



January 27, 2000

HOUSE BILL No. 1237

DIGEST OF HB 1237 (Updated January 26, 2000 11:03 AM - DI 87)

Citations Affected: IC 24-8.

Synopsis: Sweepstakes regulation. Exempts charity gaming from prohibitions against certain acts concerning promotional gifts and contests. Provides for disclaimers and statements of odds for sweepstakes notices. Prohibits a promoter from mailing a promotion notice to a person after the promoter receives a do not mail request from that person. Provides that a do not mail request is valid for five years. Repeals sweepstakes exemption for promotions involving a book, record, video, or magazine that can be returned for a full refund within seven days. Provides that in addition to pursuing penalties for violation the attorney general may pursue civil remedies against a person who violates the law concerning promotional gifts and contests.

Effective: July 1, 2000.

**Herrell, Adams T, Alderman,
Bardon, Friend, Kuzman, Welch**

January 10, 2000, read first time and referred to Committee on Public Policy, Ethics, and Veterans Affairs
January 26, 2000, reported — Do Pass.

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HB 1237—LS 7196/DI 94+



January 27, 2000

Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

HOUSE BILL No. 1237

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-8-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2000]: Sec. 1. **(a) Except as provided in**
3 **subsection (b)**, this article applies to a promotion offer made:
4 (1) by a person in Indiana; or
5 (2) to a person in Indiana;
6 **(b) This article does not apply to a promotion offer made in**
7 **connection with an allowable event (as defined in IC 4-32-6-2) by**
8 **a qualified organization (as defined in IC 4-32-6-20).**
9 SECTION 2. IC 24-8-2-3 IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2000]: Sec. 3. "Prize" means a gift, award, or
11 other item ~~distributed~~ **or service of value offered or awarded** in a
12 promotion.
13 SECTION 3. IC 24-8-2-5 IS AMENDED TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2000]: Sec. 5. "Promotion" means a written
15 notice ~~offering~~:
16 (1) ~~property~~; or
17 (2) ~~a chance to obtain property~~;

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1 to a person based on a representation that the person has been awarded
 2 or may have been awarded a prize: containing a representation that
 3 a person:

- 4 (1) has won;
 5 (2) has been selected to receive; or
 6 (3) may be eligible to receive;

7 a prize, and includes marketing and advertising material used in
 8 connection with the promotion.

9 SECTION 4. IC 24-8-2-9 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2000]: **Sec. 9. "Sweepstakes"** means a game of chance for which
 12 consideration is not required to enter.

13 SECTION 5. IC 24-8-2-10 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2000]: **Sec. 10. "Facsimile check"** means a nonnegotiable
 16 document designed to resemble a check or other negotiable
 17 instrument.

18 SECTION 6. IC 24-8-2-11 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2000]: **Sec. 11. "Simulated government document"** means a
 21 document that reasonably could be interpreted or construed as
 22 implying a state or federal government connection, approval, or
 23 endorsement through the use of a seal, insignia, reference to the
 24 Postmaster General, citation to a state or federal statute, or name
 25 of a state or federal agency, department, commission, program,
 26 trade name, or brand name.

27 SECTION 7. IC 24-8-3-1 IS AMENDED TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2000]: **Sec. 1.** Notice may be delivered by any
 29 of the following methods:

- 30 (1) Hand.
 31 (2) Mail.
 32 (3) Newspaper.
 33 (4) Other periodical.
 34 (5) Fax machine.
 35 (6) Internet.
 36 (7) Electronic mail.

37 SECTION 8. IC 24-8-3-3 IS AMENDED TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2000]: **Sec. 3.** The notice must state the
 39 verifiable retail value of each prize a participant has been awarded or
 40 may have been awarded: **person:**

- 41 (1) has won;
 42 (2) has been selected to receive; or

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1 **(3) may be eligible to receive.**

2 SECTION 9. IC 24-8-3-4 IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2000]: Sec. 4. (a) If an element of chance is
4 involved, each notice must **state include a statement of** the odds the
5 participant has of receiving each prize.

6 (b) The statement of the odds **described in subsection (a)** must
7 include, for each prize, the total number of prizes to be ~~given away~~
8 **awarded** and the total number of notices distributed.

9 (c) The total number of notices must include all notices in which a
10 prize may be given, including notices for other sponsors.

11 (d) ~~If the odds of winning a prize are not accurately stated on the~~
12 ~~basis of the number of notices, the odds shall be stated in a manner that~~
13 ~~will not deceive or mislead a participant regarding the participant's~~
14 ~~chance of receiving a prize. The statement required under~~
15 ~~subsection (a) must be in at least 12 point boldface type on the first~~
16 ~~page of the promotion and must include a statement in the~~
17 ~~following form:~~

18 "**(number of prizes) out of (notices distributed).**".

19 SECTION 10. IC 24-8-3-6 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 6. If a person is
21 required or invited to view, hear, or attend a sales presentation in order
22 to claim a prize that ~~has been awarded or may have been awarded;~~ **the**
23 **person:**

24 **(1) has won;**

25 **(2) has been selected to receive; or**

26 **(3) may be eligible to receive;**

27 the requirement or invitation must be conspicuously disclosed to the
28 person in the notice in at least ~~10~~ **12** point boldface type on the first
29 page of the notice.

