

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Senator Malone**

# **A Bill**

**ACT 736 OF 1995**  
**SENATE BILL 381**

## **For An Act To Be Entitled**

8 "AN ACT TO CREATE THE ARKANSAS PRIZE PROMOTION ACT; TO  
9 REQUIRE CERTAIN DISCLOSURES IN ALL PRIZE PROMOTIONS; TO  
10 PROVIDE CERTAIN EXEMPTIONS; TO PROVIDE PENALTIES AND  
11 REMEDIES FOR VIOLATION OF THE ACT; AND FOR OTHER  
12 PURPOSES."

## **Subtitle**

15 "THE ARKANSAS PRIZE PROMOTION ACT"

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Definitions. As used in this act, unless the context  
20 otherwise requires:

21 (1) "Prize" means a gift, award, or other item or service that is  
22 offered or awarded to a participant in a real or purported contest,  
23 competition, sweepstakes, puzzle, drawing, scheme, plan, or other selection  
24 process.

25 (2) "Retail value" of a prize means:

26 (A) A price at which the sponsor can substantiate that a  
27 substantial number of the prizes have been sold to the public in Arkansas in  
28 the preceding year; or

29 (B) If the sponsor is unable to satisfy the requirement in clause  
30 (A), then no more than 1.5 times the amount the sponsor paid for the prize in  
31 a bona fide purchase from an unaffiliated seller.

32 (3) "Sponsor" means a corporation, partnership, limited liability  
33 company, sole proprietorship, or natural person that offers a prize to a  
34 person in Arkansas in conjunction with the sale or lease of any product or  
35 service, or in conjunction with any real or purported contest, competition,  
36 sweepstakes, puzzle, drawing, scheme, plan, or other selection process that

1 requires, or creates the reasonable impression of requiring, or allows the  
2 person to pay any money as a condition of receiving, or in conjunction with  
3 allowing the person to receive, use, compete for, or obtain a prize, or  
4 information about a prize.

5

6 SECTION 2. Disclosures required.

7 (a) No sponsor shall offer a prize, nor shall a sponsor use any  
8 solicitation, whether written or oral, and however communicated, that offers a  
9 prize unless the person to whom such offer is made has first received a  
10 written prize notice containing the information required in paragraphs (b) and  
11 (c).

12 (b) A written prize notice must contain each of the following:

13 (1) The true name or names of the sponsor and the address of the  
14 sponsor\_s actual principal place of business;

15 (2) The retail value of each prize the person receiving the  
16 notice has been selected to receive or may be eligible to receive;

17 (3) A statement of the person\_s odds of receiving each prize  
18 identified in the notice;

19 (4) Any requirement that the person pay shipping or handling fees  
20 or any other charges in order to obtain or use a prize, or any fees required  
21 to obtain information about a prize, including the nature and amount of such  
22 charges;

23 (5) If the receipt of the prize is subject to a restriction, a  
24 statement that a restriction applies, and a description of the restrictions;

25 (6) Any limitations on eligibility for the prize;

26 (7) If a sponsor represents that the person is a "winner", is a  
27 "finalist", has been "specially selected", is in "first place", or is  
28 otherwise among a limited group of persons with an enhanced likelihood of  
29 receiving a prize, the written prize notice must contain a statement of the  
30 maximum number of persons in the group or purported group with this enhanced  
31 likelihood of receiving a prize.

32 (c) The information required by paragraph (b) must be presented in the  
33 following form:

34 (1) The retail value and statement of odds required under  
35 paragraph (b), clauses (2) and (3), must be stated in immediate proximity to

1 each identification of a prize on the written notice, and must be in the same  
2 size and boldness of type as the reference to the prize;

3           (2) The statement of odds must include, for each prize, the total  
4 number of prizes to be given away and the total number of written prizes to be  
5 distributed. The number of prizes and written prize notices must be stated in  
6 Arabic numerals. The statement of odds must be in the following form:

7           "...(number of prizes) out of ...(notices distributed)"; if a person is  
8 required to pay shipping or handling fees or any other charges in order to  
9 obtain a prize, to be eligible to obtain a prize, to obtain information about  
10 a prize, or to otherwise participate in the contest, the following statement  
11 must appear in immediate proximity to each listing of the prize in the written  
12 prize notice, in not less than 10 point bold face type: "YOU MUST PAY \$.....  
13 TO RECEIVE THIS ITEM" or "YOU MUST PAY \$..... TO COMPETE FOR THIS ITEM," or  
14 "YOU MUST PAY \$..... TO OBTAIN INFORMATION ABOUT THIS ITEM," whichever is  
15 applicable; and a statement required under paragraph (b), clause (7), must  
16 appear in immediate proximity to each representation that the person is among  
17 a group of persons with an enhanced likelihood of receiving a prize, and must  
18 be in the same size and boldness of type as the representation.

