate cannot be honored within 30 days, the sponsor shall mail the winner the retail value of the prize. Ind. Code Ann. § 24-8-5-1	A knowing or intentional violation is a Level six felony. Ind. Code Ann. § 24-8-6-1 A sponsor or promoter who commits a violation is liable to an aggrieved person for the greater of two times the actual damages or \$500, plus attorney's fees, Ind. Code Ann. § 24-8-6-2 A violation is considered a deceptive act that is actionable
			The prize or the voucher/certificate shall be given to the person at the time the person is informed of the prize. Ind. Code Ann. § 24-8-42	by the attorney general under Ind. Code Ann. § 24-5-0.5-0.1 through 24-5-0.5-12 and is subject to that law's penalties. Ind. Code Ann. § 24-8-6-3
Iowa	Iowa Code §§ 714B.1 through 714B.10 ; Iowa Admin. Code r. 61-32.1	A written prize notice, containing certain information, must be included in every advertisement that requires a person to purchase merchandise or pay or donate money, or gives the reasonable impression that such a purchase, payment, or donation is required, as a condition of awarding a prize, or as a condition of allowing a person to receive, use, compete for, or obtain information about a prize. Iowa Code § 714B.2(1)(c)	Within 30 days of making a representation that a person has won a prize, the sponsor must provide the person with the prize or a document giving the person the unconditional right to receive the prize, or, at the winner's selection, any other prize listed in the prize notice of equal or greater value or the retail value of the prize. Iowa Code § 714B.4	A person who commits an intentional violation is guilty of an aggravated misdemeanor. Iowa Code § 714B.6 A violation of the prize promotion law constitutes a violation of Iowa Code § 714.16 (Consumer Frauds). Iowa Code § 714B.7 A person suffering pecuniary loss as a result of a violation may bring an action to recover the greater of \$500 or twice the amount of the pecuniary loss, plus costs and attorneys' fees. Iowa Code § 714B.8



Kansas	Kan. Stat. Ann. § 50-692	A solicitor, who represents to an individual that the individual has been selected or may be eligible to receive a prize, shall not request, and the solicitor or sponsor shall not accept, a payment from the individual and the solicitor shall not create the reasonable impression that such payment is required before the individual receives a written prize notice, which must contain certain information. Kan. Stat. Ann. § 50-692(b)	If the prize is not available, the individual who is to receive the prize shall be given the option of choosing another prize listed in the notice of equal or greater value, the retail value of the prize, or a certificate stating that the prize will be shipped within 30 days at no cost; if the certificate is not honored within 30 days, the solicitor shall deliver to the winner the retail value of the prize. Kan. Stat. Ann. § 50-692(e)	Any violation is an unconscionable act or practice under the Kansas Consumer Protection Act. A person suffering pecuniary loss because of a violation may bring an action in court and shall recover the greater of \$500 or twice the amount of the pecuniary loss, plus costs and attorneys' fees. Kan. Stat. Ann. §§ 50-692(g), (h)
Kentucky	Ky. Rev. Stat. § 365.055 ; Ky. Rev. Stat. § 365.070	Any document mailed to the general public, for the purpose of marketing a product, that informs the recipient who has won a prize, must prominently and conspicuously communicate by clear and understandable language all exclusions or conditions to receiving the prize. Ky. Rev. Stat. § 365.055(1)	No statute.	Failure to disclose any exclusions or conditions for receiving a prize constitutes an unfair trade practice and remedies for a violation shall be available as provided in Ky. Rev. Stat. § 365.070. Ky. Rev. Stat. § 365.055
Louisiana	La. Rev. Stat. Ann. §§ 51:1721 through 51:1727	A person, firm, or corporation may not offer a prize or gift to a consumer as part of any advertising or sales promotion plan, if, in order to claim the prize, the consumer is given, invited, required, or requested to submit to a sales presentation or promotional program unless certain disclosures are made. La. Rev. Stat. Ann. § 51:1721(A) A person or entity may not solicit an	No person shall, in connection with the sale or lease or the 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 the prize, gift, or item of value shall be delivered to the recipient, at no expense to the recipient, within 10 days of representation. La.	A violation shall constitute an unfair practice under La. Rev. Stat. Ann. § 51:1405; whoever commits a violation shall be fined not more than \$500 and/or imprisoned for not more than six months for each violation. La. Rev. Stat. Ann. § 51:1722



