

Bill No. SB 86

Amendment No. 1

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Agriculture and Consumer Services recommended the following amendment:

Senate Amendment

Delete everything after the enacting clause

and insert:

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

849.094 Game promotion for ~~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 for the purpose of selling, promoting, or advertising a consumer product or service being offered to the public and other states in connection with the sale 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

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1 winner," or "preselected sweepstakes" which involve the
 2 distribution of winning numbers or game pieces designated as
 3 such in the game promotion rules.~~However, "game promotion"~~
 4 ~~shall not be construed to apply to bingo games conducted~~
 5 ~~pursuant to s. 849.0931.~~

6 (b) "Operator" means any person, firm, corporation, or
 7 association or agent or employee thereof who sponsors,
 8 promotes, operates, or conducts a game promotion, or in whose
 9 name a game promotion is in any manner sponsored, promoted,
 10 operated, or conducted,except any charitable nonprofit
 11 organization.

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

14 (2) It is unlawful for any operator:

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

20 1. Allocates ~~Allocate~~ a winning game or any portion
 21 thereof to certain lessees, agents, or franchises; or

22 2. Allocates ~~Allocate~~ a winning game or part thereof
 23 to a particular period of the game promotion or to a
 24 particular geographic area;

25 (b) Arbitrarily to remove, disqualify, disallow, or
 26 reject any entry;

27 (c) To fail to award prizes offered; however, if
 28 participation in the game promotion is by means of a game
 29 piece from which the winner can determine that he or she has
 30 won a designated prize, it is not unlawful under this section
 31 to fail to award a prize having an announced value of less

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1 than \$100 if the prize is unclaimed at the end of the game
2 promotion;

3 (d) To fail to award by alternate means those prizes
4 having an announced value of \$100 or greater which remain
5 unclaimed at the end of the game promotion;

6 (e)~~(d)~~ To print, publish, or circulate literature or
7 advertising material used in connection with such game
8 promotions which is false, deceptive, or misleading; or

9 (f)~~(e)~~ To require an entry fee, payment, purchase, or
10 proof of purchase as a condition of entering a game promotion
11 or to represent that an entry fee, payment, purchase, or proof
12 of purchase is a condition of entering a game promotion or
13 will enhance the chances of winning;:-

14 (g) To fail to make clearly and conspicuously on any
15 envelope containing advertising and promotional material
16 distributed in connection with a game promotion to the public
17 through the mail, the following disclosures in 16-point font:

18 1. The statement "This is a game promotion that
19 involves chance. You have not automatically won";

20 2. The name and physical address of the operator;

21 3. A toll-free number of the operator whom persons may
22 call for answers to questions they have about the game
23 promotion;

24 (h) To fail to make clearly and conspicuously on the
25 top of the first page of all advertising and promotional
26 material distributed in connection with a game promotion to
27 the public through the mail regardless of whether an envelope
28 is used, the following disclosures in 16-point font: "This
29 offer includes a game promotion that involves chance. You have
30 not automatically won. Your chances of winning are...(insert
31 applicable mathematical probability).... No purchase is

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1 required either to win a prize or to increase your chances of
2 winning a prize."

3
4 Paragraphs (g) and (h) do not apply to timeshare prize and
5 gift promotional offers defined in s. 721.111.

6 (3) The operator of a game promotion in which the
7 total announced value of the prizes offered is greater than
8 \$5,000 shall file with the Department of State a copy of the
9 rules and regulations of the game promotion, including a
10 statement setting forth the beginning and ending dates of the
11 game promotion and a list of all prizes and prize categories
12 offered at least 7 days before the commencement of the game
13 promotion. Such rules and regulations may not thereafter be
14 changed, modified, or altered. The operator of a game
15 promotion shall conspicuously post the rules and regulations
16 of such game promotion in each and every retail outlet or
17 place where such game promotion may be played or participated
18 in by the public. The operator ~~and~~ shall also publish the
19 rules and regulations in all game promotion materials that
20 offer a chance to enter and that are distributed to the public
21 through the mail in no less than 12-point font ~~in all~~
22 ~~advertising copy used in connection therewith.~~ All
23 advertisements pertaining to the game promotion must indicate
24 the address and telephone number where such rules and
25 regulations can be obtained. Such rules and regulations must
26 be made available to the public without charge upon request.

