

By Senator Campbell

33-761-00

See HB 123

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 and  
 9           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 rules and regulations of  
 14          game promotions and to maintenance and  
 15          distribution of winner lists; providing  
 16          rulemaking authority; providing penalties,  
 17          including increased penalties in cases of an  
 18          unlawful act against an older individual;  
 19          amending s. 721.111, F.S.; conforming a  
 20          cross-reference; providing an effective date.

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

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

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

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

29           (a) "Game promotion" means, but is not limited to, a  
 30 contest, game of chance, sweepstakes, or gift enterprise,  
 31 conducted within ~~or throughout~~ the state or offered to

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

12 (b) "Operator" means any person, firm, corporation, or  
13 association or agent or employee thereof who sponsors,  
14 promotes, operates, or conducts a game promotion, or in whose  
15 name a game promotion is in any manner sponsored, promoted,  
16 operated, or conducted, except any charitable nonprofit  
17 organization.

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

20 (2) It is unlawful for any operator:

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

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

28 2. Allocates ~~Allocate~~ a winning game or part thereof  
29 to a particular period of the game promotion or to a  
30 particular geographic area.†

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1           (b) Arbitrarily to remove, disqualify, disallow, or  
2 reject any entry.†

3           (c) To fail to award prizes offered; however, if  
4 participation in the game promotion is by means of a game  
5 piece from which the winner can determine that he or she has  
6 won a designated prize, it is not unlawful under this section  
7 to fail to award a prize having an announced value of less  
8 than \$100 if the prize is unclaimed at the end of the game  
9 promotion.

10           (d) To fail to award by alternate means those prizes  
11 having an announced value of \$100 or greater which remain  
12 unclaimed at the conclusion of the game promotion.

13           ~~(e)(d)~~ To print, publish, or circulate literature or  
14 advertising material used in connection with such game  
15 promotions which is false, deceptive, or misleading.†~~or~~

16           ~~(f)(e)~~ To require an entry fee, payment, purchase, or  
17 proof of purchase as a condition of entering a game promotion  
18 or to represent that an entry fee, payment, purchase, or proof  
19 of purchase is a condition of entering a game promotion or  
20 will enhance the chances of winning.

21           (g) To send advertising and promotional material in  
22 connection with a game promotion to any person who has  
23 requested, or whose guardian or agent has requested on such  
24 person's behalf, that the person's name be deleted from such  
25 game promotion distribution. Such a request must be processed  
26 by the operator within 60 days.

27           (h) To fail to make clearly and conspicuously on any  
28 envelope containing advertising and promotional material  
29 distributed in connection with a game promotion to the public  
30 through the mail the following disclosures in 16-point font:  
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1           1. The statement "This is a game promotion that  
2 involves chance. You have not automatically won."

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

4           3. A toll-free number of the operator whom persons may  
5 call for answers to questions they have about the game  
6 promotion.

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8 This paragraph does not apply to timeshare prize and gift  
9 promotional offers as defined in s. 721.111.

10           (i) To fail to make clearly and conspicuously on the  
11 top of the first page of all advertising and promotional  
12 material distributed in connection with a game promotion to  
13 the public through the mail, regardless of whether an envelope  
14 is used, the following disclosures in 16-point font: "This  
15 offer includes a game promotion that involves chance. You have  
16 not automatically won. Your chances of winning are...(insert  
17 applicable mathematical probability).... No purchase is  
18 required either to win a prize or to increase your chances of  
19 winning a prize." This paragraph does not apply to timeshare  
20 prize and gift promotional offers as defined in s. 721.111.

21           (3) The operator of a game promotion in which the  
22 total announced value of the prizes offered is greater than  
23 \$5,000 shall file with the Department of State a copy of the  
24 rules and regulations of the game promotion, including a  
25 statement setting forth the beginning and ending dates of the  
26 game promotion and a list of all prizes and prize categories  
27 offered, at least 7 days before the commencement of the game  
28 promotion. Such rules and regulations may not thereafter be  
29 changed, modified, or altered. The operator of a game  
30 promotion shall conspicuously post the rules and regulations  
31 of such game promotion in each and every retail outlet or

1 place where such game promotion may be played or participated  
2 in by the public and shall also publish the rules and  
3 regulations in all game promotion materials distributed to the  
4 public through the mail in no less than 12-point font and in  
5 all advertising copy used in connection therewith. Such rules  
6 and regulations must be made available to the public without  
7 charge upon request.

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9 Radio and television announcements and newsprint and magazine  
10 advertisements may indicate that the rules and regulations are  
11 available at retail outlets or from the operator of the  
12 promotion. A nonrefundable filing fee of \$100 shall accompany  
13 each filing and shall be deposited into the Division of  
14 Licensing Trust Fund to be used to pay the costs incurred in  
15 administering and enforcing the provisions of this section.  
16 The filing or acceptance of any information or documents  
17 pursuant to this section does not constitute a determination  
18 of compliance or applicability of any provision set forth in  
19 this section.

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

1 advance of the commencement of the game promotion. In lieu of  
2 establishing such trust account, the operator may obtain a  
3 surety bond in an amount equivalent to the total value of all  
4 prizes offered; and such bond shall be filed with the  
5 Department of State at least 7 days in advance of the  
6 commencement of the game promotion.