		individual by mail to participate in a contest unless the solicitation includes a statement regarding the odds of winning. La. Rev. Stat. Ann. § 51:1725(A)	Rev. Stat. Ann. § 51:1723(A)(1)	
Maine	No statute.	No statute.	No statute.	No statute.
Maryland	Md. Code Ann., Com. Law §§ 13-305 through 13-306 ; Md. Code Ann., Com. Law §§ 13-401 through 13-411	When a person offers prizes in a sales promotion effort relating to the sale, lease, or rental of real property not prohibited by law, that person must make certain written disclosures that are clear and conspicuous. If a person offers a contest, sweepstakes, or other sales promotion effort not prohibited by law, involving the award of prizes by chance, that person shall make certain written disclosures to each offeree. Md. Code Ann., Com. Law §§ 13-305(e), (g)	If a gift or other inducement offered to a customer in exchange for business is not available at the time the customer complies with the conditions attached to the offer, the offeror must provide the customer with a certificate that states customer has complied with all the conditions and that the offeror will give the customer an identical or substantially similar item of equal value on presentment of the certificate. The certificate may designate a period of not less than 90 days after the date the customer receives the certificate within which the certificate must be presented for redemption. Md. Code Ann., Com. Law § 13-306	Subject to the enforcement and penalty provisions of the Consumer Protection Act. Md. Code Ann., Com. Law §§ 13-401 through 13-411
Massachusetts	Mass. Ann. Laws ch. 93A, § 2 ; 940 Mass. Code Regs. 6.08 ; 940 Mass. Code Regs. 6.14	A seller may not offer any product for free or at a reduced price (a prize), to a prospective buyer in conjunction with the prospective buyer's participation in a sales presentation or	No statute.	A violation is considered an unfair or deceptive act. 940 Mass. Code Regs. 6.08



		promotional contest unless certain information is clearly and conspicuously disclosed in the advertisement. <u>940 Mass. Code Regs. 6.08</u>		
Michigan	<u>Mich. Comp. Laws Serv. § 445.111c</u> ; <u>Mich. Comp. Laws Serv. § 445.903</u> ; <u>Mich. Comp. Laws Serv. § 750.372a</u>	A person may not offer a consumer a prize, if in order to claim the prize the consumer is required to submit to a sales presentation, unless a written disclosure is given to the consumer which meets certain requirements. <u>Mich. Comp. Laws Serv. § 445.903 (1)(ff)</u>	<u>No statute.</u>	It is considered an unfair or deceptive act or practice to offer a consumer a prize promotion over the telephone in which purchase or payment is necessary to obtain the prize (<u>Mich. Comp. Laws Serv. § 445.111c</u>) or a prize that requires the consumer to submit to a sales presentation in order to claim the prize unless the required disclosures are made (<u>Mich. Comp. Laws Serv. § 445.903 (1)(ff)</u>). A person who commits certain violations regarding game promotions shall be guilty of a misdemeanor. <u>Mich. Comp. Laws Serv. § 750.372a(e)</u>
Minnesota	<u>Minn. Stat. Ann. § 325F.755</u>	A sponsor may not require a person to pay money as a condition of being awarded a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize or use any solicitation that creates the reasonable impression that payment is required, unless the person has first received a written prize notice, which must contain certain information. <u>Minn. Stat. Ann. § 325F.755 Subd.2(a)</u>	Within 30 days of making a representation that a person has won a prize, the sponsor must provide the person with the prize or a voucher/certificate giving the person the unconditional right to receive the prize, or, at the winner's selection, any other prize listed in the prize notice of equal or greater value or the retail value of the prize. <u>Minn. Stat. Ann. § 325F.755 Subd. 3</u>	No statute.



