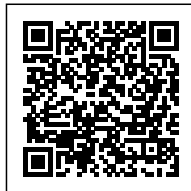


# DON'T GET SWEEP AWAY: MISSOURI SWEEPSTAKES LAWS

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One would be hard-pressed to find someone unaware of the McDonald's Monopoly Sweepstakes. In 1987, McDonald's began offering Monopoly game pieces with every purchase made during the sweepstake's period. Some game pieces were "instant winners" (entitling the customer to free menu items, like a McFlurry shake or medium fry); others were collected by customers who hoped to match the pieces needed to win the \$1 million grand prize.

It may be surprising, then, that there was a way to obtain the game pieces, without ever purchasing a single item from McDonald's. We can thank the law for this alternative way to play.

## **Sweepstakes: Understanding the Law**

A sweepstakes (in comparison to a contest, which is a game of skill) is defined as a game of chance, where winning is outside the participant's control. Under Missouri law, an illegal sweepstakes contains three components: (1) prize, (2) chance and (3) consideration (which, for the McDonald's sweepstakes, was an exchange of money).

These are also the elements of a lottery, which many states, including Missouri, regulate and statutorily prohibit private companies and individuals from conducting. Thus, in order to legally

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conduct a sweepstakes, one of the three elements must be eliminated. Eliminating "chance" would change the game into a contest; therefore, it's usually retained. So, too, is the "prize" element, because it incentivizes customers to participate. That leaves the element of "consideration." Therein lies the answer as to how to play McDonald's Monopoly game, without paying to do so.

## **Sweepstakes: Free Alternative Method of Entry**

In Missouri (as well as many other states), sweepstakes promoters **that are not charitable or religious organizations** must offer a free alternative method of entry (AMOE) if consideration is present. This free alternative method of entry is typically found in the fine print of all promotions, so consumers would be wise to read them and those conducting sweepstakes would be wise to include them (as Missouri law requires).

The free alternative method of entry is typically a mail-in option and the fine print usually states that the mail-in option must be hand-written and that each request must be mailed in separately to be eligible. Presumably this burden is intended to discourage participants from easily printing and mailing hundreds of requests for entry. However, the sweepstakes promoter must still treat the non-paying entrants the same as the customers who buy products to play.

## **Sweepstakes: Small Businesses**

While a company like McDonald's can afford to pay lawyers to ensure compliance with every state's laws, smaller businesses and individuals may be compelled to limit the number of states in which they administer their sweepstakes in order to save costs. They should not, however, skimp on seeking legal advice regarding those states' laws. Besides making sure the sweepstakes is legally compliant, other legal issues should also be considered, such as advertising and privacy laws.

With the rise of social media sweepstakes, bloggers, influencers, and small businesses should carefully consider whether they are running an illegal sweepstakes. For example, a participant's agreement to follow people on a social media platform or to "like" a page might be deemed "consideration," even if no payment is involved. Therefore, small businesses and individuals alike would be well-advised to seek the advice of an attorney to avoid running afoul of the law when conducting one of these "games of chance". After all, ignorance of the law is no excuse.

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