

By Representative Carlton

1                                   A bill to be entitled  
2           An act relating to commercial game promotions;  
3           amending s. 849.094, F.S.; revising provisions  
4           relating to game promotions in connection with  
5           the sale of consumer products or services;  
6           redesignating such game promotions as  
7           commercial game promotions; providing  
8           additional definitions; specifying prohibited  
9           activities; requiring registration of game  
10          promotions; providing registration procedure;  
11          specifying requirements with respect to game  
12          promotion rules and regulations; providing a  
13          filing fee for registration; revising  
14          provisions relating to the establishment of a  
15          trust account; providing for waiver of the  
16          requirement to establish a trust account under  
17          specified circumstances; providing for  
18          notification of game promotion winners;  
19          providing notification procedures; requiring  
20          the Department of State to keep a certified  
21          list of game promotion winners for a specified  
22          period of time; revising powers of the  
23          Department of State and the Attorney General  
24          with respect to the operation of game  
25          promotions; providing for denial or revocation  
26          of registration for violation of the act;  
27          specifying fines; authorizing the department or  
28          the Department of Legal Affairs to bring civil  
29          action; revising criminal penalties; amending  
30          s. 721.111, F.S.; correcting a cross reference;  
31          providing an effective date.

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

2

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

5 849.094 Commercial game promotion; registration;  
6 prohibited acts; enforcement in connection with sale of  
7 consumer products or services.--

8 (1) DEFINITIONS.--As used in this section, the term:

9 (a) "Game promotion" means, but is not limited to, a  
10 contest, game of chance, sweepstakes, or gift enterprise,  
11 conducted within ~~or throughout~~ the state or offered to  
12 residents of this state and other states in connection with  
13 the sale, promotion, or advertisement of a consumer product or  
14 service products or services, and in which the elements of  
15 chance and prize are present. The term includes, but is not  
16 limited to, enterprises commonly known as "matching," "instant  
17 winner," "scratch-off," or "preselected sweepstakes" which  
18 involve the distribution of winning numbers or game pieces  
19 designated as such in the rules.~~However, "game promotion"~~  
20 ~~shall not be construed to apply to bingo games conducted~~  
21 ~~pursuant to s. 849.0931.~~

22 (b) "Game of chance" means any promotion in which  
23 winning is dependent in whole or in part upon lot or chance.

24 (c)(b) "Operator" means any person, firm, corporation,  
25 or association or agent or employee thereof who promotes,  
26 operates, or conducts a game promotion on his or her own  
27 behalf or for a client for a fee, consideration, or  
28 remuneration in any form, except any charitable nonprofit  
29 organization.

30 (d) "Sponsor" means any person who retains the  
31 services of an operator to conduct a game promotion.

1       (e) "Department" means the Department of State.

2       (f) "Conduct" means the designing, operating,  
3 sponsoring, announcing, or advertising of a game promotion.

4       (g) "Winner" means each person who, under the rules of  
5 a game promotion, is entitled to the award of, or has been  
6 awarded, any prize which has a retail value of \$100 or more.

7       (h) "Winners list" means the name and address of each  
8 winner of a game promotion, the prize won, and a statement  
9 indicating whether or not the prize was awarded.

10       (i) "Person" means any individual, child, firm,  
11 association, joint venture, partnership, estate, trust,  
12 business trust, syndicate, fiduciary, corporation, or any  
13 other group or combination of groups.

14       (j) "Total announced value" means the total retail  
15 value of all prizes advertised or offered.

16       (k) "Senior citizen" means a person who is 60 years of  
17 age or older.

18       (2) PROHIBITED ACTIVITIES.--It is unlawful ~~to~~ for any  
19 operator:

20       (a) Conduct a game promotion which is not registered  
21 or not in compliance with this section and the rules adopted  
22 by the department.

23       (b) Conduct a game promotion so that a specific winner  
24 is or may be predetermined or preselected or to ensure that a  
25 winner is not selected.

26       (c) Conduct a game promotion which requires an entry  
27 fee, purchase, payment, contribution, consideration,  
28 membership, or any required affirmation, act, or agreement to  
29 cancel or refuse goods or services in order to enter or claim  
30 a prize or which effectively restricts a free method of entry.

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1       (d) Fail or refuse to award all prizes offered or  
2 refuse or fail to distribute prizes.

3       (e) Arbitrarily remove, disqualify, disallow, or  
4 reject any entry.