Mississippi	No statute.	No statute.	No statute.	No statute.
Missouri	No statute.	No statute.	No statute.	No statute.
Montana	Mont. Code Ann. §§ 30-14-1401 through 30-14-1414	When contacting a consumer and prior to requesting any payment from the consumer, a seller or telemarketer must disclose certain information in a clear and conspicuous manner. Mont. Code Ann. § 30-14-1410	No statute.	Failure to comply with the disclosure and contract requirements is a violation of Mont. Code Ann. § 30-14-103 and is subject to the applicable penalty and the Montana Unfair Trade Practices and Consumer Protection Act. Mont. Code Ann. § 30-14-1410(9) A person convicted of failure to comply with all requirements may be fined up to \$500 and/or imprisoned for up to six months; subsequent violations may result in a fine not to exceed \$50,000 and/or imprisonment for up to five years (additional penalties for telemarketing fraud). Mont. Code Ann. § 30-14-1414
Nebraska	Neb. Rev. Stat. Ann. § 9-701	An operator shall disclose to participants all terms and conditions of a gift enterprise. Neb. Rev. Stat. Ann. § 9-701(4)	No statute.	No statute.
Nevada	Nev. Rev. Stat. Ann. §§ 598.131 through 598.139	A person may not, in connection with the sale or lease or solicitation for the sale or lease of any goods, property, or service, represent that another person has won anything of value or is the winner of any contest unless certain disclosures are made. Nev. Rev. Stat. Ann. § 598.136 Certain representations are required where a person has a chance	The prize must be delivered to the recipient at no expense to that person within 30 days after the representation. Nev. Rev. Stat. Ann. § 598.136(1)(d)	Any violation regarding certain representations constitutes a deceptive trade practice for the purposes of Nev. Rev. Stat. Ann. §§ 598.0903 through 598.0999 . Nev. Rev. Stat. Ann. § 598.139



		to win a prize. Nev. Rev. Stat. Ann. § 598.137		
New Hampshire	N.H. Rev. Stat. Ann. §§ 358O:1 through 358-O:10	No person shall, in connection with the sale or lease or solicitation for sale or lease of goods, property, or service, represent that another person has a chance to win or to	No person shall, 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	Any consumer who suffers loss by reason of a violation may bring a civil action and if successful, shall recover attorney's fees and court costs. N.H. Rev. Stat. Ann. § 358-O:8
		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 which a participant must satisfy. N.H. Rev. Stat. Ann. § 358-O:4(I) It shall be unlawful to notify a person that such 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 such person pay any money, or purchase, lease, or rent any goods or services, unless the nature of the charges to be incurred were clearly and conspicuously disclosed. N.H. Rev. Stat. Ann. § 358-O:4(III)	the winner of a contest, unless the prize, gift, or item of value is delivered to the recipient, at no expense, within 10 days of the representation. N.H. Rev. Stat. Ann. § 358-O:3(I)	Any violation shall constitute a prohibited practice under N.H. Rev. Stat. Ann. §§ 358-A:1 through 358-A:13 and shall be subject to any of its enforcement provisions. N.H. Rev. Stat. Ann. § 358-O:9
New Jersey	N.J. Stat. § 56:8-2.3	No statute.	No statute.	The notification to any person by any means, as a part of an advertising plan or scheme, that he has won a prize and



				requiring the winner to do any act, purchase any other item, or submit to a sales promotion effort is an unlawful practice and a violation of the consumer fraud act. N.J. Stat. § 56:8-2.3
New Mexico	N.M. Code R. §§ 12.2.2.1 through 12.2.2.14	Certain disclosures are required and must be clearly and conspicuously made in each and every representation made in connection with the game promotion. N.M. Code R. § 12.2.2.10	No statute.	Certain practices in the game promotion industry are considered unfair and deceptive trade practices under the Unfair Practices Act, or false advertising under the False Advertising Act. N.M. Code R. § 12.2.2.6 It is an unfair or deceptive trade practice for any person to engage in any advertising or other representation in conjunction with any game promotion, which may deceive or mislead any person concerning any aspect of the game promotion. N.M. Code R. § 12.2.2.9 It is an unfair or deceptive trade practice for any person to sponsor, use, or promote in any manner any game promotion, whether involving skill or chance, which requires consideration in order to participate, unless certain disclosures are made. N.M. Code R. § 12.2.2.10 Certain misrepresentations are considered an unfair or deceptive act or practice. N.M. Code R. § 12.2.2.12



