

Bill No. SB 86
Amendment No. ____

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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| 11 | Senator Campbell moved the following amendment: | | |
| 12 | | | |
| 13 | Senate Amendment (with title amendment) | | |
| 14 | Delete everything after the enacting clause | | |
| 15 | | | |
| 16 | and insert: | | |
| 17 | Section 1. Section 849.094, Florida Statutes, is | | |
| 18 | amended to read: | | |
| 19 | 849.094 Game promotion <u>for</u> 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, <u>sweepstakes</u> , or gift enterprise, | | |
| 24 | conducted within or throughout the state <u>or offered to any</u> | | |
| 25 | <u>person in this state for the purpose of selling, promoting, or</u> | | |
| 26 | <u>advertising a consumer product or service being offered to the</u> | | |
| 27 | <u>public and other states in connection with the sale of</u> | | |
| 28 | consumer products or services , and in which the elements of | | |
| 29 | chance and prize are present. <u>The term includes, but is not</u> | | |
| 30 | <u>limited to, enterprises commonly known as "matching," "instant</u> | | |
| 31 | <u>winner," or "preselected sweepstakes" which involve the</u> | | |

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

5 (b) "Operator" means any person, firm, corporation, or
 6 association or agent or employee thereof who promotes,
 7 operates, or conducts a game promotion, or on whose behalf a
 8 game promotion is promoted, operated, or conducted,except any
 9 charitable nonprofit organization.

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

12 (2) It is unlawful for any operator:

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

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

20 2. Allocate a winning game or part thereof to a
 21 particular period of the game promotion or to a particular
 22 geographic area.~~†~~

23 (b) Arbitrarily to remove, disqualify, disallow, or
 24 reject any entry.~~†~~

25 (c) To fail to award prizes offered.~~†~~

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

29 (e) To require an entry fee, payment, purchase,or
 30 proof of purchase as a condition of entering a game promotion
 31 or to represent that an entry fee, payment, purchase, or proof

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1 of purchase is a condition of entering a game promotion or
2 will enhance the chances of winning.

3 (f) To fail to make clearly and conspicuously on any
4 envelope containing advertising and promotional material
5 distributed in connection with a game promotion to the public
6 through the mail, the following disclosures in 16-point font:

7 1. The statement "This is a game promotion that
8 involves chance. You have not automatically won."

9 2. The name and physical address of the operator.

10 3. A toll-free number of the operator whom persons may
11 call for answers to questions they have about the game
12 promotion.

13
14 This paragraph does not apply to direct mail necessary to the
15 accounting of an existing business relationship with
16 consumers, provided the disclosures otherwise required on the
17 envelope are clearly and conspicuously made in the same manner
18 in any advertising and promotional material offering a game
19 promotion included therein. This paragraph also does not apply
20 to timeshare prize and gift promotional offers defined in s.
21 721.111.

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

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1 prize and gift promotional offers defined in s. 721.111.
2 (3)(a) The operator of a game promotion in which the
3 total announced value of the prizes offered is greater than
4 \$5,000 shall file with the Department of State a copy of the
5 rules and regulations of the game promotion, including a
6 statement setting forth the beginning and ending dates of the
7 game promotion, and a list of all prizes and prize categories
8 offered at least 7 days before the commencement of the game
9 promotion. Such rules and regulations may not thereafter be
10 changed, modified, or altered. The operator of a game
11 promotion shall conspicuously post the rules and regulations
12 of such game promotion in each and every retail outlet or
13 place where such game promotion may be played or participated
14 in by the public. The operator and shall also publish the
15 rules and regulations in all game promotion materials that
16 offer a chance to enter and that are distributed to the public
17 through the mail in no less than 12-point font ~~in all~~
18 ~~advertising copy used in connection therewith.~~ All
19 advertisements pertaining to the game promotion must indicate
20 the address and telephone number where such rules and
21 regulations can be obtained. Such rules and regulations must
22 be made available to the public without charge upon request.
23 (b) An operator may not distribute direct-mail
24 advertising or promotional material in connection with a game
25 promotion to any person who has requested or whose guardian or
26 agent has requested on such person's behalf that the person's
27 name be deleted from such game promotion distribution. Such a
28 request must be processed by the operator within 60 days after
29 ~~receipt. Radio and television announcements may indicate that~~
30 ~~the rules and regulations are available at retail outlets or~~
31 ~~from the operator of the promotion.~~

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1 (c) A nonrefundable filing fee of \$100 shall accompany
2 each filing and shall be deposited into the Division of
3 Licensing Trust Fund to be used to pay the costs incurred in
4 administering and enforcing the provisions of this section.

5 (d) The filing or acceptance of any information or
6 documents pursuant to this section does not constitute
7 registration or a determination of compliance or applicability
8 of any provision set forth in this section.

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

27 1. The moneys held in the trust account may be
28 withdrawn in order to pay the prizes offered only upon
29 certification to the Department of State of the name of the
30 winner or winners and the amount of the prize or prizes and
31 the value thereof.

