



474154

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2009	.	
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The Committee on Regulated Industries (Dean) recommended the following:

Senate Amendment (with title amendment)

Between lines 2340 and 2341
insert:

Section 67. Section 849.094, Florida Statutes, is amended
to read:

849.094 Game promotion in connection with sale of consumer
products or services.—

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

(a) "Commencement of the game promotion" means the date the
game promotion begins as disclosed in the filing made to the



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12 department pursuant to s. 849.094(3).

13 (b) "Department" means the Department of Agriculture and
14 Consumer Services.

15 (c)~~(a)~~ "Game promotion" means, but is not limited to, a
16 contest, game of chance, or gift enterprise, conducted within or
17 throughout the state and other states in connection with the
18 sale of consumer products or services, and in which the elements
19 of chance and prize are present. However, "game promotion" shall
20 not be construed to apply to bingo games conducted pursuant to
21 s. 849.0931.

22 (d) "In connection with the sale of consumer products or
23 services" means the completion of a retail sales transaction
24 between a merchant or service provider and an end-use purchaser
25 of the product or service. Any required fee, charge, or payment
26 for an additional opportunity to participate in the game
27 promotion before or after the sale shall not be deemed in
28 connection with the sale of consumer products or services.

29 (e)~~(b)~~ "Operator" means any person, firm, corporation, or
30 association or agent or employee thereof who promotes, sponsors,
31 administers, operates, or conducts a game promotion,~~except any~~
32 ~~charitable nonprofit organization.~~

33 (2) It is unlawful for any operator:

34 (a) To design, engage in, promote, or conduct such a game
35 promotion, in connection with the promotion or sale of consumer
36 products or services, wherein the winner may be predetermined or
37 the game may be manipulated or rigged so as to:

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

40 2. Allocate a winning game or part thereof to a particular



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41 period of the game promotion or to a particular geographic area;

42 (b) Arbitrarily to remove, disqualify, disallow, or reject
43 any entry;

44 (c) To fail to award prizes offered;

45 (d) To print, publish, or circulate literature or
46 advertising material used in connection with such game
47 promotions which is false, deceptive, or misleading; or

48 (e) To require an entry fee, payment, or proof of purchase
49 as a condition of entering a game promotion.

50 (3) (a) Except as provided in paragraph (11)(c), the
51 operator of a game promotion in which the total announced value
52 of the prizes offered is greater than \$5,000 shall file with the
53 department of ~~Agriculture and Consumer Services~~ a copy of the
54 rules and regulations of the game promotion and a list of all
55 prizes and prize categories offered at least 7 days before the
56 commencement of the game promotion. Such rules and regulations
57 may not thereafter be changed, modified, or altered. The
58 operator of a game promotion shall conspicuously post the rules
59 and regulations of such game promotion in each and every retail
60 outlet or place where such game promotion may be played or
61 participated in by the public and shall also publish the rules
62 and regulations in all advertising copy used in connection
63 therewith. However, such advertising copy need only include the
64 material terms of the rules and regulations if the advertising
65 copy includes a website address, a toll-free telephone number,
66 or a mailing address where the full rules and regulations may be
67 viewed, heard, or obtained for the full duration of the game
68 promotion. Such disclosures must be legible. Radio and
69 television announcements may indicate that the rules and



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70 regulations are available at retail outlets or from the operator
71 of the promotion. A nonrefundable filing fee of \$100 shall
72 accompany each filing and shall be used to pay the costs
73 incurred in administering and enforcing the provisions of this
74 section. The department may not accept a filing from any
75 operator, person, firm, corporation, association, agent, or
76 employee against whom there has been a criminal or civil
77 adjudication, or who has not satisfied a civil fine, for any
78 violation of this section.

79 (b) Each operator of an electronic game promotion shall
80 file with the department a certification by an independent
81 testing laboratory that such electronic game promotion contains
82 a finite number of entries at least 7 days before the
83 commencement of the game promotion.