New York	N.Y. Gen. Bus. Law §§ 369-e through 369-eee; N.Y. Comp. Codes R. & Regs. tit. 19, §§ 132.1 through 132.5	Every person, firm, or corporation, engaging in any promotion or advertising game or contest in connection with the promotion, advertising, or sale of consumer products, shall post in a conspicuous and prominent location in every applicable retail establishment and published in all advertising copy, a statement showing the minimum number and value of prizes available and all applicable rules and regulations. N.Y. Gen. Bus. Law § 369-e(2) Certain written disclosures are required for any promotion, solicitation, or advertisement, for the purchase or lease of a product, real estate, investment, services, or a membership if the outcome is based on an element of chance, the consumer is told that they have won or may win a prize or award, and requires the consumer to do something;	No statute.	Certain violations, including failure to file the required statement with the secretary of state; failure to comply with posting and publication requirements; and printing or publishing false, deceptive, or misleading advertising material are class B misdemeanors. Whenever the attorney general has reason to believe that any promotion or advertising scheme or plan is being unlawfully operated, the attorney general may bring an action in court to enjoin the continued operation of such promotion or advertising scheme or plan. N.Y. Gen. Bus. Law § 369-e For any violations of the prize award schemes law, the attorney general may seek an injunction and to enjoin and restrain continuance of the violation; the court may also
		and such written disclosures must clearly and conspicuously disclose certain information. N.Y. Gen. Bus. Law § 369-ee		impose a civil penalty of not more than \$1,000 per violation. N.Y. Gen. Bus. Law § 369ee(4)



North Carolina	N.C. Gen. Stat. § 75-16 ; N.C. Gen. Stat. §§ 75-32 through 75-35	On whose behalf the contest or promotion is conducted, all material conditions which a participant must meet, and other required information must be clearly and prominently disclosed. N.C. Gen. Stat. § 75-33	No person, firm, or corporation engaged in commerce shall, in connection with the sale or lease or solicitation for the sale or lease of any goods, property, or service, represent that any other person, firm, or corporation has won anything of value or is the winner of any contest, unless the prize is delivered to the recipient, at no expense, within 10 days of the representation. N.C. Gen. Stat. § 75-32	Any injured person has a right of action on account of such injury, and if damages are assessed, judgment shall be rendered in favor of the plaintiff for treble the amount fixed by the verdict. N.C. Gen. Stat. § 75-16
North Dakota	N.D. Cent. Code, §§ 53-11-01 through 53-11-05	A sponsor may not require a person to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize. A sponsor may not use a solicitation that creates the reasonable impression that a payment is required, unless the sponsor first has delivered to the person written prize notice, which contains certain information. N.D. Cent. Code, § 53-11-02(1)	Within 30 days of making a representation, a sponsor must provide the winner with the prize, a document giving the winner the unconditional right to receive the prize, or at the selection of the winner, any other prize listed in the prize notice of equal or greater value, or the retail value of the prize. N.D. Cent. Code, § 5311-03	A violation is an unlawful practice under N.D. Cent. Code, § 51-15-02 and is subject to applicable provisions of that chapter. A person who commits an intentional violation is guilty of a class C felony. A person suffering pecuniary loss because of an intentional violation may bring an action in district court to recover costs, attorney's fees, and the greater of \$500 or twice the amount of the pecuniary loss. N.D. Cent. Code, § 53-11-05
Ohio	Ohio Admin. Code 109:4-3-06	The supplier must clearly and conspicuously disclose to the consumer any and all conditions necessary to win the prize or receive anything of value. Ohio Admin. Code 109:4-3-06(D)(3)	No statute.	Certain violations concerning prizes are considered to be a deceptive act or practice in connection with a consumer transaction. Ohio Admin. Code 109:4-3-06



Oklahoma	Okla. Stat. tit. 21, §§ 996.1 through 996.3	No statute.	No statute.	Every violation of the provisions of prizes and gift law shall be an unlawful practice pursuant to the provisions of the Oklahoma Consumer Protection Act. Okla. Stat. tit. 21, § 996.3(E)
Oregon	Or. Rev. Stat. Ann. § 646.608 ; Or. Rev. Stat. Ann. § 646A.800 ; Or. Admin. R. 137-020-0410 through 137-020-0460	When in the course of business, a person uses the U.S. mail to solicit participation in a contest (Or. Admin. R. 137020-0420) or sweepstakes (Or. Admin. R. 137-020-0430), certain information must be clearly and conspicuously disclosed in the solicitation. Or. Rev. Stat. Ann. § 646A.800	No statute.	It is an unlawful business practice to make any false or misleading statement about a prize, contest, or promotion used to publicize a product, business, or service. Or. Rev. Stat. Ann. § 646.608(1)(p) A person who fails to make the required disclosures regarding contests and sweepstakes is engaged in an unlawful business practice. Or. Rev. Stat. Ann. § 646A.800 Failure to comply with the rules pertaining to the advertisement or solicitation of a promotion is considered an unfair or deceptive act in trade or commerce. Or. Admin. R. 137020-0440
Pennsylvania	No statute.	No statute.	No statute.	No statute.
Rhode Island	R.I. Gen. Laws §§ 11-50-1 through 11-50-8 ; R.I. Gen. Laws §§ 42-61.1-1 through 42-61.1-9	Every person, firm, or corporation engaging in any promotion or advertising game or contest of chance shall post in a conspicuous and prominent location in every applicable retail establishment the minimum number and value of prizes available to be won, all applicable rules and regulations, and the names and addresses of prize winners. R.I. Gen. Laws § 1150-2	No person shall, in connection with the sale or lease or solicitation for the sale or lease of goods, property, or services, represent that another person has won anything of value or is the winner of a contest, unless the prize, gift, or item of value shall be delivered to the recipient at no expense to them, within 10 days of the representation. R.I. Gen. Laws § 42-61.1-2	A person who violates any provision of R.I. Gen. Laws §§ 11-50-1 through 11-50-7 is guilty of a misdemeanor. Whenever the attorney general has reason to believe that any promotion or advertising scheme or plan is unlawfully being operated, the attorney general may bring an action in court to enjoin the continued operation of the promotion or advertising scheme