5       (f) Allocate the winning of prizes to certain lessees,  
6 agents, franchisees, employees, or contractors.

7       (g) Allow employees and their immediate family,  
8 sponsors, lessees, agents, dealers, distributors, or  
9 franchisees, or the employees of immediate families, sponsors,  
10 lessees, agents, dealers, distributors, or franchisees, to  
11 participate.

12       (h) Conduct a game promotion which involves  
13 literature, promotion material, or advertisement copy that is  
14 false, deceptive, or misleading, or which fails to include the  
15 exact name that appears on the registration.

16       (i) Conduct a game promotion which represents on the  
17 outside of the envelope containing the literature, promotional  
18 material, or advertisement relating to the game promotion that  
19 a person is a winner of the game promotion or otherwise  
20 conveys that a person has been specially selected or  
21 designated a winner of the game promotion without a statement  
22 that certain conditions must be met in order to claim the  
23 prize.

24       (j) Fail to disclose all material conditions and  
25 contingencies as well as the odds of winning such prizes in  
26 print that is at least 12-point type and in a manner that is  
27 both clear and conspicuous in relation to the overall  
28 promotion.

29       (k) Conduct a game promotion which fails to include in  
30 its literature, promotional material, or advertisement copy a  
31 statement that the game is registered with the Department of

1 State, the registration number of the game, and the toll-free  
2 telephone number for the Department of State, along with a  
3 statement directing individuals to call such number for  
4 information regarding the game registration.

5 (l) Mail any literature, promotional material, or  
6 advertisement to a person who has requested, in writing, to be  
7 removed from the promoter's mailing list.

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

13 ~~1. Allocate a winning game or any portion thereof to~~  
14 ~~certain lessees, agents, or franchises; or~~

15 (m)2. Conduct a game promotion so as to allocate the  
16 winning of prizes a winning game or part thereof to any a  
17 particular portion or period of the game promotion or to a  
18 particular geographic area.

19 (n) Force, coerce, or require a lessee, agent, dealer,  
20 distributor, or franchisee to purchase or participate in any  
21 game promotion.

22 (o) Provide any false or misleading information on any  
23 registration material.

24 (p) Conduct a game promotion that uses the sale of a  
25 consumer good or service as incidental to the operation of the  
26 promotion itself.

27 ~~(b) Arbitrarily to remove, disqualify, disallow, or~~  
28 ~~reject any entry;~~

29 ~~(c) To fail to award prizes offered;~~  
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1           ~~(d) To print, publish, or circulate literature or~~  
2 ~~advertising material used in connection with such game~~  
3 ~~promotions which is false, deceptive, or misleading; or~~

4           ~~(e) To require an entry fee, payment, or proof of~~  
5 ~~purchase as a condition of entering a game promotion.~~

6           (3) REGISTRATION OF GAME PROMOTIONS.--

7           (a) The operator of a game promotion in which the  
8 total announced value of the prizes advertised or offered is  
9 greater than \$5,000 or more shall file with the department of  
10 State an application for registration on a form provided by  
11 the department. Such application shall include a copy of the  
12 rules and regulations of the game promotion and a list of all  
13 prizes and prize categories. The application shall provide  
14 identification of the operator and sponsor and the dates of  
15 the promotion. Such dates shall not be changed nor sponsors  
16 added or deleted after the registration has been issued. Such  
17 application shall be filed offered at least 14 7 days before  
18 the starting date commencement of the game promotion as  
19 reflected on the application. Such rules and regulations may  
20 not thereafter be changed, modified, or altered. Operators  
21 shall inform the department in writing of any address change  
22 occurring subsequent to submission of the application.

23           (b) The rules shall provide for the award and  
24 distribution of all prizes in any game promotion in which the  
25 total announced value of the prizes advertised or offered has  
26 a retail value of \$1,000 or more. The rules shall also provide  
27 for subsequent drawings or means of selecting a winner when no  
28 prizes are claimed, in order to ensure the award and  
29 distribution of all prizes offered. An operator of a game  
30 promotion shall post the rules and regulations, and required  
31 entry forms, in a conspicuous place at each retail outlet or

