

By Senator Campbell

33-1399-98

1                                   A bill to be entitled  
 2           An act relating to game promotions; amending s.  
 3           849.094, F.S.; redefining the terms "game  
 4           promotion" and "operator" and defining the term  
 5           "older individual"; prohibiting certain acts in  
 6           connection with game promotions and promotional  
 7           materials therefor; requiring certain  
 8           information to be printed on envelopes;  
 9           revising standards for waiver of requirements  
 10          for maintaining trust accounts or surety bonds;  
 11          providing penalties, including increased  
 12          penalties when an unlawful act is against an  
 13          older individual; providing an effective date.

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 15 Be It Enacted by the Legislature of the State of Florida:

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 17           Section 1. Section 849.094, Florida Statutes, is  
 18 amended to read:

19           849.094 Game promotion in connection with sale of  
 20 consumer products or services.--

21           (1) As used in this section, the term:

22           (a) "Game promotion" means, but is not limited to, a  
 23 contest, game of chance, ~~sweepstakes~~, or gift enterprise,  
 24 conducted within ~~or throughout~~ the state or offered to  
 25 residents of this state and other states in connection with  
 26 the sale, promotion, or advertisement of a consumer product or  
 27 service of consumer products or services, and in which the  
 28 elements of chance and prize are present. The term includes,  
 29 but is not limited to, enterprises commonly known as  
 30 "matching," "instant winner," or "preselected sweepstakes"  
 31 which involve the distribution of winning numbers or game

1 pieces designated as such in the game promotion rules.

2 However, "game promotion" shall not be construed to apply to  
3 bingo games conducted pursuant to s. 849.0931.

4 (b) "Operator" means any person, firm, corporation, or  
5 association or agent or employee thereof who promotes,  
6 operates, or conducts a game promotion, or any entity  
7 authorized in any manner to promote, operate, or conduct a  
8 game production, except any charitable nonprofit organization.

9 (c) "Older individual" means an individual who is 60  
10 years of age or older.

11 (2) It is unlawful for any operator:

12 (a) To design, engage in, promote, or conduct such a  
13 game promotion, in connection with the promotion or sale of  
14 consumer products or services, wherein the winner may be  
15 predetermined or the game may be manipulated or rigged so as  
16 to:

17 1. Allocate a winning game or any portion thereof to  
18 certain lessees, agents, or franchises; or

19 2. Allocate a winning game or part thereof to a  
20 particular period of the game promotion or to a particular  
21 geographic area;

22 (b) Arbitrarily to remove, disqualify, disallow, or  
23 reject any entry;

24 (c) To fail to award prizes offered;

25 (d) To print, publish, or circulate literature or  
26 advertising material used in connection with such game  
27 promotions which is false, deceptive, or misleading; ~~or~~

28 (e) To require an entry fee, payment, or proof of  
29 purchase as a condition of entering a game promotion; ~~-~~

30 (f) To send any printed materials in connection with  
31 game promotion to any person or any guardian or agent of any

1 person who has requested in writing that no such printed  
2 materials be received from the operator; or

3 (g) To use more than one type size, color of print, or  
4 type style in any letter or within the same sentence or clause  
5 on any envelope or other printed materials distributed to the  
6 public in connection with game promotion regarding the fact,  
7 likelihood, or odds of winning a prize.

8 (3) The operator of a game promotion in which the  
9 total announced value of the prizes offered is greater than  
10 \$5,000 shall file with the Department of State a copy of the  
11 rules and regulations of the game promotion and a list of all  
12 prizes and prize categories offered at least 7 days before the  
13 commencement of the game promotion. Such rules and  
14 regulations may not thereafter be changed, modified, or  
15 altered. The operator of a game promotion shall conspicuously  
16 post the rules and regulations of such game promotion in each  
17 and every retail outlet or place where such game promotion may  
18 be played or participated in by the public and shall also  
19 publish the rules and regulations in all game promotion  
20 materials distributed to the public through the mail and in  
21 all advertising copy used in connection therewith. Any  
22 envelope distributed to or available to the public in  
23 connection with game promotion must include the following  
24 information on the outside of the envelope in 12-point type or  
25 larger:

26 (a) On the same side that the inducement appears, the  
27 odds of winning a particular prize if that prize is referenced  
28 on the envelope.

29 (b) The physical address of the operator.

30 (c) The toll-free number for the Department of State,  
31 along with a statement directing individuals to call the

1 number if they have questions regarding the prizes offered or  
2 whether the operator is registered with the Department of  
3 State.

4  
5 Radio and television announcements may indicate that the rules  
6 and regulations are available at retail outlets or from the  
7 operator of the promotion. A nonrefundable filing fee of \$100  
8 shall accompany each filing and shall be deposited into the  
9 Division of Licensing Trust Fund to be used to pay the costs  
10 incurred in administering and enforcing the provisions of this  
11 section.