		No person shall, in connection with the sale or lease or solicitation for sale or lease of goods, property, or service, represent that another person has a chance to win or to receive a prize, gift, or item of value without clearly and	or plan. R.I. Gen. Laws § 11-50-8 Any consumer who suffers a loss by reason of a violation of the provisions of the Prizes and Gift Act may bring a civil action to enforce those provisions and if successful shall recover attorney's fees, and court costs.
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		conspicuously disclosing certain information. R.I. Gen. Laws § 42-61.1-3(a)(1)		R.I. Gen. Laws § 42-61.1-7 Any violation of the Prizes and Gift Act constitutes a violation of the Deceptive Trade Practices Act (R.I. Gen. Laws §§ 6-13.1-1 through 6-13.1-29) and shall be subject to any of the enforcement provisions of that chapter. R.I. Gen. Laws § 42-61.1-8
South Carolina	S.C. Code Ann. §§ 37-15-10 through 37-15-100	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 certain information. S.C. Code Ann. § 37-15-40	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 the prize, gift, or item of value is delivered to the recipient, at no expense, within 10 days of the representation. S.C. Code Ann. § 37-15-30(A)	A consumer who suffers loss by reason of a violation may bring a civil action to enforce the provisions and, if successful, shall recover attorney's fees and court costs. S.C. Code Ann. § 37-15-80 A violation 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. S.C. Code Ann. § 37-15-90



