

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" which 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~~\$25, 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 against an older
25 individual, the operator is guilty of a misdemeanor of the
26 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 against an older individual, the amount of the
6 civil penalty shall be not more than \$5,000 for each such
7 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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HOUSE 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. 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.

ADDITIONAL SPONSORS

Frankel, Levine, Hill, Spratt, Betancourt, Bloom, Boyd, Turnbull, Logan, Suarez, Sublette, Chestnut, Fiorentino, Hart, Stansel, Crist, Johnson, Prieguez, Waters, Valdes, Maygarden, Bainter, Wiles, Lacasa, Wallace, Sanderson, Wise, Fuller, Kyle, Crow, Cantens, Goodlette, Fasano, Argenziano, Murman, Gay, Posey, Merchant, Eggelletion, L. Miller, Cosgrove, Farkas, J. Miller, Kilmer and Littlefield