

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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3		.	
4		.	

ORIGINAL STAMP BELOW

11 The Committee on Crime & Punishment offered the following:

13 **Amendment (with title amendment)**

14 Remove from the bill: Everything after the enacting clause  
15  
16 and insert in lieu thereof:

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

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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 promotion, 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 advertising and promotional material in  
31 connection with game promotion to any person or any guardian

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1 or agent who has requested that his or her name be deleted  
2 from such game promotion distribution. Such a request must be  
3 processed by the operator within 60 days; or

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

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

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

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

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1 on the envelope.

2 (b) The physical address of the operator.

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

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

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

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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,

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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

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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

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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  
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15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 On page 1, line 2,  
18 remove from the title of the bill: all of said lines  
19  
20 and insert in lieu thereof:

21 An act relating to game promotions; amending s.  
22 849.094, F.S.; redefining the terms "game  
23 promotion" and "operator" and defining the term  
24 "older individual"; prohibiting certain acts in  
25 connection with game promotions and promotional  
26 materials therefor; requiring certain  
27 information to be printed on envelopes;  
28 providing penalties, including increased  
29 penalties when an unlawful act is against an  
30 older individual; providing an effective date.

31