South Dakota	S.D. Codified Laws §§ 37-32-1 through 37-32-18	A written prize notice must contain certain information (S.D. Codified Laws § 37-32-3), including the verifiable retail value and the statement of odds (S.D. Codified Laws § 3732-4), and if the individual is required to pay shipping and handling (S.D. Codified Laws § 37-32-5)	If the prize is not available, the solicitor must provide the winner with a voucher or certificate stating that the prize will be shipped within 30 days, at no cost to the individual. If the voucher/certificate is not honored within 30 days, the solicitor shall deliver to the individual the retail value of the prize. S.D. Codified Laws § 37-32-10	The attorney general or state's attorney may bring an action to restrain a violation by temporary or permanent injunction (S.D. Codified Laws § 37-32-11), may petition the court to recover a civil penalty of \$100–\$5,000 per violation from any person who violates the terms of an injunction (S.D. Codified Laws § 37-32-12), and recover, on behalf of the state, a civil penalty of not more than \$2,000 if the violation was intentional (S.D. Codified Laws § 37-32-13). Any individual who claims to have been adversely affected by any unlawful act or practice may bring a civil action for the recovery of twice the actual damages suffered or \$500, whichever is greater, plus courts costs and attorneys' fees. S.D. Codified Laws § 3732-14 Any person who knowingly or intentionally violates the law with the intent to defraud a consumer is guilty of a Class 1 misdemeanor. S.D. Codified Laws § 37-32-17
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Tennessee	Tenn. Code Ann. § 47-18-120; Tenn. Code Ann. § 47-18-124	A sponsor may not require a person in Tennessee to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, nor may a sponsor use any solicitation that creates the reasonable impression that a payment is required, unless the person has first received a written prize notice, which must contain certain information. Tenn. Code Ann. § 47-18124(b) Any person engaged in trade or commerce, directly or indirectly, by any means, including, but not limited to, by mail, by telephone, by advertisement, or in person, who offers to consumer, or represents or leads a consumer to believe, that the consumer will or may receive any prize as an inducement to purchase a good, service, or other product or otherwise incur a monetary obligation, visit a business, attend or listen to a sales presentation or otherwise contact a salesperson; or any person	Within 30 days of making a representation, a sponsor must provide the winner with the prize, a document giving the winner the unconditional right to receive the prize, or at the selection of the winner, any other prize listed in the prize notice of equal or greater value, or the retail value of the prize. Tenn. Code Ann. § 4718-124(e)	Certain acts pertaining to prizes offered as inducements are considered unfair or deceptive acts or practices and are unlawful. Tenn. Code Ann. § 47-18-120(c) Violations are considered unfair deceptive acts or practices and are punishable by a civil penalty of a minimum of \$1,000, up to a maximum of 10 times the amount collected or requested by the offeror for each violation. Tenn. Code Ann. § 47-18-124(h) (prizes); Tenn. Code Ann. § 47-18-120(g) (prizes offered as inducements)
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		engaged in trade or commerce, directly or indirectly, by any means, who offers to sell travel services, at wholesale or retail, to a consumer or other person is required to make certain disclosures. Tenn. Code Ann. § 47-18-120(b)		
Texas	Tex. Bus. & Com. Code §§ 621.001 through 622.206 ; Tex. Penal Code § 32.42	An offeror who notifies a person that the person will receive a gift shall, at the time of the notification, clearly and conspicuously disclose certain information. Tex. Bus. & Com. Code § 621.052(a) An offeror who notifies a person that the person has won a prize, will receive a prize or has a chance to win or receive a prize, shall, at the time of the notification, clearly and conspicuously disclose that attendance at a sales presentation is required, the approximate duration of the sales presentation, and a description of the product or service being sold. Tex. Bus. & Com. Code § 621.102 A person who uses a matched contest shall clearly and conspicuously disclose certain information in writing in the offer. Tex. Bus. & Com. Code § 621.104(a) A person may not use a drawing unless the offeror clearly and conspicuously	If the response to an offer exceeds the number of gifts or major or minor prizes available at the sales location, the offeror shall tender a rain check for the gift or prize represented in the offer. The offeror shall send that exact gift or prize to the recipient, without cost, not later than the 14th day after the date the recipient visits the sales location or attends the sales presentation Tex. Bus. & Com. Code § 621.152 If an offeror who knows that the gift or minor prize will not be available within 14 days of the date of the visit or attendance shall tender to the recipient, by cash or check, the amount of \$100. If, after the expiration of the fourteenth day, the offeror has not sent the gift or prize, the offeror shall send by mail to the recipient of the rain check a check or money order in the amount of \$100	A knowing violation is a criminal offense. Tex. Bus. & Com. Code § 621.251(a) A violation is a deceptive trade practice and is actionable under that subchapter. Tex. Bus. & Com. Code § 621.252 The court shall award the attorney general a civil penalty of not less than \$5,000 or more than \$50,000 for each violation found under the sweepstakes law (Tex. Bus. & Com. Code § 622.202) and may also award injunctive relief or other equitable or ancillary relief that is reasonably necessary to prevent violations (Tex. Bus. & Com. Code § 622.204) If the attorney general prevails, the court shall award court costs, attorney's fees, investigative costs, witness fees, and deposition expenses. Tex. Bus. & Com. Code § 622.206 The sweepstakes chapter does not create a private right of action. Tex. Bus. & Com. Code

		discloses certain information in writing in the offer. <u>Tex. Bus. & Com. Code § 621.106(a)</u>	payable to the recipient <u>Tex. Bus. & Com. Code § 621.153</u>	<u>§ 622.205</u>
Utah	<u>Utah Code Ann. §§ 13-28-1 through 13-28-9; Utah Admin. Code R152-11-6</u>	If a solicitor represents to an individual that the individual 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 before the individual receives a written prize notice, which must contain certain information. <u>Utah Code Ann. § 13-28-3; Utah Code Ann. § 13-28-4(1)</u>	If the prize is not available, the solicitor shall provide the individual with any one of the following items selected by the individual: another available prize listed in the written prize notice that is of equal or greater value; the retail value of the prize; or a document stating that the prize will be shipped within 30 days at no cost. If the document, is not honored within 30 days, the solicitor shall deliver the retail value of the prize to the individual. <u>Utah Code Ann. § 13-28-6</u>	Any person who violates the prize notices regulation act is subject to a cease-and-desist order and an administrative fine of \$100–\$5,000 per violation. Any person who commits an intention violation is guilty of a class A misdemeanor and may be fined up to \$10,000. <u>Utah Code Ann. § 13-28-7</u> The attorney general or any district or county attorney may bring an action for injunctive or other relief and for the collection of penalties; and the court may award restitution when appropriate. <u>Utah Code Ann. § 13-28-8(2)</u>





