

General Business

§ 369-e. Use of games of chance in selling commodities. 1. Every person, firm or corporation proposing to engage in any game, contest or other promotion or advertising scheme or plan in connection with the promotion, advertising or sale of consumer products or services which offers the opportunity to receive gifts, prizes or gratuities, as determined by chance, without any consideration therefor, where the total announced value of the prizes offered is in excess of five thousand dollars shall file with the secretary of state, at least thirty days prior to the commencement of such game, contest or promotion upon a form that he shall provide, a statement setting forth: the minimum number of participating objects to be made available; the minimum number of prize-winning objects that will be included in such promotion or advertising scheme or plan; the proportionate opportunity of winning prizes; the minimum value of prizes to be made available; and the rules and regulations pertaining to such promotion or advertising scheme or plan, which shall include the period of time and the geographic area to be covered by the contest and such other information as the secretary of state may, from time to time, require. The non-refundable filing fee of one hundred dollars shall accompany each such statement.

Failure to file such statement shall be a class B misdemeanor.

2. Every person, firm or corporation, engaging in any promotion or advertising game or contest of the type set forth in subdivision one of this section, shall cause to be posted in a conspicuous and prominent location in every retail establishment offering the opportunity to participate in such game or contest and published in all advertising copy used in connection therewith, a statement showing the minimum number and value of prizes available to be won over a stated period of time and stated geographic area, and the rules and regulations pertaining to such promotion or advertising scheme or plan. Failure to cause such posting and publication shall be a class B misdemeanor.

3. Every person, firm or corporation who manipulates or rigs any promotion or advertising scheme or plan of the type set forth in subdivision one of this section so that prize-winning objects are dispersed to predetermined individuals or retail establishments shall be guilty of a class B misdemeanor, provided, however, that this subdivision shall not prevent distribution of prize-winning objects of equal value to retail establishments in a uniform ratio to the number of participating objects distributed to those establishments.

4. Every person, firm or corporation engaging in any promotion or advertising game or contest of the type set forth in subdivision one of this section shall establish and maintain a special trust account in a branch of a national or state chartered banking institution with a balance sufficient to pay or purchase the total value of prizes offered. In lieu of establishing such trust account, said operator may furnish a bond, with sufficient sureties, in an amount equal to the total value of all prizes offered; such bond shall be in favor of the people of the state of New York. A copy of a certificate of deposit indicating the balance of said trust account or a copy of the surety bond shall be filed with the office of the secretary of state simultaneously with the filing of the statement required by subdivision one hereof. The monies so held in escrow or said surety bond shall at all times equal the total amount of prizes so offered. The monies may be withdrawn, from time to time, in order to pay, award or purchase prizes offered only upon certification to the secretary of state of the names and addresses of

the winners and the amount or value of the respective prizes.

5. Every person, firm or corporation engaging in any promotion or advertising scheme or plan of the type set forth in subdivision one of this section shall within ninety days following the completion of said promotion or advertising scheme or plan, file with the secretary of state a listing of the name and address of each winner of every prize having a value of more than twenty-five dollars, the description of the prize won by each such person, and the date when such prize was delivered to each such person, and shall maintain complete records of such promotion or advertising scheme or plan for a period of six months thereafter. Failure to file such listing with the secretary of state or to maintain such records shall be a class B misdemeanor. A copy of such listing shall be furnished, without charge, to any person who requests the same from said promoter. Nothing herein shall prohibit a requirement that such request must be accompanied by a stamped, self-addressed envelope provided such requirement shall be included in and made a part of the rules and regulations filed pursuant to subdivision one of this section.

6. Every person, firm or corporation who prints, publishes or circulates literature or advertising material, used in connection with any promotion or advertising scheme or plan of the type set forth in subdivision one of this section, which is false, deceptive or misleading, shall be guilty of a class B misdemeanor.

7. Every person, firm or corporation who coerces a retail dealer to participate in any promotion or advertising scheme or plan of the type set forth in subdivision one of this section shall be guilty of a class B misdemeanor. Such coercion includes, but is not limited to, circumstances in which a course of business conduct extending over a period of one year or longer between a supplier and a dealer is materially changed, for no legitimate business reason, coincident with a failure or refusal of the dealer to participate in such games.

8. Whenever the attorney general shall have reason to believe that any promotion or advertising scheme or plan of the type set forth in subdivision one of this section is being operated in violation of this section, he may bring an action in the supreme court, in the name and on behalf of the people of the state of New York to enjoin the continued operation of such promotion or advertising scheme or plan. An action for violation of this section may be instituted by the attorney general in the name of the people of the state of New York, and in any such action, the attorney general shall exercise all of the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or to perform therein.