30 SECTION 11. IC 24-8-3-11 IS ADDED TO THE INDIANA CODE
31 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
32 1, 2000]: **Sec. 11. A promotion may not:**

33 **(1) represent directly or by implication that a:**

34 **(A) person has won a particular prize when the person has**
35 **not;**

36 **(B) person is a winner, finalist, has been specially selected,**
37 **is in first place, or is otherwise among a limited group of**
38 **persons with an enhanced likelihood of receiving a prize**
39 **unless the person:**

40 **(i) has won; or**

41 **(ii) is a member of a select or limited group in which**
42 **membership materially and substantially increases the**



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- 1 person's chances of receiving a prize over other persons
 2 receiving the promotion;
 3 (C) purchase is necessary to enter, to timely enter, to retain
 4 select status, or to receive future promotions, or that a
 5 person's status as a customer may affect the person's
 6 chances of winning a prize;
 7 (D) person is being notified a second or final time of the
 8 opportunity to receive or be eligible to receive a prize,
 9 unless the representation regarding the second or final
 10 notice is true; or
 11 (E) notice is urgent, or otherwise convey an impression of
 12 urgency by use of:
 13 (i) description;
 14 (ii) narrative copy; or
 15 (iii) phrasing, words, or markings on an envelope;
 16 unless there is a limited period during which the recipient
 17 must take action to receive or be eligible to receive a prize,
 18 and the date by which the action is required appears in
 19 immediate proximity to each representation of urgency;
 20 (2) use a facsimile check; or
 21 (3) use a simulated government document.

22 SECTION 12. IC 24-8-3-12 IS ADDED TO THE INDIANA CODE
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 24 1, 2000]: **Sec. 12. (a) If a promotion is a sweepstakes, the notice
 25 must include a separate sweepstakes facts insert and must have a
 26 detachable free entry postcard.**

27 **(b) A sweepstakes facts insert must be in at least 12 point
 28 boldface type and contain a statement in substantially the following
 29 form:**

Prize	Retail Value	Number of Prizes	Odds of Winning	Entry Deadline
(type)	(dollars)	(number)	(1 in X)	(date)

- 32 **"YOU HAVE NOT YET WON. This is a game of chance. If
 33 you enter, your entry will have the same chance to win as
 34 every other entry. No one will know who the winner is until
 35 after the sweepstakes ends.**
 36 **ENTER FOR FREE. You do not have to buy anything to
 37 enter. Just mail the Free Entry Postcard attached below. You
 38 will be entered once for each prize offered in this mailing.**
 39 **ENTER AS OFTEN AS YOU LIKE. You do not have to wait**

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1 for us to mail you an entry form. You may submit additional
 2 entries by mailing a postcard with your name and address to
 3 (entry address). Each postcard you mail will be entered once
 4 for each prize currently offered by this sweepstakes company.
 5 Each postcard must be mailed separately.
 6 **BUYING WILL NOT HELP YOU WIN.** Your chances of
 7 winning without a purchase are just as good as the chances of
 8 someone who buys something. It is illegal to give any
 9 advantage to buyers in a sweepstakes."

10 (c) A detachable free entry postcard must comply with all of the
 11 following:

12 (1) Be attached to the sweepstakes facts insert in a manner
 13 that allows for simple detaching and provide complete
 14 instructions for detachment.

15 (2) Be in at least 12 point boldface type.

16 (3) Be return addressed with the complete entry address.

17 (4) Provide a blank area designated for the name and address
 18 of the person submitting the entry.

19 (5) Have the statement "Free Entry Postcard" on the same
 20 side as the entry address.

21 (6) Have the following statement, in substantially the same
 22 form, on the side opposite the entry address:

23 "Free Entry Postcard.

24 Just mail this postcard to enter.

25 No purchase necessary to enter.

26 Buying will not help you win."

27 (7) Meet the minimum and maximum United States Postal
 28 Service requirements for postcard size and thickness.

29 (d) If a sweepstakes promotion contains a form for ordering
 30 products, the sweepstakes facts insert must be immediately
 31 adjacent to the order form in the promotion mailing envelope.

32 (e) A sweepstakes notice must contain the official rules of the
 33 sweepstakes. The official rules must:

34 (1) be in at least 12 point boldface type;

35 (2) contain the language of the sweepstakes facts insert as
 36 stated in subsection (b); and

37 (3) be in a form that allows the person entering the
 38 sweepstakes to retain a complete copy of the rules.

39 SECTION 13. IC 24-8-6-3 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. A person who
 41 violates this article commits a deceptive act that is actionable by the
 42 attorney general under IC 24-5-0.5 and is subject to the penalties and



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remedies listed in IC 24-5-0.5.

SECTION 14. IC 24-8-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]:

Chapter 7. Mailing Lists

Sec. 1. (a) A promoter or sponsor shall include with each promotion a statement that clearly and conspicuously provides the address or tollfree telephone number to which a person can respond with a request that promotions not be mailed to the person (referred to in this chapter as a "do not mail request").

(b) A do not mail request may be made for a person by:

- (1) the person;**
- (2) the attorney general, if the attorney general has received a do not mail request from the person;**
- (3) the person's conservator;**
- (4) the person's guardian; and**
- (5) an individual with power of attorney for the person.**

Sec. 2. The attorney general shall transmit a do not mail request submitted by a person to the appropriate promoter or sponsor.

Sec. 3. (a) A promoter or sponsor who receives a do not mail request may not mail further promotions to the person submitting the do not mail request for a period of five (5) years after the date the request is submitted to the promoter or sponsor.

(b) Not later than thirty (30) days after receiving a do not mail request, a promoter or sponsor must remove the person's name and address from all lists:

- (1) used by the promoter or sponsor; and**
- (2) made available for sale or rental to others.**

(c) A promoter or sponsor shall maintain a record of each do not mail request under this chapter. The record must be retained for a period of five (5) years after the date of receipt.

(d) A promoter or sponsor shall not charge a fee for maintaining a record of a do not mail request.

SECTION 15. IC 24-8-3-10 IS REPEALED [EFFECTIVE JULY 1, 2000].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred House Bill 1237, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

KUZMAN, Chair

Committee Vote: yeas 9, nays 3.

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