

By Senator Campbell

33-13A-99

1                                   A bill to be entitled  
 2           An act relating to game promotions; amending s.  
 3           849.094, F.S.; redefining the terms "game  
 4           promotion" and "operator" and defining the term  
 5           "older individual"; prohibiting certain acts in  
 6           connection with game promotions and promotional  
 7           materials therefor; requiring certain  
 8           information to be printed on envelopes;  
 9           revising provision relating to maintenance and  
 10          distribution of winner lists; providing  
 11          penalties, including increased penalties when  
 12          an unlawful act is against an older individual;  
 13          providing an effective date.

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

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 17           Section 1. Section 849.094, Florida Statutes, is  
 18 amended to read:  
 19           849.094 Game promotion for ~~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 for the purpose of selling, promoting,  
 26 or advertising a consumer product or service being  
 27 contemporaneously offered to the public ~~and other states in~~  
 28 ~~connection with the sale of consumer products or services,~~ and  
 29 in which the elements of chance and prize are present. The  
 30 term includes, but is not limited to, enterprises commonly  
 31 known as "matching," "instant winner," or "preselected

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

1 sweepstakes" which involve the distribution of winning numbers  
2 or game pieces designated as such in the game promotion rules.

3 ~~However, "game promotion" shall not be construed to apply to~~  
4 ~~bingo games conducted pursuant to s. 849.0931.~~

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

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

13 (2) It is unlawful for any operator:

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

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

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

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

26 (c) To fail to award prizes offered; however, if  
27 participation in the game promotion is by means of a game  
28 piece from which the winner can determine that he or she has  
29 won a designated prize, it is not unlawful under this section  
30 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 conclusion 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 send advertising and promotional material in  
15 connection with a game promotion to any person who has  
16 requested or whose guardian or agent has requested on such  
17 person's behalf that the person's name be deleted from such  
18 game promotion distribution. Such a request must be processed  
19 by the operator within 60 days;  
20 (h) To fail to make clearly and conspicuously on any  
21 envelope containing advertising and promotional material  
22 distributed in connection with a game promotion to the public  
23 through the mail, the following disclosures in 16-point font:  
24 1. The statement "This is a game promotion that  
25 involves chance. You have not automatically won";  
26 2. The name and physical address of the operator;  
27 3. A toll-free number of the operator whom persons may  
28 call for answers to questions they have about the game  
29 promotion;  
30 (i) To fail to make clearly and conspicuously on the  
31 top of the first page of all advertising and promotional

1 material distributed in connection with a game promotion to  
2 the public through the mail regardless of whether an envelope  
3 is used, the following disclosures in 16-point font: "This  
4 offer includes a game promotion that involves chance. You have  
5 not automatically won. Your chances of winning are...(insert  
6 applicable mathematical probability).... No purchase is  
7 required either to win a prize or to increase your chances of  
8 winning a prize."

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10 Paragraphs (h) and (i) 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, including a  
16 statement setting forth the beginning and ending dates of the  
17 game promotion and a list of all prizes and prize categories  
18 offered at least 7 days before the commencement of the game  
19 promotion. Such rules and regulations may not thereafter be  
20 changed, modified, or altered. The operator of a game  
21 promotion shall conspicuously post the rules and regulations  
22 of such game promotion in each and every retail outlet or  
23 place where such game promotion may be played or participated  
24 in by the public and shall also publish the rules and  
25 regulations in all game promotion materials distributed to the  
26 public through the mail in no less than 12-point font and in  
27 all advertising copy used in connection therewith. Such rules  
28 and regulations must be made available to the public without  
29 charge upon request.

1 Radio and television announcements and news print and magazine  
2 advertisements may indicate that the rules and regulations are  
3 available at retail outlets or from the operator of the  
4 promotion. A nonrefundable filing fee of \$100 shall accompany  
5 each filing and shall be deposited into the Division of  
6 Licensing Trust Fund to be used to pay the costs incurred in  
7 administering and enforcing the provisions of this section.  
8 The filing or acceptance of any information or documents  
9 pursuant to this section does not constitute a determination  
10 of compliance or applicability of any provision set forth in  
11 this section.

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

30 1. The moneys held in the trust account may be  
31 withdrawn in order to pay the prizes offered only upon

1 certification to the Department of State of the name of the  
2 winner or winners and the amount of the prize or prizes and  
3 the value thereof.

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

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

17           (5) Every operator of a game promotion in which the  
18 total announced value of the prizes offered is greater than  
19 \$5,000 shall maintain for a period of 3 years from the date  
20 the prizes have been awarded ~~provide the Department of State~~  
21 ~~with a certified~~ list of the names and addresses of all  
22 persons, whether from this state or from another state, who  
23 have won prizes that ~~which~~ have a value of greater ~~more~~ than  
24 ~~\$100\$25, the value of such prizes, and the dates when the~~  
25 ~~prizes were won within 60 days after such winners have been~~  
26 ~~finally determined~~. The operator shall provide a copy of the  
27 list of winners, without charge, to any person who requests  
28 it. The operator shall provide a copy of the list of winners,  
29 without charge, immediately upon request by the Department of  
30 State, the Department of Legal Affairs, or the office of the  
31 state attorney.~~In lieu of the foregoing, the operator of a~~

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

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

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

27 ~~(7)(a)(8)(a)~~ (7)(a) The Department of State may adopt rules  
28 pursuant to ss. 120.54 and 120.536(1) to administer the  
29 provisions of this section ~~shall have the power to promulgate~~  
30 ~~such rules and regulations respecting the operation of game~~  
31 ~~promotions as it may deem advisable.~~

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

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

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

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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SENATE SUMMARY

Increases the penalty when an unlawful act or violation of a rule made in respect to a game promotion in connection with the sale of consumer products or services is against a person 60 years of age or older. Prohibits sending materials in connection with a promotion when the recipient has requested in writing not to receive such materials; provides standards for content and style of specified disclosure materials. Requires certain information to be included on envelopes.