

By Senator Campbell

33-1084-01

See HB

1 A bill to be entitled
 2 An act relating to game promotions; amending s.
 3 849.094, F.S.; revising definitions; defining
 4 the term "older individual"; providing
 5 additional unlawful acts with respect to
 6 operators of game promotions in connection with
 7 the sale of consumer products or services;
 8 providing for required notices and disclosures;
 9 providing a time period for the keeping of
 10 certain required records by game operators;
 11 providing for rules; providing enhanced
 12 penalties for violations involving older
 13 individuals; authorizing the department to
 14 issue certain orders for violations; amending
 15 s. 721.111, F.S.; conforming a cross-reference;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 849.094, Florida Statutes, as
 21 amended by chapter 2000-258, Laws of Florida, is amended to
 22 read:

23 849.094 Game promotion in connection with sale of
 24 consumer products or services.--

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

26 (a) "Game promotion" means, but is not limited to, a
 27 contest, game of chance, sweepstakes, or gift enterprise,
 28 conducted within ~~or throughout~~ the state or offered to
 29 residents of this state for the purpose of selling, promoting,
 30 or advertising a consumer product or service being
 31 contemporaneously offered to the public ~~and other states in~~

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

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

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

17 (2) It is unlawful for any operator:

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

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

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

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

30 (c) To fail to award prizes offered; however, if
31 participation in the game promotion is by means of a game

1 piece from which the winner can determine that he or she has
2 won a designated prize, it is not unlawful under this section
3 to fail to award a prize having an announced value of less
4 than \$100 if the prize is unclaimed at the end of the game
5 promotion.

6 (d) To fail to award by alternative means those prizes
7 having an announced value of \$100 or greater which remain
8 unclaimed at the conclusion of the game promotion.

9 (e)~~(d)~~ To print, publish, or circulate literature or
10 advertising material used in connection with such game

11 promotions which is false, deceptive, or misleading. ~~or~~

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

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

23 (h) To fail to make clearly and conspicuously on any
24 envelope containing advertising and promotional material
25 distributed in connection with a game promotion to the public
26 by mail the following disclosures in 16-point type:

27 1. The statement: "This is a game promotion that
28 involves chance. You have not automatically won."

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

30 3. A toll-free number persons may call for answers to
31 questions they have about the game promotion.

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2 This paragraph does not apply to timeshare prizes and gift
3 promotional offers as defined in s. 721.111.

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

15 (3) The operator of a game promotion in which the
16 total announced value of the prizes offered is greater than
17 \$5,000 shall file with the Department of Agriculture and
18 Consumer Services a copy of the rules and regulations of the
19 game promotion, including a statement setting forth the
20 beginning and ending dates of the game promotion, and a list
21 of all prizes and prize categories offered at least 7 days
22 before the commencement of the game promotion. Such rules and
23 regulations may not thereafter be changed, modified, or
24 altered. The operator of a game promotion shall conspicuously
25 post the rules and regulations of such game promotion in each
26 and every retail outlet or place where such game promotion may
27 be played or participated in by the public and shall also
28 publish the rules and regulations in all game promotion
29 materials distributed to the public by mail in no less than
30 12-point type and in all advertising copy used in connection
31 therewith. Such rules and regulations must be made available

1 to the public upon request without charge.Radio and
2 television announcements and newsprint and magazine
3 advertisements may indicate that the rules and regulations are
4 available at retail outlets or from the operator of the
5 promotion. A nonrefundable filing fee of ~~\$200~~~~\$100~~ shall
6 accompany each filing and shall be deposited into the General
7 Inspection Trust Fund to be used to pay the costs incurred in
8 administering and enforcing the provisions of this section.
9 The filing or acceptance of any information or documents
10 pursuant to this section does not constitute a determination
11 of compliance or applicability of any provision set forth in
12 this section.

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

1 1. The moneys held in the trust account may be
2 withdrawn in order to pay the prizes offered only upon
3 certification to the Department of Agriculture and Consumer
4 Services of the name of the winner or winners and the amount
5 of the prize or prizes and the value thereof.

