

1                   A bill to be entitled  
2           An act relating to game promotions; amending s. 849.094,  
3           F.S.; providing and revising definitions; prohibiting the  
4           Department of Agriculture and Consumer Services from  
5           accepting a filing of a copy of the rules, prizes, prize  
6           categories, and regulations of a game promotion from  
7           certain persons, firms, corporations, or associations;  
8           requiring an operator of an electronic game promotion to  
9           file with the department a certification from an  
10          independent testing laboratory; requiring an operator of  
11          certain game promotions to establish a trust account with  
12          a balance equal to the total value of all prizes offered;  
13          requiring the official of the financial institution  
14          holding the trust account to set forth the account number  
15          of the trust account; authorizing the operator to obtain a  
16          surety bond from a surety authorized to do business in  
17          this state; providing that the moneys held in the trust  
18          account may be withdrawn only upon written approval by the  
19          department; requiring the operator to certify certain  
20          information to the department; providing requirements for  
21          a surety bond obtained in lieu of establishing a trust  
22          account; providing a date for the final determination of  
23          winners; deleting a provision that exempts the activities  
24          of nonprofit organizations and organizations engaged in  
25          enterprises other than the sale of consumer products or  
26          services from the requirements of operating a game  
27          promotion; providing that certain statutory provisions do  
28          not prohibit the use of certain electronic devices or

29 computer terminals to conduct or display the results of a  
 30 game promotion; providing that each specified electronic  
 31 device or computer terminal is a separate game promotion;  
 32 requiring a statement of physical location and a separate  
 33 filing fee for each device or terminal; requiring an  
 34 operator of a game promotion that uses certain electronic  
 35 devices or computer terminals to comply with certain  
 36 requirements; providing an effective date.

37  
 38 Be It Enacted by the Legislature of the State of Florida:

39  
 40 Section 1. Section 849.094, Florida Statutes, is amended  
 41 to read:

42 849.094 Game promotion in connection with sale of consumer  
 43 products or services.—

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

45 (a) "Commencement of the game promotion" means the date  
 46 the game promotion begins as disclosed in the filing made to the  
 47 department pursuant to subsection (3).

48 (b) "Department" means the Department of Agriculture and  
 49 Consumer Services.

50 (c) (a) "Game promotion" includes means, but is not limited  
 51 to, a contest, game of chance, or gift enterprise, conducted  
 52 within or throughout the state and other states in connection  
 53 with the sale of consumer products or services, and in which the  
 54 elements of chance and prize are present. The term does ~~However,~~  
 55 ~~"game promotion" shall not include be construed to apply to~~  
 56 bingo games conducted pursuant to s. 849.0931.

57 (d) ~~(b)~~ "Operator" means any person, firm, corporation, or  
 58 association, or any agent or employee thereof, who promotes,  
 59 sponsors, administers, operates, or conducts a game promotion,  
 60 ~~except any charitable nonprofit organization.~~

61 (e) "Sale of consumer products or services" means the  
 62 completion of a retail sales transaction between a merchant or  
 63 service provider and an end-use purchaser of the product or  
 64 service. The term does not include any required fee, charge, or  
 65 payment for an additional opportunity to participate in the game  
 66 promotion before or after the sale.

67 (2) It is unlawful for any operator:

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

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

74 2. Allocate a winning game or part thereof to a particular  
 75 period of the game promotion or to a particular geographic area;

76 (b) Arbitrarily to remove, disqualify, disallow, or reject  
 77 any entry;

78 (c) To fail to award prizes offered;

