

2012 Kansas Statutes

50-692. Prize notification; definitions; requirements of notice and solicitation; violations. (a) As used in this section:

- (1) "Prize" means a gift, award or other item or service of value.
- (2) "Prize notice" means a notice given to an individual in this state that satisfies all of the following:
 - (A) Is or contains a representation that the individual has been selected or may be eligible to receive a prize.
 - (B) Conditions receipt of a prize on a payment from the individual or requires or invites the individual to make a contact to learn how to receive the prize or to obtain other information related to the notice.
- (3) "Solicitor" means a person who represents to an individual that the individual has been selected or may be eligible to receive a prize.
- (4) "Sponsor" means a person on whose behalf a solicitor gives a prize notice.
- (5) "Verifiable retail value" of a prize means:
 - (A) A price at which the solicitor or sponsor can demonstrate that a substantial number of the prizes have been sold by a person other than the solicitor or sponsor in the trade area in which the prize notice is given.
 - (B) If the solicitor or sponsor is unable to satisfy paragraph (A), no more than 1.5 times the amount the solicitor or sponsor paid for the prize.
- (b) If a solicitor represents to an individual, by oral or written communication, that the individual has been selected or may be eligible to receive a prize, the solicitor shall not request, and the solicitor or sponsor shall not accept, a payment from the individual in any form and the solicitor shall not create the reasonable impression that such payment is required before the individual receives a written prize notice that contains all of the information required under subsection (c)(1) presented in the manner required under subsection (c)(2) through (6).
 - (c) (1) A written prize notice shall contain all of the following information presented in the manner required under paragraphs (1) through (6):
 - (A) The name and address of the solicitor and sponsor.
 - (B) The verifiable retail value of each prize the individual has been selected or may be eligible to receive.
 - (C) If the notice lists more than one prize that the individual has been selected or may be eligible to receive, a statement of the odds the individual has of receiving each prize.
 - (D) Any requirement or invitation for the individual to view, hear or attend a sales presentation in order to claim a prize, the approximate length of the sales presentation and a description of the property or service that is the subject of the sales presentation.
 - (E) Any requirement that the individual pay shipping or handling fees or any other charges to obtain or use a prize.
 - (F) If a receipt of the prize is subject to a restriction, a statement that a restriction applies, a description of the restriction and a statement containing the location in the notice where the restriction is described.
 - (G) Any limitations on eligibility.
 - (2) (A) The verifiable retail value and the statement of odds required in a written prize notice under paragraphs (1)(B) and (C) shall be stated in immediate proximity to each listing of the prize in each place the prize appears on the written prize notice and shall be in the same size and boldness of type as the prize.
 - (B) The statement of odds shall include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be delivered. The number of prizes and written prize notices shall be stated in Arabic numerals. The statement of odds shall be in the following form: " (number of prizes) out of written prize notices."
 - (C) The verifiable retail value shall be in the following form: "verifiable retail value: \$."
- (3) If an individual is required to pay shipping or handling fees or any other charges to obtain or use a prize, the following statement shall appear in immediate proximity to each listing of the prize in each place the prize appears in the written prize notice and shall be in not less than 10-point boldface type: "YOU MUST PAY \$ IN ORDER TO RECEIVE OR USE THIS ITEM."
- (4) The information required in a written prize notice under paragraph (1)(D) shall be on the first page of the written prize notice in not less than 10-point boldface type. The information required under paragraph (1)(F) and (G) shall be in not less than 10-point boldface type.
- (5) If a written prize notice is given by a solicitor on behalf of a sponsor, the name of the sponsor shall be more prominently and conspicuously displayed than the name of the promoter.
- (6) A solicitor or sponsor shall not do any of the following:
 - (A) Place on an envelope containing a written prize notice any representation that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize.
 - (B) Deliver a written prize notice that contains language, or is designed in a manner, that would lead a reasonable person to believe that it originates from a government agency, public utility, insurance company, consumer reporting agency, debt collector or law firm unless the written prize notice originates from that source.
 - (C) Represent directly or by implication that the number of individuals eligible for the prize is limited or that an individual has been selected to receive a particular prize unless the representation is true.
- (d) If a prize notice requires or invites an individual to view, hear or attend a sales presentation in order to claim a prize, the sales presentation shall not begin until the solicitor does all of the following:
 - (1) Informs the individual of the prize, if any, that has been awarded to the individual.
 - (2) If the individual has been awarded a prize, delivers to the individual the prize or the item selected by the individual under subsection (e) if the prize is not available.
- (e) (1) A solicitor who represents to an individual in a written prize notice that the individual has been awarded a prize shall provide the prize to the individual unless the prize is not available. If the prize is not available, the solicitor shall provide the individual with any one of the following items selected by the individual:
 - (A) Any other prize listed in the written prize notice that is available and that is of equal or greater value.
 - (B) The verifiable retail value of the prize in the form of cash, a money order or a certified check.
 - (C) A voucher, certificate or other evidence of obligation stating that the prize will be shipped to the individual within 30 days at no cost to the individual.
- (2) If a voucher, certificate or other evidence of obligation delivered under paragraph (1)(C) is not honored within 30 days, the solicitor shall deliver to the individual the verifiable retail value of the prize in the form of cash, a money order or a certified check. The sponsor shall make the payment to the individual if the solicitor fails to do so.

(f) Nothing in this section shall be construed to permit an activity otherwise prohibited by law.

(g) Any violation of this section is an unconscionable act or practice under the Kansas consumer protection act.

(h) In addition to any other remedies, a person suffering pecuniary loss because of a violation by another person of this section may bring an action in any court of competent jurisdiction and shall recover all of the following:

(1) The greater of \$500 or twice the amount of the pecuniary loss.

(2) Costs and reasonable attorney fees.

(i) The provisions of this section shall not apply to the sale or purchase, or solicitation or representation in connection therewith, of goods from a catalog or of books, recordings, videocassettes, periodicals and similar goods through a membership group or club which is regulated by the federal trade commission trade regulation rule concerning use of negative option plans by sellers in commerce or through a contractual plan or arrangement such as a continuity plan, subscription arrangement or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive such goods and the recipient of such goods is given the opportunity, after examination of the goods, to receive a full refund of charges for the goods or unused portion thereof, upon return of the goods or unused portion thereof, undamaged.

(j) This section shall be part of and supplemental to the Kansas consumer protection act.

History: L. 1994, ch. 277, § 1; July 1.