7           1. The moneys held in the trust account may be  
8 withdrawn in order to pay the prizes offered only upon  
9 certification to the Department of State of the name of the  
10 winner or winners and the amount of the prize or prizes and  
11 the value thereof.

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

16           (b) The Department of State may waive the provisions  
17 of this subsection for any operator who has conducted game  
18 promotions in the state for not less than 5 consecutive years  
19 and who has not had any civil, criminal, or administrative  
20 action instituted against him or her by the state or an agency  
21 of the state for violation of this section within that 5-year  
22 period. Such waiver may be revoked upon the commission of a  
23 violation of this section by such operator, as determined by  
24 the Department of State.

25           (5) Every operator of a game promotion in which the  
26 total announced value of the prizes offered is greater than  
27 \$5,000 shall maintain for a period of 3 years from the date  
28 the prizes have been awarded ~~provide the Department of State~~  
29 ~~with a certified~~ list of the names and addresses of all  
30 persons, whether from this state or from another state, who  
31 have won prizes that ~~which~~ have a value of greater ~~more~~ than

1 ~~\$100~~<sup>\$25</sup>, the value of such prizes, and the dates when the  
2 prizes were won within 60 days after such winners have been  
3 finally determined. The operator shall provide a copy of the  
4 list of winners, without charge, to any person who requests  
5 it. The operator shall provide a copy of the list of winners,  
6 without charge, immediately upon request by the Department of  
7 State, the Department of Legal Affairs, or the office of the  
8 state attorney. ~~In lieu of the foregoing, the operator of a~~  
9 ~~game promotion may, at his or her option, publish the same~~  
10 ~~information about the winners in a Florida newspaper of~~  
11 ~~general circulation within 60 days after such winners have~~  
12 ~~been determined and shall provide to the Department of State a~~  
13 ~~certified copy of the publication containing the information~~  
14 ~~about the winners. The operator of a game promotion is not~~  
15 ~~required to notify a winner by mail or by telephone when the~~  
16 ~~winner is already in possession of a game card from which the~~  
17 ~~winner can determine that he or she has won a designated~~  
18 ~~prize. All winning entries shall be held by the operator for~~  
19 ~~a period of 90 days after the close or completion of the game.~~

20 ~~(6) The Department of State shall keep the certified~~  
21 ~~list of winners for a period of at least 6 months after~~  
22 ~~receipt of the certified list. The department thereafter may~~  
23 ~~dispose of all records and lists.~~

24 ~~(6)(7)~~ No operator shall force, directly or  
25 indirectly, a lessee, agent, or franchise dealer to purchase  
26 or participate in any game promotion. For the purpose of this  
27 section, coercion or force shall be presumed in these  
28 circumstances in which a course of business extending over a  
29 period of 1 year or longer is materially changed coincident  
30 with a failure or refusal of a lessee, agent, or franchise  
31 dealer to participate in such game promotions. Such force or

1 coercion shall further be presumed when an operator advertises  
2 generally that game promotions are available at its lessee  
3 dealers or agent dealers.

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

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

17 (8)(9)(a) Any person, firm, or corporation, or  
18 association or agent or employee thereof, or any operator who  
19 engages in any acts or practices stated in this section to be  
20 unlawful, or who violates any of the rules adopted and  
21 regulations made pursuant to this section, is guilty of a  
22 misdemeanor of the second degree, punishable as provided in s.  
23 775.082 or s. 775.083. However, when such unlawful acts or  
24 practices or such rule violations are committed against an  
25 older individual, the operator is guilty of a misdemeanor of  
26 the first degree, punishable as provided in s. 775.082 or s.  
27 775.083.

28 (b) Any person, firm, or corporation, or association,  
29 agent, or employee thereof, or any operator who violates any  
30 provision of this section or any of the rules adopted and  
31 regulations made pursuant to this section shall be liable for



1 a civil penalty of not more than \$1,000 for each such  
2 violation, which shall accrue to the state and may be  
3 recovered in a civil action brought by the Department of State  
4 or the Department of Legal Affairs. However, when such  
5 violation is committed against an older individual, the amount  
6 of the civil penalty shall be not more than \$5,000 for each  
7 such violation.

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

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

19 721.111 Prize and gift promotional offers.--

20 (2) A game promotion, such as a contest of chance,  
21 gift enterprise, or sweepstakes, in which the elements of  
22 chance and prize are present may not be used in connection  
23 with the offering or sale of timeshare periods, except for  
24 drawings, as that term is defined in s. 849.0935(1)(a), in  
25 which no more than 10 prizes are promoted and in which all  
26 promoted prizes are actually awarded. All such drawings must  
27 meet all requirements of this chapter and of ss. 849.092 and  
28 849.094(1), (2), and (6)~~(7)~~.

29 Section 3. This act shall take effect October 1, 2000.  
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LEGISLATIVE 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 committed 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. Revises provisions relating to rules and regulations of game promotions and to maintenance and distribution of winner lists. Requires certain information to be printed on envelopes and certain information to be printed on advertising and promotional material distributed in connection with a game promotion to the public through the mail. Provides rulemaking authority. Revises and provides definitions. (See bill for details.)