19

20           SECTION 3. Prize award required.

21           A sponsor who represents to a person that the person has been awarded a  
22 prize shall, not later than thirty (30) days after making a representation,  
23 provide the person with the prize, or with a voucher, certificate, or other  
24 document giving the person the unconditional right to receive the prize, or  
25 shall provide the person with either of the following items selected by the  
26 person:

27           (1) Any other prize listed in the written prize notice that is  
28 available and that is of equal or greater value; or

29           (2) The retail value of the prize, as stated in the written notice, in  
30 the form of cash, a money order, or a certified check.

31

32           SECTION 4. Telephonic prize offers.

33           (a) All provisions of this act apply to prize offers made by way of  
34 telephone communication. Sponsors of such offers shall not solicit, nor  
35 accept the payment of any money from any person unless that person has first

1 received the written prize notice as required by this act. No sponsor shall  
2 solicit, nor utilize in any fashion any credit card or bank account  
3 information from any person unless that person has first received a written  
4 prize notice as required by this act.

5 (b) If a sponsor contacts a person by telephone after that person has  
6 first received a written prize notice as required by this act, the sponsor  
7 shall specifically identify the written prize notice, and shall by oral  
8 disclosure communicate all disclosures required by Section 2 of this act prior  
9 to soliciting or accepting any money from any person and prior to soliciting  
10 or accepting any credit card or bank account information from any person.

11

12 SECTION 5. Application of the Home Solicitation Act.

13 All prize offers, including telephone prize offers, in which the sponsor  
14 has initiated contact regardless of his location and the consumer\_s agreement  
15 to pay is made at the consumer\_s home, and is an agreement to pay more than  
16 twenty-five dollars (\$25.00) is a "Home Solicitation Sale" within the meaning  
17 of Arkansas Code Annotated § 4-89-102.

18

19 SECTION 6. Exemptions.

20 (a) Advertising Media Exempt. Nothing in this act creates liability  
21 for the acts by the publisher, owner, agent, or employee of a newspaper,  
22 periodical, radio station, television station, cable television station  
23 system, or other advertising medium arising out of the publication or  
24 dissemination of a solicitation, notice, or promotion governed by this act,  
25 unless the publisher, owner, agent, or employee had knowledge that the  
26 solicitation, notice, or promotion violated the requirements of this act, or  
27 had a financial interest in the solicitation, notice, or promotion.

28 (b) Free Prize Promotions. This act does not apply to sponsors of  
29 prize promotions where all prizes are awarded absolutely for free and there is  
30 no opportunity for the payment of money from the person to the sponsor, or any  
31 agent of the sponsor. The fact that a prize promotion makes provision for  
32 entry into the contest, or eligibility for the prize, without any payment does  
33 not exempt the prize promotion, nor its sponsor, from the provisions of this  
34 act where the prize promotion requires, or creates the reasonable impression  
35 of requiring, or allows the person to pay any money as a condition of

1 receiving, or in conjunction with allowing the person to receive, use, compete  
2 for, or obtain a prize of information about a prize. If the prize promotion  
3 provides any opportunity for any payment by the person to the sponsor for any  
4 reason, regardless of whether such payment is required, and regardless how  
5 such payment is denominated, this exemption shall not apply.

6 (c) *Other Exemptions. This act does not apply to solicitations or*  
7 *representations, in connection with:*

8 (1) *the sale or purchase of books, recordings, videocassettes,*  
9 *periodicals, and similar goods through:*

10 (A) *a membership group or club which is regulated by the*  
11 *Federal Trade Commission pursuant to Code of Federal Regulations, title 16,*  
12 *part 425.1, concerning use of negative option plans by sellers in commerce, or*