				A person suffering pecuniary loss because of a violation may bring an action and may recover the greater of \$500 or twice the amount of the pecuniary loss, plus court costs and attorney's fees. Utah Code Ann. § 13-28-9 Certain violations are considered to be a deceptive act or practice in connection with a consumer transaction. Utah Admin. Code R152-11-6
Vermont	Vt. Stat. Ann. tit. 9, §§ 2451 through 2464c; CVR 06-031-003	No statute.	No statute.	Violations involving contests or prizes constitute unfair and deceptive trade acts and practices in commerce under Vt. Stat. Ann. tit. 9, § 2453. CVR 06-031-003
Virginia	Va. Code Ann. §§ 59.1-196 through 59.1-207; Va. Code Ann. §§ 59.1-415 through 59.1-423	No person shall, in connection with the sale or lease or solicitation for sale or lease of goods, property or service, represent that another person has a chance to win or to receive a prize, gift, or item of value without clearly and	No person shall, 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 the prize is delivered to the	Any consumer who suffers loss by reason of a violation may bring a civil action and if successful, shall recover attorney's fees, and court costs. Va. Code Ann. § 59.1-421 Any violation shall constitute a

		conspicuously disclosing certain information. Va. Code Ann. § 59.1-417(A)	recipient, at no expense, within 10 days of the representation. Va. Code Ann. § 59.1-416(A)	prohibited practice under Va. Code Ann. § 59.1-200 and shall be subject to enforcement under Va. Code Ann. §§ 59.1196 through 59.1-207 . Va. Code Ann. § 59.1-422
Washington	Wash. Rev. Code Ann. § 9.46.0356 ; Wash. Rev. Code Ann. §§ 19.170.010 through 19.170.900 ; Wash. Rev. Code Ann. § 30.22.260	An offer for goods, services, or property made as part of a promotion to a person based on a representation that the person has been awarded, or will be awarded, a prize (Wash. Rev. Code Ann. § 19.170.020) must contain certain disclosures. Wash. Rev. Code Ann. § 19.170.030	If the prize is not available for immediate delivery to the recipient, the recipient shall be given a rain check for the prize, the retail value of the prize, or a substitute item of equal or greater value. If the rain check cannot be honored within 30 days, the promoter or sponsor shall mail the person the retail value of the prize. Wash. Rev. Code Ann. § 19.170.040(5)	A violation is an unfair or deceptive act in trade or commerce for the purpose of applying the Consumer Protection Act and constitutes an act of deceptive promotional advertising. Wash. Rev. Code Ann. § 19.170.010(2) A person who suffers damage from an act of deceptive promotional advertising may bring an action against the sponsor and/or promoter. Damages may include fees paid in violation of Wash. Rev. Code Ann. § 19.170.030 and the dollar value of a prize represented to be awarded to a person, but not received by that person. In an action for deceptive promotional advertising, the court may award the greater of \$500 or three times the actual damages sustained by the person, not to exceed \$10,000; equitable relief, including, but not limited to an injunction and restitution of money and property; attorneys' fees and costs; and any other relief that the court deems proper. Wash. Rev. Code Ann. § 19.170.060





				A person who knowingly violates any provision of promotional advertising or prizes law is guilty of a gross misdemeanor. Wash. Rev. Code Ann. § 19.170.070
West Virginia	W. Va. Code § 46A-6-102; W. Va. Code §§ 46A-6D-1 through 46A-6D-10; W. Va. Code §§ 46A-7-101 through 46A-7-115	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. Certain additional information must also be disclosed. W. Va. Code § 46A-6D-4(a)	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 the prize is delivered to the recipient, at no expense, within 10 days of the representation. W. Va. Code § 46A-6D-3(a)	Any consumer who suffers loss by reason of a violation may bring a civil action, and if successful, shall recover attorney's fees and court costs. W. Va. Code § 46A-6D-8 Any violation constitutes an unlawful act or practice under W. Va. Code §§ 46A-6-101 through 46A-6-110 regarding fraudulent acts or practices committed by a supplier in connection with a consumer transaction and shall be subject to the enforcement provisions of W. Va. Code §§ 46A-7-101 through 46A-7-115.