1 place where the game promotion may be played or participated  
2 in by the public. All printed advertisement copy shall provide  
3 the rules and regulations and the necessary entry form or  
4 instructions on how they can be obtained. Radio and  
5 television announcements or advertisements shall state the  
6 location or address from which the rules and regulations and  
7 entry forms may be obtained.~~The operator of a game promotion~~  
8 ~~shall conspicuously post the rules and regulations of such~~  
9 ~~game promotion in each and every retail outlet or place where~~  
10 ~~such game promotion may be played or participated in by the~~  
11 ~~public and shall also publish the rules and regulations in all~~  
12 ~~advertising copy used in connection therewith. Radio and~~  
13 ~~television announcements may indicate that the rules and~~  
14 ~~regulations are available at retail outlets or from the~~  
15 ~~operator of the promotion.~~

16 (c) A nonrefundable filing fee to be established by  
17 rule of the department, but which shall not exceed \$250, of  
18 ~~\$100~~ shall accompany each application for registration filing  
19 and shall be deposited into the Division of Licensing Trust  
20 Fund to be used to pay the costs incurred in administering and  
21 enforcing the provisions of this section.

22 (d)(4)(a) Every operator of such a game promotion in  
23 which the total announced value of the prizes offered is  
24 ~~greater than~~ \$5,000 or more shall establish a trust account,  
25 in a national or state-chartered financial institution, with a  
26 balance sufficient to pay or purchase the total value of all  
27 prizes offered. On a form supplied by the department of  
28 ~~State~~, an official of the financial institution holding the  
29 trust account shall set forth the dollar amount ~~of the trust~~  
30 ~~account~~, the identity of the entity or individual establishing  
31 the trust account, and the name of the game promotion exactly

1 as it appears on the application for which the trust account  
2 has been established. Such form shall be filed with the  
3 department ~~of State~~ at the time application for registration  
4 is made least 7 days in advance of the commencement of the  
5 ~~game promotion~~. In lieu of establishing such trust account,  
6 the operator may obtain a surety bond in an amount equivalent  
7 to the total value of all prizes offered; and such bond shall  
8 be filed with the Department of State at least 14 7 days in  
9 advance of the commencement of the game promotion.

10 1. The corpus of any trust moneys held in the trust  
11 account or bond may not be withdrawn in order to pay the  
12 prizes offered.

13 2. The trust or bond shall be released by the  
14 department only upon submission of the winners list  
15 ~~certification to the department of State of the name of the~~  
16 ~~winner or winners and the amount of the prize or prizes and~~  
17 ~~the value thereof.~~

18 2. ~~If the operator of a game promotion has obtained a~~  
19 ~~surety bond in lieu of establishing a trust account, the~~  
20 ~~amount of the surety bond shall equal at all times the total~~  
21 ~~amount of the prizes offered.~~

22 3.(b) The department ~~of State~~ may waive the  
23 requirement of the establishment of a trust account or bond on  
24 a per-registration basis ~~provisions of this subsection~~ for any  
25 person operator who:

26 a. Is a member club of Major League Baseball, the  
27 National Basketball Association, the National Football League,  
28 or the National Hockey League; or

29 b. Has conducted game promotions in the state for not  
30 less than 5 consecutive years and who has not had any civil,  
31 criminal, or administrative action instituted against him or



1 her by ~~the state~~ or an agency of the state for violation of  
2 this section within that 5-year period. Such waiver may be  
3 revoked by the department upon the finding ~~commission~~ of a  
4 violation of this section or consumer protection law of  
5 another state ~~by such operator, as determined by the~~  
6 ~~Department of State.~~

7 (e) A game promotion shall not be registered except  
8 upon submission of a complete application by an operator. An  
9 application is complete only if it contains the documents  
10 specified in this subsection.

11 (4) NOTIFICATION OF WINNERS REQUIRED.--

12 (a) The operator of a game promotion shall promptly  
13 notify all winners by mail or by telephone except those  
14 winners already in possession of a game card or other  
15 documentation from which the winner can determine that he or  
16 she has won a designated prize. All winning entries shall be  
17 held by the operator for a period of 1 year after submission  
18 of the winners list.

19 (b) When a prize has been won and the operator has  
20 been unable to contact the winner at the address and telephone  
21 number as presented on the entry form, a certified letter must  
22 be sent to the winner at the last known address advising the  
23 winner of the fact that he or she is a winner, the specific  
24 prize won, what action must be taken to claim the prize, and  
25 the allotted time in which the prize may be claimed.