84 (4) (a) Except as provided in paragraph (11) (c), every
85 operator of ~~such~~ a game promotion in which the total announced
86 value of the prizes offered is greater than \$5,000 shall
87 establish a trust account, in a national or state-chartered
88 financial institution, with a balance equal to ~~sufficient to pay~~
89 ~~or purchase~~ the total value of all prizes offered. On a form
90 supplied by the department ~~of Agriculture and Consumer Services,~~
91 an official of the financial institution holding the trust
92 account shall set forth the account number and the dollar amount
93 of the trust account, the identity of the entity or individual
94 establishing the trust account, and the name of the game
95 promotion for which the trust account has been established. Such
96 form shall be filed with the department ~~of Agriculture and~~
97 ~~Consumer Services~~ at least 7 days in advance of the commencement
98 of the game promotion. In lieu of establishing such trust



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99 account, the operator may obtain a surety bond from a surety
100 authorized to do business in this state in an amount equivalent
101 to the total value of all prizes offered; and such bond shall be
102 filed with the department ~~of Agriculture and Consumer Services~~
103 at least 7 days in advance of the commencement of the game
104 promotion.

105 1. The moneys held in the trust account may be withdrawn in
106 order to pay the prizes offered only upon written approval by
107 certification to the department. This approval shall be provided
108 only after the operator certifies to the department of
109 ~~Agriculture and Consumer Services~~ of the name and address of
110 each the winner, or winners and the amount of the prize or
111 prizes to be awarded, and the value of each prize thereof.

112 2. If the operator of a game promotion has obtained a
113 surety bond in lieu of establishing a trust account, the amount
114 of the surety bond shall equal at all times the total amount of
115 the prizes offered. The bond shall be in favor of the department
116 for the use and benefit of any consumer who qualifies for the
117 award of a prize under the rules and regulations of the game
118 promotion but who does not receive the prize awarded. Such bond
119 shall be applicable and liable for payment of the claims duly
120 adjudicated by order of the department. The proceedings to
121 adjudicate such claims shall be conducted in accordance with ss.
122 120.569 and 120.57.

123 (b) The department ~~of Agriculture and Consumer Services~~ may
124 waive the provisions of this subsection for any operator who has
125 conducted game promotions in the state for not less than 5
126 consecutive years and who has not had any civil, criminal, or
127 administrative action instituted against him or her by the state



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128 or an agency of the state for violation of this section within
129 that 5-year period. Such waiver may be revoked upon the
130 commission of a violation of this section by such operator, as
131 determined by the department ~~of Agriculture and Consumer~~
132 ~~Services~~.

133 (5) Except as provided in paragraph (11)(c), every operator
134 of a game promotion in which the total announced value of the
135 prizes offered is greater than \$5,000 shall provide the
136 department ~~of Agriculture and Consumer Services~~ with a certified
137 list of the names and addresses of all persons, whether from
138 this state or from another state, who have won prizes that ~~which~~
139 have a value of more than \$25, the value of such prizes, and the
140 dates when the prizes were won within 60 days after such winners
141 have been finally determined. The date for the final
142 determination of winners shall be 60 days after the ending date
143 of the game promotion disclosed in the original filing under
144 subsection (3). The operator shall provide a copy of the list of
145 winners, without charge, to any person who requests it. In lieu
146 of the foregoing, the operator of a game promotion may, at his
147 or her option, publish the same information about the winners in
148 a Florida newspaper of general circulation within 60 days after
149 such winners have been determined and shall provide to the
150 department ~~of Agriculture and Consumer Services~~ a certified copy
151 of the publication containing the information about the winners.
152 The operator of a game promotion is not required to notify a
153 winner by mail or by telephone when the winner is already in
154 possession of a game card from which the winner can determine
155 that he or she has won a designated prize. All winning entries
156 shall be held by the operator for a period of 90 days after the



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157 close or completion of the game.

158 (6) The department of ~~Agriculture and Consumer Services~~
159 shall keep the certified list of winners for a period of at
160 least 6 months after receipt of the certified list. The
161 department thereafter may dispose of all records and lists.

162 (7) No operator shall force, directly or indirectly, a
163 lessee, agent, or franchise dealer to purchase or participate in
164 any game promotion. For the purpose of this section, coercion or
165 force shall be presumed in these circumstances in which a course
166 of business extending over a period of 1 year or longer is
167 materially changed coincident with a failure or refusal of a
168 lessee, agent, or franchise dealer to participate in such game
169 promotions. Such force or coercion shall further be presumed
170 when an operator advertises generally that game promotions are
171 available at its lessee dealers or agent dealers.

