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## CONTESTS, SWEEPSTAKES AND SALES PROMOTIONS

A promotion which attempts to draw attention to a particular product or company by awarding some sort of prize by chance might be called a contest or a sweepstake, prize offer, lottery, raffle, derby, drawing or game. Chapter 945 of the Wisconsin Statutes covers these types of promotions. The Following is a brief summary of those aspects of the law which generate a large number of citizen inquiries. For more detailed information, a copy of Wis. Stats. Ch. 945 is available online at: <http://www.legis.state.wi.us/rsb/stats.htm>.

### ELEMENTS OF A LOTTERY

Three elements – **Prize**, **Chance** and **Consideration** – must be present in any promotion conducted in the state of Wisconsin in order for the promotion to constitute an illegal lottery. All three elements must be present. If one of the elements is eliminated, the promotion is not a lottery.

#### 1. Prize

Prize is obvious, since it is the reason why consumers enter promotions. After all, if there were no prizes no one would enter or conduct promotions.

#### 2. Chance

Chance means that a winner is chosen by the “luck of the draw” with no skill or ability involved. Factors that determine if skill or ability is involved include:

- ❖ Participants are told about the exact nature of the skill required of them. For example, in a writing contest participants must be informed of the type of writing skill which is sought and how it will be judged
- ❖ The contest is actually judged by competent judges on the basis of specific criteria.

- ❖ Participants are allowed an equal opportunity to win based on the quality of their performance.
- ❖ Duplicate prizes are awarded in the case of tying entries.

If prize and consideration are present, a contest is still an illegal lottery if the outcome is determined essentially by chance, even though some skill is involved. For example, if the skill required of a participant involves simply guessing which word from a provided list of possibilities is the correct answer, the contest would be illegal.

### 3. Consideration

Consideration essentially means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant (See Wis. Stats. s.945.01(5)(b)[1]). Consideration may be present even without the expenditure of money (See Volume 61 Opinions of the Attorney General of Wisconsin, page 405).

Several methods of entering contests are specifically mentioned in the statute to **not** constitute consideration (See Wis. Stats. ss.945.01(5)(b)[2a] through [2g]). These include:

- ❖ The price of postage necessary to mail in entries.
- ❖ The price of fuel used to visit participating stores or other locations.
- ❖ Proof of purchase requirement, provided the required proof consists of nothing more than all or part of the container of any product packaged by the manufacturer or a facsimile. The law **requires** the acceptance of facsimiles in order for the promotion to be viewed as lacking consideration. Its intent is to allow individuals a way to enter without having to spend money.
- ❖ Promotions which require entrants to visit a store or other location, as long as no purchase or admittance fee is required. For example, consumers may have to go to the store to pick up game tokens, match numbers or obtain entry blanks. Specific conditions for “in pack” chance promotions are set forth under Wis. Stats. s.100.16(2). “In pack” promotions include offers of tokens or game pieces in cereal boxes or prizes under bottle caps.

If a promotion allows participation by means of two different methods, one of which constitutes consideration and the other does not, it is an illegal lottery and is prohibited by Wis. Stats. Ch.945. This assumes, of course, that the elements of prize and chance are also present in the promotion.

For more information and questions regarding lotteries & sweepstakes please contact:

Wisconsin Department of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive, P.O. Box 8911  
Madison, Wisconsin 53708-8911  
(800) 422-7128 [www.datcp.wi.gov](http://www.datcp.wi.gov)

## **STATE LOTTERY**

The Wisconsin Lottery, as conducted under Wis. Stats. Ch.565 by the Wisconsin Department of Revenue, does not affect the status of other games, contests, drawings and promotions conducted in the state of Wisconsin. Questions regarding the state-operated lottery should be addressed to:

Wisconsin Lottery  
2135 Rimrock Road - Madison, WI 53713  
(608) 261-8800 - [www.wilottery.com](http://www.wilottery.com)

## **BINGO AND RAFFLES**

Qualified charitable organizations, exclusively, are eligible to receive licenses authorizing them to conduct fund-raising raffle or bingo events under Wis. Stats. Ch.563. Penalties contained in Chapter 945 of the Wisconsin State Statutes do not apply to events which have been licensed by the Wisconsin Division of Gaming. Information and application forms may be obtained by contacting the Division at:

Wisconsin Division of Gaming  
3319 W. Beltline Hwy. – 1<sup>st</sup> Floor – Madison, WI 53713  
Bingo: (608) 270-2530 - Raffle: (608) 270-2552  
<http://www.doa.state.wi.us/Divisions/Gaming>

## **CASINO NIGHTS, POKER TOURNEYS, ETC.**

Casino nights are illegal lotteries. According to Volume 70 Opinions of the Attorney General of Wisconsin, page 59, "...games such as 'Las Vegas nights' wherein participants must make a payment or donation in order to gamble with play money and then use the play money at the end of the evening to bid on prizes constitute illegal lotteries under Wisconsin law. The law does not exempt benevolent and nonprofit organizations."

Poker tournaments or any game structure that includes all three elements of gambling (**prize, chance and consideration**) are illegal as well under Wis. Stats. Ch.945 and run the risk of criminal prosecution by the District Attorney in the county of infraction. The worthiness of the cause on whose behalf a game or promotion is being conducted has no bearing on the question of legality or illegality of the promotion.