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

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

84 (3) (a) Except as provided in paragraph (11)(c), the

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85 operator of a game promotion in which the total announced value  
86 of the prizes offered is greater than \$5,000 shall file with the  
87 department ~~of Agriculture and Consumer Services~~ a copy of the  
88 rules and regulations of the game promotion and a list of all  
89 prizes and prize categories offered at least 7 days before the  
90 commencement of the game promotion. Such rules and regulations  
91 may not thereafter be changed, modified, or altered. The  
92 operator of a game promotion shall conspicuously post the rules  
93 and regulations of such game promotion in each and every retail  
94 outlet or place where such game promotion may be played or  
95 participated in by the public and shall also publish the rules  
96 and regulations in all advertising copy used in connection  
97 therewith. However, such advertising copy need only include the  
98 material terms of the rules and regulations if the advertising  
99 copy includes a website address, a toll-free telephone number,  
100 or a mailing address where the full rules and regulations may be  
101 viewed, heard, or obtained for the full duration of the game  
102 promotion. Such disclosures must be legible. Radio and  
103 television announcements may indicate that the rules and  
104 regulations are available at retail outlets or from the operator  
105 of the promotion. A nonrefundable filing fee of \$100 shall  
106 accompany each filing and shall be used to pay the costs  
107 incurred in administering and enforcing the provisions of this  
108 section. The department may not accept a filing from any  
109 operator, person, firm, corporation, or association, or any  
110 agent or employee thereof, against whom there has been a  
111 criminal or civil adjudication, or who has not satisfied a civil  
112 fine, for any violation of this section.

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113        (b) Each operator of an electronic game promotion, at  
114 least 7 days before commencement of the game promotion, shall  
115 file with the department a certification by an independent  
116 testing laboratory that such electronic game promotion contains  
117 a finite number of entries.

118        (4) (a) Except as provided in paragraph (11) (c), every  
119 operator of ~~such~~ a game promotion in which the total announced  
120 value of the prizes offered is greater than \$5,000 shall  
121 establish a trust account, in a national or state-chartered  
122 financial institution, with a balance equal to ~~sufficient to pay~~  
123 ~~or purchase~~ the total value of all prizes offered. On a form  
124 supplied by the department ~~of Agriculture and Consumer Services,~~  
125 an official of the financial institution holding the trust  
126 account shall set forth the account number and the dollar amount  
127 of the trust account, the identity of the entity or individual  
128 establishing the trust account, and the name of the game  
129 promotion for which the trust account has been established. Such  
130 form shall be filed with the department ~~of Agriculture and~~  
131 ~~Consumer Services~~ at least 7 days in advance of the commencement  
132 of the game promotion. In lieu of establishing such trust  
133 account, the operator may obtain a surety bond from a surety  
134 authorized to do business in this state in an amount equivalent  
135 to the total value of all prizes offered; and such bond shall be  
136 filed with the department ~~of Agriculture and Consumer Services~~  
137 at least 7 days in advance of the commencement of the game  
138 promotion.

139        1. The moneys held in the trust account may be withdrawn  
140 in order to pay the prizes offered only upon written approval by

141 ~~certification to the department.~~ This approval shall be provided  
 142 only after the operator certifies to the department of  
 143 ~~Agriculture and Consumer Services~~ of the name and address of  
 144 each the winner, or winners and the amount of the prize or  
 145 prizes to be awarded, and the value of each prize thereof.

146 2. If the operator of a game promotion has obtained a  
 147 surety bond in lieu of establishing a trust account, the amount  
 148 of the surety bond shall equal at all times the total amount of  
 149 the prizes offered. The bond shall be in favor of the department  
 150 for the use and benefit of any consumer who qualifies for the  
 151 award of a prize under the rules and regulations of the game  
 152 promotion but who is not awarded the prize. Such bond shall be  
 153 applicable and liable for payment of the claims duly adjudicated  
 154 by order of the department. The proceedings to adjudicate such  
 155 claims shall be conducted in accordance with ss. 120.569 and  
 156 120.57.