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

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

14 (5) Every operator of a game promotion in which the
15 total announced value of the prizes offered is greater than
16 \$5,000 shall maintain for a period of 2 years from the date
17 the prizes have been awarded ~~provide the Department of State~~
18 ~~with a certified list of the names and addresses of all~~
19 ~~persons, whether from this state or from another state, who~~
20 ~~have won prizes that which have a value of greater more than~~
21 ~~\$100\$25, the value of such prizes, and the dates when the~~
22 ~~prizes were won within 60 days after such winners have been~~
23 ~~finally determined.~~ The operator shall provide a copy of the
24 list of winners, without charge, to any person who requests
25 it. The operator shall provide a copy of the list of winners,
26 without charge, immediately upon request by the Department of
27 State, the Department of Legal Affairs, or the office of the
28 state attorney.~~In lieu of the foregoing, the operator of a~~
29 ~~game promotion may, at his or her option, publish the same~~
30 ~~information about the winners in a Florida newspaper of~~
31 ~~general circulation within 60 days after such winners have~~

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1 ~~been determined and shall provide to the Department of State a~~
2 ~~certified copy of the publication containing the information~~
3 ~~about the winners. The operator of a game promotion is not~~
4 ~~required to notify a winner by mail or by telephone when the~~
5 ~~winner is already in possession of a game card from which the~~
6 ~~winner can determine that he or she has won a designated~~
7 ~~prize. All winning entries shall be held by the operator for a~~
8 ~~period of 90 days after the close or completion of the game.~~

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

13 ~~(6)(7)~~ No operator shall force, directly or
14 indirectly, a lessee, agent, or franchise dealer to purchase
15 or participate in any game promotion. For the purpose of this
16 section, coercion or force shall be presumed in these
17 circumstances in which a course of business extending over a
18 period of 1 year or longer is materially changed coincident
19 with a failure or refusal of a lessee, agent, or franchise
20 dealer to participate in such game promotions. Such force or
21 coercion shall further be presumed when an operator advertises
22 generally that game promotions are available at its lessee
23 dealers or agent dealers.

24 ~~(7)(8)~~(a) The Department of State may adopt rules
25 pursuant to ss. 120.54 and 120.536(1) to administer the
26 provisions of this section and may take administrative action
27 with respect to violations of this section ~~shall have the~~
28 ~~power to promulgate such rules and regulations respecting the~~
29 ~~operation of game promotions as it may deem advisable.~~

30 (b) Whenever the Department of State or the Department
31 of Legal Affairs has reason to believe that a game promotion

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1 is being operated in violation of this section, it may bring
2 an action in the circuit court of any judicial circuit in
3 which the game promotion is being operated in the name and on
4 behalf of the people of the state against any operator thereof
5 to enjoin the continued operation of such game promotion
6 anywhere within the state.

7 (8)(9)(a) Any person, firm, or corporation, or
8 association, or agent, or employee thereof, or any operator,
9 who engages in any acts or practices stated in this section to
10 be unlawful, ~~or who violates any of the rules and regulations~~
11 ~~made pursuant to this section,~~ is guilty of a misdemeanor of
12 the second degree, punishable as provided in s. 775.082 or s.
13 775.083. However, when such unlawful acts or practices are
14 committed against an older individual, the operator is guilty
15 of a misdemeanor of the first degree, punishable as provided
16 in s. 775.082 or s. 775.083.

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

28 (9)(10) This section does not apply to actions or
29 transactions regulated by the Department of Business and
30 Professional Regulation or to the activities of nonprofit
31 organizations or to any other organization engaged in any

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

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

8 721.111 Prize and gift promotional offers.--

9 (2) A game promotion, such as a contest of chance,
10 gift enterprise, or sweepstakes, in which the elements of
11 chance and prize are present may not be used in connection
12 with the offering or sale of timeshare periods, except for
13 drawings, as that term is defined in s. 849.0935(1)(a), in
14 which no more than 10 prizes are promoted and in which all
15 promoted prizes are actually awarded. All such drawings must
16 meet all requirements of this chapter and of ss. 849.092 and
17 849.094(1), (2), and (6) ~~(7)~~.

18 Section 3. This act shall take effect October 1, 1999.
19
20

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

22 And the title is amended as follows:

23 Delete everything before the enacting clause
24

25 and insert:

26 A bill to be entitled
27 An act relating to game promotions; amending s.
28 849.094, F.S.; redefining the terms "game
29 promotion" and "operator" and defining the term
30 "older individual"; prohibiting certain acts in
31 connection with game promotions and advertising

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1 and promotional material therefor; requiring
2 certain information to be printed on envelopes
3 and certain information to be printed on
4 advertising and promotional material
5 distributed in connection with a game promotion
6 to the public through the mail; revising
7 provisions relating to maintenance and
8 distribution of winner lists; providing
9 penalties, including increased penalties when
10 an unlawful act is against an older individual;
11 amending s. 721.111, F.S.; correcting a cross
12 reference, to conform; providing an effective
13 date.
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