

By the Committee on Commerce and Economic Opportunities and
Senator Campbell

310-1930-98

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

A bill to be entitled
An act relating to game promotions; amending s.
849.094, F.S.; redefining the terms "game
promotion" and "operator" and defining the term
"older individual"; prohibiting certain acts in
connection with game promotions and promotional
materials therefor; requiring certain
information to be printed on envelopes;
providing penalties, including increased
penalties when an unlawful act is against an
older individual; providing an effective date.

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

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

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

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

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

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

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

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

10 (2) It is unlawful for any operator:

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

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

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

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

23 (c) To fail to award prizes offered;

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

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

29 (f) To send advertising and promotional material in
30 connection with game promotion to any person or any guardian
31 or agent who has requested that his or her name be deleted

1 from such game promotion distribution. Such a request must be
2 processed by the operator within 60 days; or

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

8
9 Paragraphs (f) and (g) do not apply to timeshare prize and
10 gift promotional offers defined in s. 721.111.

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

29 (a) On the same side that the inducement appears, the
30 odds of winning a particular prize if that prize is referenced
31 on the envelope.

1 (b) The physical address of the operator.

2 (c) The toll-free number for the Department of State,
3 along with a statement directing individuals to call the
4 number if they have questions regarding the prizes offered or
5 whether the operator is registered with the Department of
6 State.

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

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

31

1 Department of State at least 7 days in advance of the
2 commencement of the game promotion.

3 1. The moneys held in the trust account may be
4 withdrawn in order to pay the prizes offered only upon
5 certification to the Department of State of the name of the
6 winner or winners and the amount of the prize or prizes and
7 the value thereof.

8 2. If the operator of a game promotion has obtained a
9 surety bond in lieu of establishing a trust account, the
10 amount of the surety bond shall equal at all times the total
11 amount of the prizes offered.

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

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

1 publish the same information about the winners in a Florida
2 newspaper of general circulation within 60 days after such
3 winners have been determined and shall provide to the
4 Department of State a certified copy of the publication
5 containing the information about the winners; however, when
6 this option is exercised by the operator, all published
7 materials distributed to the public must indicate that the
8 winners will be announced in this manner. The operator of a
9 game promotion is not required to notify a winner by mail or
10 by telephone when the winner is already in possession of a
11 game card from which the winner can determine that he or she
12 has won a designated prize. All winning entries shall be held
13 by the operator for a period of 90 days after the close or
14 completion of the game.

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

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

30 (8)(a) The Department of State has the authority to
31 adopt rules pursuant to ss. 120.54 and 120.536(1) to implement

1 the provisions of this section shall have the power to
2 ~~promulgate such rules and regulations respecting the operation~~
3 ~~of game promotions as it may deem advisable.~~

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

12 (9)(a) Any person, firm, or corporation, or
13 association or agent or employee thereof, or any operator who
14 engages in any acts or practices stated in this section to be
15 unlawful, or who violates any of the rules adopted and
16 ~~regulations made~~ pursuant to this section, is guilty of a
17 misdemeanor of the second degree, punishable as provided in s.
18 775.082 or s. 775.083. However, when such unlawful acts or
19 practices or such rule violations are against an older
20 individual, the operator is guilty of a misdemeanor of the
21 first degree, punishable as provided in s. 775.082 or s.
22 775.083.

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

1 civil penalty shall be not more than \$5,000 for each such
2 violation.

3 (10) This section does not apply to actions or
4 transactions regulated by the Department of Business and
5 Professional Regulation or to the activities of nonprofit
6 organizations or to any other organization engaged in any
7 enterprise other than the sale of consumer products or
8 services. Subsections (3), (4), (5), (6), and (7) and
9 paragraph (8)(a) and any of the rules made pursuant thereto do
10 not apply to television or radio broadcasting companies
11 licensed by the Federal Communications Commission.

12 Section 2. This act shall take effect October 1, 1998.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2224
4 The committee substitute:
5 Revises the bill's prohibition against sending any printed
6 game promotion materials to a person or guardian or agent who
7 has made a written request not to receive such materials, to
8 make the prohibition applicable to advertising and promotional
9 materials sent to a person or guardian or agent who has
10 requested that his or her name be deleted from the game
11 promotion distribution and to specify that such a request must
12 be processed by the operator within 60 days;
13 Narrows the bill's prohibition against using more than one
14 type size, color of print, or type style in certain game
15 promotion materials distributed to the public regarding the
16 likelihood of winning a prize, to make the prohibition
17 applicable to such use within the same sentence or clause in
18 any letter or on any envelope mailed to the public;
19 Specifies that the bill's provisions expanding the current
20 statutory list of unlawful game promotion activities do not
21 apply to timeshare prize and gift promotional offers defined
22 in s. 721.111, F.S.;
23 Removes from the bill the prohibition against the Department
24 of State waiving certain trust-account or surety-bond
25 requirements when a game promotion operator has been the
26 subject of consumer complaints; and
27 Clarifies that the department's rule-making authority is
28 pursuant to specified provisions of the Administrative
29 Procedure Act.
30
31