26 (c)~~(5)~~ Every operator of a game promotion in which the  
27 total announced value of the prizes offered is ~~greater than~~  
28 \$5,000 or more shall provide the department ~~of State~~ with a  
29 certified winners list ~~of the names and addresses~~ of all  
30 persons, whether from this state or from another state, who  
31 have won prizes which have a value of \$100 or more. Such list

1 ~~shall be submitted~~ than \$25, the value of such prizes, and the  
2 ~~dates when the prizes were won~~ within 90 60 days after the  
3 ~~ending date of the game promotion as reflected in the~~  
4 ~~application~~ such winners have been finally determined. In no  
5 ~~event may the award of all prizes exceed the 90-day period in~~  
6 ~~which the certified winners list must be submitted to the~~  
7 ~~department.~~

8 (d) The operator shall provide a copy of the list of  
9 winners, without charge, to any person who requests it for a  
10 period of 1 year after the submission of the winners list to  
11 the department. The operator may require submission of a  
12 self-addressed, stamped envelope. In lieu of the foregoing,  
13 ~~the operator of a game promotion may, at his or her option,~~  
14 ~~publish the same information about the winners in a Florida~~  
15 ~~newspaper of general circulation within 60 days after such~~  
16 ~~winners have been determined and shall provide to the~~  
17 ~~Department of State a certified copy of the publication~~  
18 ~~containing the information about the winners. The operator of~~  
19 ~~a game promotion is not required to notify a winner by mail or~~  
20 ~~by telephone when the winner is already in possession of a~~  
21 ~~game card from which the winner can determine that he or she~~  
22 ~~has won a designated prize. All winning entries shall be held~~  
23 ~~by the operator for a period of 90 days after the close or~~  
24 ~~completion of the game.~~

25 (5)(6) WINNERS LIST.--The department of State shall  
26 keep the certified winners list ~~of winners~~ for a period of at  
27 least 1 year ~~6 months~~ after receipt ~~of the certified list~~. The  
28 department thereafter may dispose of all records and lists.

29 ~~(7) No operator shall force, directly or indirectly, a~~  
30 ~~lessee, agent, or franchise dealer to purchase or participate~~  
31 ~~in any game promotion. For the purpose of this section,~~

1 ~~coercion or force shall be presumed in these circumstances in~~  
2 ~~which a course of business extending over a period of 1 year~~  
3 ~~or longer is materially changed coincident with a failure or~~  
4 ~~refusal of a lessee, agent, or franchise dealer to participate~~  
5 ~~in such game promotions. Such force or coercion shall further~~  
6 ~~be presumed when an operator advertises generally that game~~  
7 ~~promotions are available at its lessee dealers or agent~~  
8 ~~dealers.~~

9 (6) AUTHORITY OF DEPARTMENT OF STATE AND ATTORNEY  
10 GENERAL.--

11 ~~(8)(a) The department may adopt of State shall have~~  
12 ~~the power to promulgate such rules and regulations respecting~~  
13 ~~the operation of game promotions as it may deem necessary to~~  
14 ~~carry out the provisions of this section advisable.~~

15 (b) The department shall have the power to investigate  
16 all game promotions and applicants for registration to assure  
17 compliance with this section and the rules adopted by the  
18 department, and to enforce the provisions of this section,  
19 upon the complaint of any person or agency, or on its own  
20 initiative.

21 (c) In the exercise of its enforcement responsibility  
22 and in the conduct of any investigation authorized by this  
23 section, the department shall have the power to subpoena and  
24 bring before it any person who represents, or is an officer or  
25 agent of, any business entity conducting game promotions in  
26 this state, require the production of any papers it deems  
27 necessary, administer oaths, and take the deposition of any  
28 person or operator so subpoenaed. Failure or refusal of any  
29 person or operator properly subpoenaed to be examined or to  
30 answer any questions about the conduct of a game promotion in  
31 this state shall be grounds for administrative or judicial

1 action as provided in this section, and may be grounds for  
2 revocation or suspension of a game promotion registration and  
3 denial of future registrations for a period not to exceed 5  
4 years.

