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By: **Delegate Glassman**

Introduced and read first time: February 6, 2004

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2                           **Consumer Protection - Prizes and Awards Conditioned on Purchase or Sales**  
3                           **Promotion**

4 FOR the purpose of altering the civil penalty for a merchant that notifies another  
5 person by any means, as part of an advertising scheme or plan, that the other  
6 person has won a prize, received an award, or has been selected or is eligible to  
7 receive anything of value if the other person is required to purchase goods or  
8 services, pay any money to participate in, or submit to a sales promotion effort;  
9 and generally relating to a merchant that notifies another person that the  
10 person has won a prize or award if the person is required to purchase goods or  
11 services or pay money in connection with a sales promotion effort.

12 BY repealing and reenacting, without amendments,  
13 Article - Commercial Law  
14 Section 13-305  
15 Annotated Code of Maryland  
16 (2000 Replacement Volume and 2003 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article - Commercial Law  
19 Section 13-410  
20 Annotated Code of Maryland  
21 (2000 Replacement Volume and 2003 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
23 MARYLAND, That the Laws of Maryland read as follows:

24                           **Article - Commercial Law**

25 13-305.

26 (a) This section does not apply to:

27 (1) Trading stamps, as defined by § 13-101 of the Business Regulation

28 Article;

1           (2)     State lottery tickets issued under the authority of Title 9, Subtitle 1  
2 of the State Government Article;

3           (3)     Retail promotions, not involving the offer of gifts and prizes, which  
4 offer savings on consumer goods or services including "one-cent sales",  
5 "two-for-the-price-of-one-sales", or manufacturer's "cents-off" coupons; or

6           (4)     Games of skill competition not involving sales promotion efforts.

7       (b)     A person may not notify any other person by any means, as part of an  
8 advertising scheme or plan, that the other person has won a prize, received an award,  
9 or has been selected or is eligible to receive anything of value if the other person is  
10 required to purchase goods or services, pay any money to participate in, or submit to  
11 a sales promotion effort.

12       (c)     In addition to the exceptions provided in subsection (a) of this section,  
13 subsection (b) of this section does not prohibit the offer of prizes requiring the person  
14 to purchase other goods and services if the retail price of the prize offered does not  
15 exceed the greater of:

16           (1)     \$40; or

17           (2)     The lesser of:

18               (i)     20% of the purchase price of the goods or services that must be  
19 purchased; or

20               (ii)    \$400.

21       (d)     The exception provided in subsection (c) of this section does not apply to  
22 the offer of a prize requiring the person either to pay any money to participate in or to  
23 submit to a sales promotion effort, or to a prize promotion involving the award of  
24 prizes by chance.

25       (e)     When a person offers prizes in a sales promotion effort relating to the sale,  
26 lease, or rental of real property not prohibited by this section, that person shall  
27 disclose to each offeree, in writing, clearly and conspicuously:

28           (1)     That the purpose of the sales promotion effort is to solicit the  
29 purchase, lease, or rental of real property;

30           (2)     The exact number of each prize offered in each category to be made  
31 available during the sales promotion;

32           (3)     The manufacturer's suggested retail price or comparable retail price  
33 of each prize offered;

34           (4)     (i)     If calculable in advance, the odds against winning each prize; or

35               (ii)    If not calculable in advance, a statement to that effect, or that  
36 the odds of winning will be determined by the number of entries;

1 (5) Whether all prizes offered will be awarded and when a determination  
2 of winners will be made; and

3 (6) If prizes with retail prices or monetary values in excess of \$100 are  
4 offered, where and when a list of winners of those prizes can be obtained.

5 (f) Where provisions of law or regulations relating to the awarding of prizes in  
6 the sale, lease, or rental of real property exist, including § 11A-119 of the Real  
7 Property Article, the provisions of those laws or regulations shall apply if the  
8 provisions are more stringent than this section.

9 (g) If a person offers a contest, sweepstakes, or other sales promotion effort  
10 not prohibited by this section, involving the award of prizes by chance, that person  
11 shall disclose to each offeree in writing:

12 (1) The exact number of each prize offered in each category to be made  
13 available during the contest, sweepstakes, or sales promotion;

14 (2) The manufacturer's suggested retail price, or comparable retail price,  
15 of each prize offered;

16 (3) If calculable in advance, the odds against winning each prize and if  
17 not calculable in advance, a statement that the odds of winning will be determined by  
18 the number of entries;

19 (4) Whether all prizes offered will be awarded and when a determination  
20 of winners will be made;

21 (5) What, if any, conditions must be met in order to receive a prize;

22 (6) If prizes with retail prices or monetary values in excess of \$100 are  
23 offered, where and when a list of winners of those prizes can be obtained; and

24 (7) That in order to receive the prize offered in the sales promotion you  
25 may not be required to:

26 (i) Purchase goods or services;

27 (ii) Pay any money; or

28 (iii) Where applicable, submit to a sales promotion effort.

29 (h) If a person offers a contest, sweepstakes, or other sales promotion effort  
30 not prohibited by this section, not involving the award of prizes by chance, that  
31 person shall disclose to each offeree in writing:

32 (1) The manufacturer's suggested retail price, or comparable retail price  
33 of each prize offered;

34 (2) What, if any, conditions must be met in order to receive a prize; and

1 (3) That in order to receive the prize offered in the sales promotion you  
2 may not be required to:

3 (i) Purchase goods or services, unless the retail price of the prize is  
4 within the limits set by subsection (c) of this section;

5 (ii) Pay any money; or

6 (iii) Where applicable, submit to a sales promotion effort.

7 (i) The disclosures shall appear on the first page of the prize notification  
8 document.

9 13-410.

10 (a) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,  
11 A merchant who engages in a violation of this title is subject to a fine of not more than  
12 \$1,000 for each violation.

13 (2) A MERCHANT WHO ENGAGES IN A VIOLATION OF § 13-305(B) OF THIS  
14 TITLE IS SUBJECT TO A FINE OF NOT MORE THAN \$5,000 FOR EACH VIOLATION.

15 (b) A merchant who has been found to have engaged in a violation of this title  
16 and who subsequently repeats the same violation is subject to a fine of not more than  
17 \$5,000 for each subsequent violation.

18 (c) The fines provided for in subsections (a) and (b) of this section are civil  
19 penalties and are recoverable by the State in a civil action or an administrative cease  
20 and desist action under § 13-403(a) and (b) of this subtitle or after an administrative  
21 hearing has been held under § 13-403(d)(3) and (4) of this subtitle.

22 (d) The Consumer Protection Division shall consider the following in setting  
23 the amount of the penalty imposed in an administrative proceeding:

24 (1) The severity of the violation for which the penalty is assessed;

25 (2) The good faith of the violator;

26 (3) Any history of prior violations;

27 (4) Whether the amount of the penalty will achieve the desired deterrent  
28 purpose; and

29 (5) Whether the issuance of a cease and desist order, including  
30 restitution, is insufficient for the protection of consumers.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 2004.