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

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

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

1 ~~of a game promotion may, at his or her option, publish the~~
2 ~~same 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~~
5 ~~Agriculture and Consumer Services a certified copy of the~~
6 ~~publication containing the information about the winners. The~~
7 ~~operator of a game promotion is not required to notify a~~
8 ~~winner by mail or by telephone when the winner is already in~~
9 ~~possession of a game card from which the winner can determine~~
10 ~~that he or she has won a designated prize. All winning entries~~
11 ~~shall be held by the operator for a period of 90 days after~~
12 ~~the close or completion of the game.~~

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

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

28 ~~(7)(8)(a)~~ The Department of Agriculture and Consumer
29 Services may adopt rules pursuant to ss. 120.536(1) and 120.54
30 to administer the provisions of this section shall have the
31 ~~power to promulgate such rules and regulations respecting the~~

1 ~~operation of game promotions as it may deem advisable.~~ The
2 department shall have the power to investigate all game
3 promotions for compliance with this section and the rules
4 promulgated hereunder.

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

14 ~~(8)(9)~~(a) Any person, firm, or corporation, or
15 association or agent or employee thereof, who engages in any
16 acts or practices stated in this section to be unlawful, or
17 who violates any of the rules and regulations made pursuant to
18 this section, is guilty of a misdemeanor of the second degree,
19 punishable as provided in s. 775.082 or s. 775.083. When such
20 unlawful acts or practices or rule violations are committed
21 against an older individual, the person is guilty of a
22 misdemeanor of the first degree, punishable as provided in s.
23 775.082 or s. 775.083.

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

1 Affairs. When such violation is committed against an older
2 individual, the amount of the civil penalty shall be no more
3 than \$5,000 for each such violation.

4 (c) The Department of Agriculture and Consumer
5 Services may enter an order imposing one or more of the
6 penalties set forth in paragraph (d) if the department finds
7 that person:

8 1. Violated or is operating in violation of any of the
9 provisions of this section or of the rules adopted or orders
10 issued hereunder;

11 2. Made a material false statement in any application,
12 document, or record required to be submitted or retained under
13 this section;

14 3. Refused or failed, after notice, to produce any
15 document or record or disclose any information required to be
16 produced or disclosed under this section or the rules of the
17 Department of Agriculture and Consumer Services;

18 4. Made a material false statement in response to any
19 request or investigation by the Department of Agriculture and
20 Consumer Services, the Department of Legal Affairs, or the
21 state attorney; or

22 5. Has intentionally defrauded the public through
23 dishonest or deceptive means.

24 (d) Upon a finding as set forth in paragraph (c), the
25 Department of Agriculture and Consumer Services may enter an
26 order doing one or more of the following:

27 1. Issuing a notice of noncompliance pursuant to s.
28 120.695.

29 2. Imposing an administrative fine not to exceed
30 \$5,000 per violation for each act that constitutes a violation
31 of this section or a rule or order.

1 3. Directing that a person cease and desist specified
2 activities.

3 4. Placing an operator on probation for a period of
4 time, subject to such conditions as the Department of
5 Agriculture and Consumer Services may specify.

6 (e) The administrative proceedings that could result
7 in the entry of an order imposing any of the penalties
8 specified in paragraph (b) shall be conducted in accordance
9 with chapter 120.

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

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

21 721.111 Prize and gift promotional offers.--

22 (2) A game promotion, such as a contest of chance,
23 gift enterprise, or sweepstakes, in which the elements of
24 chance and prize are present may not be used in connection
25 with the offering or sale of timeshare interests, except for
26 drawings, as that term is defined in s. 849.0935(1)(a), in
27 which no more than 10 prizes are promoted and in which all
28 promoted prizes are actually awarded. All such drawings must
29 meet all requirements of this chapter and of ss. 849.092 and
30 849.094(1), (2), and ~~(6)(7)~~.

31 Section 3. This act shall take effect October 1, 2001.

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LEGISLATIVE SUMMARY

Revises statutory requirements with respect to game promotions in connection with the sale of consumer goods or services. Provides enhanced penalties with respect to violations against older individuals. (See bill for details.)