12 (4)(a) Every operator of such a game promotion in  
13 which the total announced value of the prizes offered is  
14 greater than \$5,000 shall establish a trust account, in a  
15 national or state-chartered financial institution, with a  
16 balance sufficient to pay or purchase the total value of all  
17 prizes offered. On a form supplied by the Department of State,  
18 an official of the financial institution holding the trust  
19 account shall set forth the dollar amount of the trust  
20 account, the identity of the entity or individual establishing  
21 the trust account, and the name of the game promotion for  
22 which the trust account has been established. Such form shall  
23 be filed with the Department of State at least 7 days in  
24 advance of the commencement of the game promotion. In lieu of  
25 establishing such trust account, the operator may obtain a  
26 surety bond in an amount equivalent to the total value of all  
27 prizes offered; and such bond shall be filed with the  
28 Department of State at least 7 days in advance of the  
29 commencement of the game promotion.

30 1. The moneys held in the trust account may be  
31 withdrawn in order to pay the prizes offered only upon

1 certification to the Department of State of the name of the  
2 winner or winners and the amount of the prize or prizes and  
3 the value thereof.

4           2. If the operator of a game promotion has obtained a  
5 surety bond in lieu of establishing a trust account, the  
6 amount of the surety bond shall equal at all times the total  
7 amount of the prizes offered.

8           (b) The Department of State may waive the provisions  
9 of this subsection for any operator who has conducted game  
10 promotions in the state for not less than 5 consecutive years  
11 and who has not had any civil, criminal, or administrative  
12 action instituted against him or her by the state or an agency  
13 of the state for violation of this section, or been the  
14 subject of any consumer complaints, within that 5-year period.  
15 Such waiver may be revoked upon the commission of a violation  
16 of this section by such operator, as determined by the  
17 Department of State.

18           (5) Every operator of a game promotion in which the  
19 total announced value of the prizes offered is greater than  
20 \$5,000 shall provide the Department of State with a certified  
21 list of the names and addresses of all persons, whether from  
22 this state or from another state, who have won prizes which  
23 have a value of more than \$25, the value of such prizes, and  
24 the dates when the prizes were won within 60 days after such  
25 winners have been finally determined. The operator shall  
26 provide a copy of the list of winners, without charge, to any  
27 person who requests it. In lieu of the foregoing, the  
28 operator of a game promotion may, at his or her option,  
29 publish the same information about the winners in a Florida  
30 newspaper of general circulation within 60 days after such  
31 winners have been determined and shall provide to the

1 Department of State a certified copy of the publication  
2 containing the information about the winners; however, when  
3 this option is exercised by the operator, all published  
4 materials distributed to the public must indicate that the  
5 winners will be notified in this manner. The operator of a  
6 game promotion is not required to notify a winner by mail or  
7 by telephone when the winner is already in possession of a  
8 game card from which the winner can determine that he or she  
9 has won a designated prize. All winning entries shall be held  
10 by the operator for a period of 90 days after the close or  
11 completion of the game.

12 (6) The Department of State shall keep the certified  
13 list of winners for a period of at least 6 months after  
14 receipt of the certified list. The department thereafter may  
15 dispose of all records and lists.

16 (7) No operator shall force, directly or indirectly, a  
17 lessee, agent, or franchise dealer to purchase or participate  
18 in any game promotion. For the purpose of this section,  
19 coercion or force shall be presumed in these circumstances in  
20 which a course of business extending over a period of 1 year  
21 or longer is materially changed coincident with a failure or  
22 refusal of a lessee, agent, or franchise dealer to participate  
23 in such game promotions. Such force or coercion shall further  
24 be presumed when an operator advertises generally that game  
25 promotions are available at its lessee dealers or agent  
26 dealers.

27 (8)(a) The Department of State may adopt ~~shall have~~  
28 ~~the power to promulgate~~ such rules and ~~regulations~~ respecting  
29 the operation of game promotions as it deems ~~may deem~~  
30 advisable.

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1 (b) Whenever the Department of State or the Department  
2 of Legal Affairs has reason to believe that a game promotion  
3 is being operated in violation of this section, it may bring  
4 an action in the circuit court of any judicial circuit in  
5 which the game promotion is being operated in the name and on  
6 behalf of the people of the state against any operator thereof  
7 to enjoin the continued operation of such game promotion  
8 anywhere within the state.

9 (9)(a) Any person, firm, or corporation, or  
10 association or agent or employee thereof, or any operator who  
11 engages in any acts or practices stated in this section to be  
12 unlawful, or who violates any of the rules adopted and  
13 ~~regulations made~~ pursuant to this section, is guilty of a  
14 misdemeanor of the second degree, punishable as provided in s.  
15 775.082 or s. 775.083. However, when such unlawful acts or  
16 practices or such rule violations are against an older  
17 individual, the operator is guilty of a misdemeanor of the  
18 first degree, punishable as provided in s. 775.082 or s.  
19 775.083.

20 (b) Any person, firm, or corporation, or association,  
21 agent, or employee thereof, or any operator who violates any  
22 provision of this section or any of the rules adopted and  
23 ~~regulations made~~ pursuant to this section shall be liable for  
24 a civil penalty of not more than \$1,000 for each such  
25 violation, which shall accrue to the state and may be  
26 recovered in a civil action brought by the Department of State  
27 or the Department of Legal Affairs. However, when such  
28 violation is against an older individual, the amount of the  
29 civil penalty shall be not more than \$5,000 for each such  
30 violation.

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