13 (B) *the sale or purchase of such goods through a*  
14 *contractual plan or arrangements such as a continuity plan, subscription*  
15 *arrangement, or a single sale or purchase series arrangement under which the*  
16 *seller ships such goods to a consumer who has consented in advance to receive*  
17 *the goods and after the receipt of the goods is given the opportunity to*  
18 *examine the goods and to receive a full refund of charges for the goods upon*  
19 *return of the goods undamaged within a reasonable period of time; provided*  
20 *that, the return and refund privilege shall be clearly and conspicuously*  
21 *disclosed to the consumer in the original contact with the consumer, whether*  
22 *oral or written; if the consumer elects to return the product for a refund,*  
23 *the seller shall process the refund within thirty (30) days after the receipt*  
24 *of the returned merchandise by the consumer; in addition to the return and*  
25 *refund privilege, the consumer may cancel the plan, arrangement, subscription,*  
26 *or purchase series at any time by notifying the seller. After the seller*  
27 *receives the cancellation notice, any further products, not already in*  
28 *transit, sent to the consumer shall be considered a gift to the consumer which*  
29 *the consumer may keep without further obligation, and for which gift the*  
30 *seller shall not bill the consumer;*

31 (2) *sales by a catalog seller. For purposes of this section*  
32 *\_catalog seller\_ shall mean any entity (and its subsidiaries) or person at*  
33 *least fifty percent (50%) of whose annual revenues are derived from the sale*  
34 *of products sold in connection with the distribution of catalogs of at least*  
35 *twenty-four (24) pages, which contain written descriptions or illustrations*

1 and sale prices for each item of merchandise and which are distributed in more  
2 than one state with a total annual distribution of at least two hundred fifty  
3 thousand (250,000).

4 (d) *Loss of Exemption.* Any willful failure of a seller claiming  
5 exemption under subsection (c) of this section to comply with all of the terms  
6 of the exemption shall render a claim of exemption void, and such seller shall  
7 be bound to fully comply with the provisions of this act.

8 (e) *Exemption for Pari-mutuel Wagering.* This act does not apply to  
9 pari-mutuel wagering on horse racing and greyhound racing permitted and  
10 regulated by Arkansas law.

11

12 SECTION 7. Prohibited Practices.

13 A sponsor shall not do any of the following:

14 (1) Offer a prize to any person except in accordance with the  
15 requirements of this act.

16 (2) Deliver a written prize notice, or an envelope containing a written  
17 prize notice, that contains language, or is designed in a manner, that would  
18 have the tendency or capacity to mislead intended recipients as to the source  
19 of the written prize notice. This prohibition includes, but is not limited  
20 to, a written prize notice or envelope which indicates that the notice or  
21 envelope originates from a government agency, public utility, insurance  
22 company, consumer reporting agency, debt collector, or law firm, unless the  
23 written prize notice or envelope originates from such source.

24 (3) Represent directly or by implication that the number of persons  
25 eligible for the prize is limited or that a person has been selected to  
26 receive a particular prize, unless the representation is true.

27 (4) Represent that a person is a winner or finalist, has been specially  
28 selected, is in first place, or is otherwise among a limited group of persons  
29 with an enhanced likelihood of receiving a prize, or that a person is entering  
30 a contest, sweepstakes, drawing, or other competitive enterprise, from which a  
31 single winner or select group of winners will receive a prize, when in fact  
32 the enterprise is a promotional scheme designed to make contact with  
33 prospective customers and all or a substantial number of those receiving the  
34 notice are awarded the same prize.

35 (5) Represent directly or by implication that a person will have an

1 increased chance of receiving a prize by making multiple or duplicate  
2 purchases, payments or donations, or by entering a game, drawing, sweepstakes,  
3 or other contest more than one time, unless the representation is true. A  
4 sponsor is deemed to have made such representation if the sponsor delivers one  
5 or more prize notices to a person after the person has already made a  
6 purchase, payment, or donation to the sponsor for the same promotion, or has  
7 already entered the same game, drawing, sweepstakes, or other contest, unless  
8 the sponsor can demonstrate a bona fide error even though the sponsor has  
9 implemented procedures reasonably designed to prevent such duplication.

10 (6) Represent directly or by implication that a person is being  
11 notified a second or final time of the opportunity to receive or compete for a  
12 prize, unless the representation is true.

13 (7) Represent directly or by implication that a prize notice is urgent,  
14 or otherwise convey an impression of the urgency by use of description,  
15 narrative copy, phrasing on an envelope, or similar method, unless there is a  
16 limited time period in which the recipient must take some action to claim or  
17 be eligible to receive a prize, and the date by which such action is required  
18 appears in immediate proximity to each representation of urgency and in the  
19 same type size and boldness as each representation of urgency.