157 (b) The department ~~of Agriculture and Consumer Services~~  
 158 may waive the provisions of this subsection for any operator who  
 159 has conducted game promotions in the state for not less than 5  
 160 consecutive years and who has not had any civil, criminal, or  
 161 administrative action instituted against him or her by the state  
 162 or an agency of the state for violation of this section within  
 163 that 5-year period. Such waiver may be revoked upon the  
 164 commission of a violation of this section by such operator, as  
 165 determined by the department ~~of Agriculture and Consumer~~  
 166 ~~Services.~~

167 (5) Except as provided in paragraph (11) (c), every  
 168 operator of a game promotion in which the total announced value

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169 of the prizes offered is greater than \$5,000 shall provide the  
170 department ~~of Agriculture and Consumer Services~~ with a certified  
171 list of the names and addresses of all persons, whether from  
172 this state or from another state, who have won prizes that ~~which~~  
173 have a value of more than \$25, the value of such prizes, and the  
174 dates when the prizes were won within 60 days after such winners  
175 have been finally determined. The date for the final  
176 determination of winners shall be 60 days after the ending date  
177 of the game promotion disclosed in the original filing under  
178 subsection (3). The operator shall provide a copy of the list of  
179 winners, without charge, to any person who requests it. In lieu  
180 of the foregoing, the operator of a game promotion may, at his  
181 or her option, publish the same information about the winners in  
182 a Florida newspaper of general circulation within 60 days after  
183 such winners have been determined and shall provide to the  
184 department ~~of Agriculture and Consumer Services~~ a certified copy  
185 of the publication containing the information about the winners.  
186 The operator of a game promotion is not required to notify a  
187 winner by mail or by telephone when the winner is already in  
188 possession of a game card from which the winner can determine  
189 that he or she has won a designated prize. All winning entries  
190 shall be held by the operator for a period of 90 days after the  
191 close or completion of the game.

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

196 (7) No operator shall force, directly or indirectly, a

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197 lessee, agent, or franchise dealer to purchase or participate in  
198 any game promotion. For the purpose of this section, coercion or  
199 force shall be presumed in these circumstances in which a course  
200 of business extending over a period of 1 year or longer is  
201 materially changed coincident with a failure or refusal of a  
202 lessee, agent, or franchise dealer to participate in such game  
203 promotions. Such force or coercion shall further be presumed  
204 when an operator advertises generally that game promotions are  
205 available at its lessee dealers or agent dealers.

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

210 (b) Whenever the department ~~of Agriculture and Consumer~~  
211 ~~Services~~ or the Department of Legal Affairs has reason to  
212 believe that a game promotion is being operated in violation of  
213 this section, it may bring an action in the circuit court of any  
214 judicial circuit in which the game promotion is being operated  
215 in the name and on behalf of the people of the state against any  
216 operator thereof to enjoin the continued operation of such game  
217 promotion anywhere within the state.

218 (9) (a) Any person, firm, or corporation, or association or  
219 agent or employee thereof, who engages in any acts or practices  
220 stated in this section to be unlawful, or who violates any of  
221 the rules and regulations made pursuant to this section, is  
222 guilty of a misdemeanor of the second degree, punishable as  
223 provided in s. 775.082 or s. 775.083.

224 (b) Any person, firm, corporation, association, agent, or

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225 employee who violates any provision of this section or any of  
226 the rules and regulations made pursuant to this section shall be  
227 liable for a civil penalty of not more than \$1,000 for each such  
228 violation, which shall accrue to the state and may be recovered  
229 in a civil action brought by the department ~~of Agriculture and~~  
230 ~~Consumer Services~~ or the Department of Legal Affairs.

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

240 (11)(a) The provisions of ss. 551.102(8), 849.09, 849.15,  
241 and 849.16 do not prohibit the use of electronic devices or  
242 computer terminals that have video display monitors to conduct  
243 or display the results of a game promotion otherwise permitted  
244 by this section.

245 (b) Each electronic device or computer terminal that has a  
246 video display monitor provided by the operator for consumers to  
247 participate in a game promotion is considered a separate game  
248 promotion for purposes of this section. Each electronic device's  
249 or computer terminal's physical location must be stated in the  
250 filing specified in subsection (3), and a separate nonrefundable  
251 filing fee shall be paid for each device or terminal.

252 (c) The operator of a game promotion that uses an

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253 | electronic device or computer terminal having a video display  
254 | monitor provided by the operator for use by consumers shall  
255 | comply with all requirements of subsections (3), (4), and (5)  
256 | regardless of the total announced value of the prizes offered.

257 | Section 2. This act shall take effect July 1, 2010.