27
28 An operator may not distribute advertising or promotional
29 material in connection with a game promotion to any person who
30 has requested or whose guardian or agent has requested on such
31 person's behalf that the person's name be deleted from such

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1 game promotion distribution. Such a request must be processed
2 by the operator within 60 days after receipt. ~~Radio and~~
3 ~~television announcements may indicate that the rules and~~
4 ~~regulations are available at retail outlets or from the~~
5 ~~operator of the promotion.~~ A nonrefundable filing fee of \$100
6 shall accompany each filing and shall be deposited into the
7 Division of Licensing Trust Fund to be used to pay the costs
8 incurred in administering and enforcing the provisions of this
9 section. The filing or acceptance of any information or
10 documents pursuant to this act does not constitute
11 registration or a determination of compliance or applicability
12 of any provision set forth in this section.

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

31 1. The moneys held in the trust account may be

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1 withdrawn in order to pay the prizes offered only upon
2 certification to the Department of State of the name of the
3 winner or winners and the amount of the prize or prizes and
4 the value thereof.

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

9 (b) The Department of State may waive the provisions
10 of this subsection for any operator who has conducted game
11 promotions in the state for not less than 5 consecutive years
12 and who has not had any civil, criminal, or administrative
13 action instituted against him or her by the state or an agency
14 of the state for violation of this section within that 5-year
15 period. Such waiver may be revoked upon the commission of a
16 violation of this section by such operator, as determined by
17 the 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 maintain for a period of 2 years from the date
21 the prizes have been awarded ~~provide the Department of State~~
22 ~~with a certified~~ list of the names and addresses of all
23 persons, whether from this state or from another state, who
24 have won prizes that ~~which~~ have a value of greater ~~more~~ than
25 ~~\$100\$25, the value of such prizes, and the dates when the~~
26 ~~prizes were won within 60 days after such winners have been~~
27 ~~finally determined.~~ The operator shall provide a copy of the
28 list of winners, without charge, to any person who requests
29 it. The operator shall provide a copy of the list of winners,
30 without charge, immediately upon request by the Department of
31 State, the Department of Legal Affairs, or the office of the

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1 ~~state attorney. In lieu of the foregoing, the operator of a~~
2 ~~game promotion may, at his or her option, publish the same~~
3 ~~information about the winners in a Florida newspaper of~~
4 ~~general circulation within 60 days after such winners have~~
5 ~~been determined and shall provide to the Department of State a~~
6 ~~certified copy of the publication containing the information~~
7 ~~about the winners. The operator of a game promotion is not~~
8 ~~required to notify a winner by mail or by telephone when the~~
9 ~~winner is already in possession of a game card from which the~~
10 ~~winner can determine that he or she has won a designated~~
11 ~~prize. All winning entries shall be held by the operator for~~
12 ~~a period of 90 days after the close or completion of the game.~~

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

17 ~~(6)(7)~~ No operator shall force, directly or
18 indirectly, a lessee, agent, or franchise dealer to purchase
19 or participate in any game promotion. For the purpose of this
20 section, coercion or force shall be presumed in these
21 circumstances in which a course of business extending over a
22 period of 1 year or longer is materially changed coincident
23 with a failure or refusal of a lessee, agent, or franchise
24 dealer to participate in such game promotions. Such force or
25 coercion shall further be presumed when an operator advertises
26 generally that game promotions are available at its lessee
27 dealers or agent dealers.

28 ~~(7)(a)(8)(a)~~ The Department of State may adopt rules
29 pursuant to ss. 120.54 and 120.536(1) to administer the
30 provisions of this section and may take administrative action
31 with respect to violations of this act ~~shall have the power to~~

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1 ~~promulgate such rules and regulations respecting the operation~~
2 ~~of game promotions as it may deem advisable.~~

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

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

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

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1 ~~(9)~~~~(10)~~ This section does not apply to actions or
2 transactions regulated by the Department of Business and
3 Professional Regulation or to the activities of nonprofit
4 organizations or to any other organization engaged in any
5 enterprise other than the sale of consumer products or
6 services. Subsections (3), (4), (5), and (6), ~~and (7)~~ and
7 paragraph (7)(a) ~~(8)(a)~~ and any of the rules made pursuant
8 thereto do not apply to television or radio broadcasting
9 companies licensed by the Federal Communications Commission.

10 Section 2. This act shall take effect October 1, 1999.

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