5 (d)(b) Whenever the department of State or the  
6 Department of Legal Affairs has reason to believe that a game  
7 promotion is being operated in violation of this section, it  
8 may bring an administrative action against the operator  
9 pursuant to chapter 120. Upon the finding of a violation, the  
10 department may deny or revoke the registration, or fine the  
11 operator up to \$5,000 for each count or separate offense, or  
12 both. When the department has issued a final order imposing  
13 an administrative fine, the operator shall have 30 days to pay  
14 such fine. If a fine is not paid within 30 days after its  
15 imposition, the operator may be prohibited from further  
16 registrations until all fines have been paid. Payment of  
17 fines shall be by certified check or money order.~~in the~~  
18 ~~circuit court of any judicial circuit in which the game~~  
19 ~~promotion is being operated in the name and on behalf of the~~  
20 ~~people of the state against any operator thereof to enjoin the~~  
21 ~~continued operation of such game promotion anywhere within the~~  
22 ~~state.~~

23 (e) Whenever the department or the Department of Legal  
24 Affairs has reason to believe that a game promotion is being  
25 operated in violation of this section, it may bring an action  
26 in the circuit court of any judicial circuit in which the game  
27 promotion is being offered to enjoin the continued operation  
28 of such game promotion anywhere within the state.

29 (f) The department or the Department of Legal Affairs  
30 may bring a civil action seeking a penalty of not more than  
31 \$10,000 for each violation of this section, to seek a judicial

1 order for the award of prizes, and to seek compensatory  
2 damages on behalf of any party. The department or the  
3 Department of Legal Affairs may seek a \$15,000 penalty for any  
4 violation of this section if the civil action also seeks  
5 compensatory damages on behalf of one or more parties who are  
6 senior citizens. Any moneys recovered pursuant to this  
7 paragraph shall first be applied to the payment of any  
8 compensatory damages awarded and then to the payment of civil  
9 penalties which shall be deposited into the Department of  
10 Legal Affairs Consumer Frauds Trust Fund and allocated solely  
11 to the Department of Legal Affairs for the purpose of  
12 preparing and distributing consumer education materials,  
13 programs, and seminars, or to further enforcement efforts.

14 (7) CRIMINAL PENALTIES.--

15 ~~(9)(a) Any person, firm, or corporation, or~~  
16 ~~association or agent or employee thereof, who engages in any~~  
17 ~~acts or practices stated in this section to be unlawful, or~~  
18 ~~who violates any of the rules and regulations adopted made~~  
19 ~~pursuant to this section, commits ~~is guilty of~~ a misdemeanor~~  
20 ~~of the second degree, punishable as provided in s. 775.082 or~~  
21 ~~s. 775.083.~~

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

29 ~~(10) This section does not apply to actions or~~  
30 ~~transactions regulated by the Department of Business and~~  
31 ~~Professional Regulation or to the activities of nonprofit~~

1 ~~organizations or to any other organization engaged in any~~  
2 ~~enterprise other than the sale of consumer products or~~  
3 ~~services. Subsections (3), (4), (5), and (7) and paragraph~~  
4 ~~(8)(a) and any of the rules made pursuant thereto do not apply~~  
5 ~~to television or radio broadcasting companies licensed by the~~  
6 ~~Federal Communications Commission.~~

7 Section 2. Subsection (2) of section 721.111, Florida  
8 Statutes, is amended to read:

9 721.111 Prize and gift promotional offers.--

10 (2) A game promotion, such as a contest of chance,  
11 gift enterprise, or sweepstakes, in which the elements of  
12 chance and prize are present may not be used in connection  
13 with the offering or sale of timeshare periods, except for  
14 drawings, as that term is defined in s. 849.0935(1)(a), in  
15 which no more than 10 prizes are promoted and in which all  
16 promoted prizes are actually awarded. All such drawings must  
17 meet all requirements of this chapter and of ss. 849.092 and  
18 849.094(1) and, ~~(2)~~, ~~and~~ ~~(7)~~.

19 Section 3. This act shall take effect upon becoming a  
20 law.

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HOUSE SUMMARY

Revises provisions relating to game promotions in connection with the sale of consumer products or services to redesignate such game promotions as commercial game promotions. Revises definitions and provides additional definitions for purposes of the act. Specifies prohibited activities. Requires registration of game promotions and provides registration procedure. Specifies requirements with respect to game promotion rules and regulations. Provides a filing fee for registration. Revises provisions relating to the establishment of a trust account by game promotion operators and provides for waiver of the requirement under specified circumstances. Provides for notification of game promotion winners and provides notification procedures. Requires the Department of State to keep a certified list of game promotion winners for a specified period of time. Revises powers of the Department of State and the Attorney General with respect to the operation of game promotions. Provides for denial or revocation of registration for violation of the act. Specifies fines and authorizes the department or the Department of Legal Affairs to bring civil action. Revises criminal penalties relating to such game promotions.

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