172 (8) (a) The department of ~~Agriculture and Consumer Services~~
173 shall have the power to adopt ~~promulgate~~ such rules and
174 regulations respecting the operation of game promotions as it
175 may deem advisable.

176 (b) Whenever the department of ~~Agriculture and Consumer~~
177 ~~Services~~ or the Department of Legal Affairs has reason to
178 believe that a game promotion is being operated in violation of
179 this section, it may bring an action in the circuit court of any
180 judicial circuit in which the game promotion is being operated
181 in the name and on behalf of the people of the state against any
182 operator thereof to enjoin the continued operation of such game
183 promotion anywhere within the state.

184 (9) (a) Any person, firm, or corporation, or association or
185 agent or employee thereof, who engages in any acts or practices



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186 stated in this section to be unlawful, or who violates any of
187 the rules and regulations made pursuant to this section, is
188 guilty of a misdemeanor of the second degree, punishable as
189 provided in s. 775.082 or s. 775.083.

190 (b) Any person, firm, corporation, association, agent, or
191 employee who violates any provision of this section or any of
192 the rules and regulations made pursuant to this section shall be
193 liable for a civil penalty of not more than \$1,000 for each such
194 violation, which shall accrue to the state and may be recovered
195 in a civil action brought by the department ~~of Agriculture and~~
196 ~~Consumer Services~~ or the Department of Legal Affairs.

197 (10) This section does not apply to actions or transactions
198 regulated by the Department of Business and Professional
199 Regulation ~~or to the activities of nonprofit organizations or to~~
200 ~~any other organization engaged in any enterprise other than the~~
201 ~~sale of consumer products or services.~~ Subsections (3), (4),
202 (5), (6), and (7) and paragraph (8) (a) and any of the rules made
203 pursuant thereto do not apply to television or radio
204 broadcasting companies licensed by the Federal Communications
205 Commission.

206 (11) (a) The provisions of s. 551.102(8), s. 849.09, s.
207 849.15, or s. 849.16 do not prohibit the use of electronic
208 devices or computer terminals that have video display monitors
209 to conduct or display the results of a game promotion otherwise
210 permitted by this section.

211 (b) Each electronic device or computer terminal that has a
212 video display monitor provided by the operator for consumers to
213 participate in a game promotion shall be considered a separate
214 game promotion for purposes of the section. Its physical



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215 location shall be stated in the filing specified in subsection
216 (3), and a separate nonrefundable filing fee shall be paid for
217 each device or terminal.

218 (c) The operator of a game promotion that uses an
219 electronic device or computer terminal having a video display
220 monitor provided by the operator for use by consumers shall
221 comply with all requirements of subsections (3), (4), and (5)
222 regardless of the total announced value of the prizes offered.

223
224 ===== T I T L E A M E N D M E N T =====

225 And the title is amended as follows:

226 Delete line 216

227 and insert:

228 Licensing; amending s. 849.094, F.S.; providing and
229 revising definitions; prohibiting the Department of
230 Agriculture and Consumer Services from accepting a
231 filing of a copy of the rules, prizes, and regulations
232 of a game promotion from certain persons,
233 corporations, or associations; requiring an operator
234 of a game promotion to file a certification from an
235 independent testing laboratory to the department;
236 requiring an operator of certain game promotions to
237 establish a trust account with a balance equal to the
238 total value of all prizes offered; requiring the
239 official of the financial institution holding the
240 trust account to set forth the account number of the
241 trust account; authorizing the operator to obtain a
242 surety bond from a surety authorized to do business in
243 this state; providing that the moneys held in the



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244 trust account may be withdrawn only upon written
245 approval by the department; requiring the operator to
246 certify certain information to the department;
247 providing requirements for a surety bond obtained in
248 lieu of establishing a trust account; providing a date
249 for the final determination of winners after the
250 ending date of a game promotion; deleting the
251 provision that exempts the activities of nonprofit
252 organizations from the requirements of operating a
253 game promotion; providing that certain statutory
254 provisions do not prohibit the use of certain
255 electronic devices or computer terminals to conduct or
256 display the results of a game promotion; providing
257 that each specified electronic device or computer
258 terminal is a separate game promotion; requiring a
259 separate filing fee for each device or terminal;
260 requiring an operator of a game promotion that uses
261 certain electronic devices or computer terminals to
262 comply with certain requirements; repealing ss.
263 570.071 and 570.901, F.S.,