

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

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

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

25 849.094 Game promotion for ~~in connection with~~ sale of
26 consumer products or services.--

27 (1) As used in this section, the term:

28 (a) "Game promotion" means, but is not limited to, a
29 contest, game of chance, sweepstakes, or gift enterprise,
30 conducted within ~~or throughout~~ the state or offered to any
31 person in this state for the purpose of selling, promoting, or

1 advertising a consumer product or service being offered to the
2 public and other states in connection with the sale of
3 consumer products or services,and in which the elements of
4 chance and prize are present. The term includes, but is not
5 limited to, enterprises commonly known as "matching," "instant
6 winner," or "preselected sweepstakes" which involve the
7 distribution of winning numbers or game pieces designated as
8 such in the game promotion rules.~~However, "game promotion"~~
9 ~~shall not be construed to apply to bingo games conducted~~
10 ~~pursuant to s. 849.0931.~~

11 (b) "Operator" means any person, firm, corporation, or
12 association or agent or employee thereof who promotes,
13 operates, or conducts a game promotion, or on whose behalf a
14 game promotion is promoted, operated, or conducted,except any
15 charitable nonprofit organization.

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

18 (2) It is unlawful for any operator:

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

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

26 2. Allocate a winning game or part thereof to a
27 particular period of the game promotion or to a particular
28 geographic area.†

29 (b) Arbitrarily to remove, disqualify, disallow, or
30 reject any entry.†

31 (c) To fail to award prizes offered.†

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, purchase, or
5 proof of purchase as a condition of entering a game promotion
6 or to represent that an entry fee, payment, purchase, or proof
7 of purchase is a condition of entering a game promotion or
8 will enhance the chances of winning.

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

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

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

16 3. A toll-free number of the operator whom persons may
17 call for answers to questions they have about the game
18 promotion.

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20 This paragraph does not apply to direct mail necessary to the
21 accounting of an existing business relationship with
22 consumers, provided the disclosures otherwise required on the
23 envelope are clearly and conspicuously made in the same manner
24 in any advertising and promotional material offering a game
25 promotion included therein. This paragraph also does not apply
26 to timeshare prize and gift promotional offers defined in s.
27 721.111.

28 (g) To fail to make clearly and conspicuously on the
29 top of the first page of all advertising and promotional
30 material distributed in connection with a game promotion to
31 the public through the mail regardless of whether an envelope

1 is used, the following disclosures in 16-point font: "This
2 offer includes a game promotion that involves chance. You have
3 not automatically won. Your chances of winning are...(insert
4 applicable mathematical probability).... No purchase is
5 required either to win a prize or to increase your chances of
6 winning a prize." This paragraph does not apply to timeshare
7 prize and gift promotional offers defined in s. 721.111.

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

29 (b) An operator may not distribute direct-mail
30 advertising or promotional material in connection with a game
31 promotion to any person who has requested or whose guardian or

1 agent has requested on such person's behalf that the person's
2 name be deleted from such game promotion distribution. Such a
3 request must be processed by the operator within 60 days after
4 receipt.~~Radio and television announcements may indicate that~~
5 ~~the rules and regulations are available at retail outlets or~~
6 ~~from the operator of the promotion.~~

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

11 (d) The filing or acceptance of any information or
12 documents pursuant to this section does not constitute
13 registration or a determination of compliance or applicability
14 of any provision set forth in this section.

15 (4)(a) Every operator of such a game promotion in
16 which the total announced value of the prizes offered is
17 greater than \$5,000 shall establish a trust account, in a
18 national or state-chartered financial institution, with a
19 balance sufficient to pay or purchase the total value of all
20 prizes offered. On a form supplied by the Department of State,
21 an official of the financial institution holding the trust
22 account shall set forth the dollar amount of the trust
23 account, the identity of the entity or individual establishing
24 the trust account, and the name of the game promotion for
25 which the trust account has been established. Such form shall
26 be filed with the Department of State at least 7 days in
27 advance of the commencement of the game promotion. In lieu of
28 establishing such trust account, the operator may obtain a
29 surety bond in an amount equivalent to the total value of all
30 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 maintain for a period of 2 years from the date
24 the prizes have been awarded ~~provide the Department of State~~
25 ~~with a certified~~ list of the names and addresses of all
26 persons, whether from this state or from another state, who
27 have won prizes that ~~which~~ have a value of greater ~~more~~ than
28 ~~\$100\$25, the value of such prizes, and the dates when the~~
29 ~~prizes were won within 60 days after such winners have been~~
30 ~~finally determined.~~ The operator shall provide a copy of the
31 list of winners, without charge, to any person who requests

1 it. The operator shall provide a copy of the list of winners,
2 without charge, immediately upon request by the Department of
3 State, the Department of Legal Affairs, or the office of the
4 state attorney.~~In lieu of the foregoing, the operator of a~~
5 ~~game promotion may, at his or her option, publish the same~~
6 ~~information about the winners in a Florida newspaper of~~
7 ~~general circulation within 60 days after such winners have~~
8 ~~been determined and shall provide to the Department of State a~~
9 ~~certified copy of the publication containing the information~~
10 ~~about the winners. The operator of a game promotion is not~~
11 ~~required to notify a winner by mail or by telephone when the~~
12 ~~winner is already in possession of a game card from which the~~
13 ~~winner can determine that he or she has won a designated~~
14 ~~prize. All winning entries shall be held by the operator for a~~
15 ~~period of 90 days after the close or completion of the game.~~

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

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

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

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

15 (8)(9)(a) Any person, firm, or corporation, or
16 association, or agent, or employee thereof, or any operator,
17 who engages in any acts or practices stated in this section to
18 be unlawful, ~~or who violates any of the rules and regulations~~
19 ~~made pursuant to this section,~~ is guilty of a misdemeanor of
20 the second degree, punishable as provided in s. 775.082 or s.
21 775.083. However, when such unlawful acts or practices are
22 committed against an older individual, the operator is guilty
23 of a misdemeanor of the first degree, punishable as provided
24 in s. 775.082 or s. 775.083.

25 (b) Any person, firm, or corporation, or association,
26 agent, or employee thereof, or any operator, who violates any
27 provision of this section or any of the rules adopted and
28 ~~regulations made~~ pursuant to this section shall be liable for
29 an administrative fine or a civil penalty of not more than
30 \$1,000 for each such violation, which shall accrue to the
31 state and may be recovered in any ~~a civil~~ action brought by

1 the Department of State or the Department of Legal Affairs.
 2 However, when such violation is committed against an older
 3 individual, the amount of the fine or penalty shall be not
 4 more than \$5,000 for each such violation.

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

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

16 721.111 Prize and gift promotional offers.--

17 (2) A game promotion, such as a contest of chance,
 18 gift enterprise, or sweepstakes, in which the elements of
 19 chance and prize are present may not be used in connection
 20 with the offering or sale of timeshare periods, except for
 21 drawings, as that term is defined in s. 849.0935(1)(a), in
 22 which no more than 10 prizes are promoted and in which all
 23 promoted prizes are actually awarded. All such drawings must
 24 meet all requirements of this chapter and of ss. 849.092 and
 25 849.094(1), (2), and(6)~~(7)~~.

26 Section 3. This act shall take effect October 1, 1999.

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