20 (8) Knowingly sell, rent, exchange, transfer, or otherwise furnish to  
21 or purchase from other persons, financial data regarding Arkansans disclosed  
22 in connection with a prize promotion not in compliance with this act. For  
23 purposes of this chapter, financial data includes credit card numbers, bank  
24 account numbers, other payment device numbers, and dollars spent on prize  
25 promotions which are not in compliance with this act.

26 (9) Request an individual to disclose the individual\_s phone number,  
27 age, birthdate, credit card ownership, or financial data in connection with a  
28 prize promotion which is not in compliance with this act.

29

30 SECTION 8. Violations.

31 (a) Nothing in this act shall be construed to permit an activity  
32 otherwise prohibited by law.

33 (b) A violation of this act is also a violation of the Arkansas  
34 Deceptive Trade Practices Act, Arkansas Code Annotated § 4-88-101 et seq., and  
35 is subject to all of the enforcement provisions of that act. Each prize offer

1 made in violation of this act, as to each separate person to whom such offer  
2 is made, shall constitute a separate violation of this act. For the purposes  
3 of the assessment of penalties pursuant to the Arkansas Deceptive Trade  
4 Practices Act, each separate violation of this act will constitute a separate  
5 violation of the Deceptive Trade Practices Act.

6 (c) Any person suffering a pecuniary loss because of an intentional  
7 violation of this act may bring an action in any court of competent  
8 jurisdiction and shall recover costs, reasonable attorney\_s fees, and the  
9 greater of (1) five hundred dollars (\$500) or (2) twice the amount of the  
10 pecuniary loss. It is evidence of intent if the violation occurs after the  
11 Office of the Attorney General has notified a sponsor that the sponsor is in  
12 violation of this act.

13 (d) The relief provided in this section is in addition to remedies or  
14 penalties otherwise available in regards to the same conduct under law or  
15 under other statutes of this State.

16

17 SECTION 9. Legislative finding, declaration, and intent.

18 (a) The Arkansas General Assembly has become aware of the avalanche of  
19 sweepstakes, contests, and prize promotions that have been and are being  
20 directed at Arkansas consumers, and recognizes that consumers are often misled  
21 by these sweepstakes, contests, and prize promotions. The General Assembly  
22 also recognizes that Arkansas consumers have paid hundreds of thousands of  
23 dollars to sweepstakes, contests, and prize promoters based upon  
24 misrepresentations by those promoters to Arkansas consumers. Many of the  
25 sweepstakes, contests, and prize promotions are artfully crafted to lead  
26 Arkansas consumers to believe that they have been selected to receive valuable  
27 prizes, when such is not the case. The promotions often mislead Arkansas  
28 consumers as to the value of the prizes. The promotions often mislead  
29 Arkansas consumers as to their chances to receive the prize. The promotions  
30 often mislead Arkansas consumers to believe that they must purchase the  
31 promoter\_s product, or otherwise pay to the promoter sums of money in order to  
32 be eligible to receive the prize, or that the likelihood that the prize to be  
33 awarded will be increased, or that the consumer\_s application for the prize  
34 will receive special handling if the consumer purchases the promoter\_s  
35 product. These sweepstakes, contests and prize promoters prey particularly

1 upon elderly Arkansas consumers.

2 (b) It is the intent of the *General Assembly* through the enactment of  
3 this act to require that Arkansas consumers be provided with all relevant  
4 information necessary to make an informed decision concerning sweepstakes,  
5 contests, and prize promotions; it is also the intent of the *General Assembly*  
6 to prohibit misleading and deceptive prize promotions. This act shall be  
7 construed liberally in order to achieve this purpose.

8

9 SECTION 10. All provisions of this act of a general and permanent  
10 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
11 Code Revision Commission shall incorporate the same in the Code.

12

13 SECTION 11. If any provision of this act or the application thereof to  
14 any person or circumstance is held invalid, such invalidity shall not affect  
15 other provisions or applications of the act which can be given effect without  
16 the invalid provision or application, and to this end the provisions of this  
17 act are declared to be severable.

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19 SECTION 12. All laws and parts of laws in conflict with this act are  
20 hereby repealed.

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*/s/Malone*

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APPROVED: 3-22-95

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