

2000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20006
TEL: 202-429-8970

www.lsl-law.com

March 14, 2000

New Federal Sweepstakes Law

Federal legislation has been signed into law governing mailed sweepstakes and contests. The law is titled the "Deceptive Mail Prevention and Enforcement Act." The Act amends chapter 30 of title 39 of the United States Code, which prohibits the mailing of deceptive material relating to sweepstakes, skill contests, facsimile checks, and mailings made to look like government documents.

The Act requires certain disclosures and is limited to mailed solicitations which provide an opportunity to enter a contest or sweepstakes. It does not apply to on-air advertisements or other types of media not involving the mail. Mailings that only provide general information on a contest or sweepstakes rather than an opportunity to enter are not subject to these disclosure requirements. Advertisements in newspapers, magazines and other periodicals are also not affected provided that the ad is not directed to a specifically named person and the ad does not offer an opportunity to purchase a product or service.

I. Required Disclosures

The law requires that any mailing of a solicitation to enter a skill contest or sweepstakes must include the following information "clearly and conspicuously displayed" so it is "readily noticeable, readable, and understandable" to the persons receiving the mailing:

The solicitation to enter a contest or sweepstakes must include all terms and conditions for participating in the contest or sweepstakes, complete rules, and the entry process for the contest or sweepstakes.

The official rules must disclose the estimated numerical odds of winning, the number, estimated retail value, and nature of the prize(s), and a schedule of payments if the prize is to be paid out over time.

A statement that no purchase is necessary must appear three times in a mailing: in the solicitation letter, on the order/entry form and in the official rules. This statement must be more conspicuous than other required disclosures.

A statement that purchase does not improve an individual's chances of winning must appear three times in a mailing: in the solicitation letter, on the order/entry form and in the official rules. This statement must also be more conspicuous than other disclosures required under this law.

The name of the sponsor/mailer of the sweepstakes promotion and the principal place of business or an address to contact the sponsor/mailer must be disclosed in the mailed solicitation to enter a contest or sweepstakes.

Rules for contests of skill must indicate the number of rounds or levels involved, whether subsequent rounds or levels will be more difficult to solve, the maximum cost to enter all rounds or levels, and 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 3 skill contests conducted by the sponsor.

Skill contest rules must also include judging information such as the identity or description of the qualifications of the judges if the contest will be judged by persons other than the sponsor, the judging methods used, and the date on which the winner or winners will be determined and the date or process by which prizes will be awarded.

A facsimile check must contain a statement on the check that the check is not a negotiable instrument and has no cash value.

II. Prohibited Practices

The mailing to solicit entrants cannot include the following information:

The mailing cannot represent that individuals who do not purchase products or services may be disqualified from receiving future sweepstakes mailings.

The mailing cannot indicate that an individual is a winner of a prize unless the named individual has truly won such prize.

The mailing cannot present contradictions or inconsistencies within the sweepstakes rules or other disclosure information.

The mailing cannot require that a sweepstakes entry be accompanied by an order or payment for a product or service previously ordered.

- The law prohibits the mailing of information which deceptively appears to be sent by, approved by, or endorsed by the federal government. Full disclosures preventing such deception or confusion must be

made.

III. Establishment of Name Removal Notification System

Every mailer of any sweepstakes or contest promotion information, whether or not the mailing includes entry information, must include a name removal request system whereby individuals may seek to have their name and address removed from the promoter's sweepstakes or contest mailing list. A toll free telephone number or mailing address to request such action must be given in the mailing. The mailing should also indicate that the individual may request that the promoter refrain from sending that individual any other sweepstakes or contest-related mailings. Once a promoter receives a removal request, it has sixty days to comply with the request. The mailer should also disclose that an individual can reverse the removal request by submitting a written request to receive such promotions. The removal list may not be sold, rented or otherwise used commercially. Civil penalties of up to \$10,000 may be incurred for violating the name removal request requirement and individuals may also seek actual damages or \$500.

It should be noted that this federal law does not preempt applicable existing state laws. Thus, stations interested in sending mailings concerning contests or sweepstakes should first consult legal counsel in order to ensure compliance with all state and federal laws.