				W. Va. Code § 46A-6D-9
Wisconsin	Wis. Stat. Ann. § 100.16 ; Wis. Stat. Ann. § 100.171	If a solicitor represents to an individual that the individual 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, which must contain certain information. Wis. Stat. Ann. § 100.171(2)	If the prize is not available, the solicitor must provide the winner with a voucher or certificate stating that the prize will be shipped within 30 days, at no cost. If the voucher/certificate is not honored within 30 days, the solicitor shall deliver to the individual the retail value of the prize. Wis. Stat. Ann. § 100.171(5)	A person violating the law may be required to forfeit \$100–\$5,000 for each violation and if the violation is intentional, is guilty of a Class I felony. The department or a DA may bring an action for injunctive relief and for the above mentioned penalties. The court may award restitution when appropriate. A person suffering pecuniary loss because of a violation may bring an action to recover the greater of \$500 or twice the amount of the pecuniary loss, plus costs and attorneys' fees Wis. Stat. Ann. §§ 100.171(7) through (9)
Wyoming	Wyo. Stat. Ann. §§ 40-12-201 through 40-12-209	If a solicitor represents to an individual that the individual has been selected or may be eligible to receive a prize, the solicitor shall not request, and	If the prize is not available, the solicitor must provide the winner with a voucher or certificate stating that the prize will be shipped within 30 days,	A person suffering pecuniary loss because of a violation may bring an action to recover the greater of \$500 or twice the amount of the pecuniary loss,



		the solicitor or sponsor shall not accept, a payment from the individual in any form before the individual receives a written prize notice, which must contain certain information. Wyo. Stat. Ann. § 40-12-202; Wyo. Stat. Ann. § 40-12-203(a)	at no cost. If the voucher/certificate is not honored within 30 days, the solicitor shall deliver to the individual the retail value of the prize. Wyo. Stat. Ann. § 40-12-205	plus costs and attorneys' fees. Wyo. Stat. Ann. § 40-12-208 An individual may be guilty of a misdemeanor punishable by a fine of not more than \$750 and/or imprisonment for not more than six months, for each violation; or a \$10,000 fine and/or imprisonment for not more than one year for an intentional violation. Wyo. Stat. Ann. § 40-12-206 The attorney general or district attorney may bring an action for injunctive relief and for the above mentioned penalties; and the court may award restitution when appropriate. Wyo. Stat. Ann. § 40-12-207(b)
District of Columbia	No statute.	No statute.	No statute.	No statute.
Guam	5 GCA §§ 32401 through 32403	A person offering a prize or a gift with the intent to offer a sales presentation must clearly and unequivocally disclose his/her intent to offer the sales presentation. 5 GCA § 32401(a)	No statute.	A violation is deemed a deceptive trade practice subject to action by the attorney general. 5 GCA § 32402 If a contest sponsor fails to award a prize as promised, the court may, upon application of the attorney general or the prize winner, order the sponsor to make the award as promised or pay the full retail value of the prize, plus attorney's fees and civil penalties as provided by law. 5 GCA § 32403(c)(6) The attorney general may also represent a



				consumer in an action for specific performance of the terms of the contest or offer of gift. 5 GCA § 32403(c) (9)
Puerto Rico	No statute.	No statute.	No statute.	No statute.
U.S. Virgin Islands	12A V.I.C. § 309 ; 12A V.I.C. §§ 326 through 336	All material terms and conditions relating to the offer of free prizes, gifts, or gratuities must be clearly and conspicuously disclosed at the outset of the offer. 12A V.I.C. § 309	No statute.	The Department of Licensing and Consumer Affairs may bring an action to obtain a declaratory judgment; an action to enjoin any person who has violated, is violating, or is otherwise likely to violate, the law; an action on behalf of one or more consumers for the actual damages caused by an unlawful act or practice; a motion in the Superior Court to appoint a receiver; or any other action provided by law. 12A V.I.C. § 328(a) Any person who suffers actual damage as a result of a violation of the consumer fraud and deceptive business practices law may bring an action and the court, in its discretion may award actual economic damages or any other relief that it considers proper. 12A V.I.C. § 331 . The court may award to the prevailing party costs and expenses, including attorneys' fees. 12A V.I.C. § 332