

By Senator Fasano

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1                   A bill to be entitled  
2           An act relating to game promotions; amending s.  
3           849.094, F.S.; requiring operators of certain  
4           electronic-based game promotions to comply with  
5           specified requirements governing game promotions;  
6           providing an effective date.

7  
8 Be It Enacted by the Legislature of the State of Florida:

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10           Section 1. Section 849.094, Florida Statutes, is amended to  
11 read:

12           849.094 Game promotion in connection with sale of consumer  
13 products or services.—

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

15           (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           (b) "Operator" means any person, firm, corporation, or  
23 association or agent or employee thereof who promotes, operates,  
24 or conducts a game promotion, except any charitable nonprofit  
25 organization.

26           (2) It is unlawful for any operator:

27           (a) To design, engage in, promote, or conduct such a game  
28 promotion, in connection with the promotion or sale of consumer  
29 products or services, wherein the winner may be predetermined or

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30 the game may be manipulated or rigged so as to:

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

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

35 (b) Arbitrarily to remove, disqualify, disallow, or reject  
36 any entry;

37 (c) To fail to award prizes offered;

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

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

43 (3) The operator of a game promotion in which the total  
44 announced value of the prizes offered is greater than \$5,000  
45 shall file with the Department of Agriculture and Consumer  
46 Services a copy of the rules and regulations of the game  
47 promotion and a list of all prizes and prize categories offered  
48 at least 7 days before the commencement of the game promotion.  
49 Such rules and regulations may not thereafter be changed,  
50 modified, or altered. The operator of a game promotion shall  
51 conspicuously post the rules and regulations of such game  
52 promotion in each and every retail outlet or place where such  
53 game promotion may be played or participated in by the public  
54 and shall also publish the rules and regulations in all  
55 advertising copy used in connection therewith. However, such  
56 advertising copy need only include the material terms of the  
57 rules and regulations if the advertising copy includes a website  
58 address, a toll-free telephone number, or a mailing address

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59 where the full rules and regulations may be viewed, heard, or  
60 obtained for the full duration of the game promotion. Such  
61 disclosures must be legible. Radio and television announcements  
62 may indicate that the rules and regulations are available at  
63 retail outlets or from the operator of the promotion. A  
64 nonrefundable filing fee of \$100 shall accompany each filing and  
65 shall be used to pay the costs incurred in administering and  
66 enforcing the provisions of this section.

67 (4) (a) Every operator of such a game promotion in which the  
68 total announced value of the prizes offered is greater than  
69 \$5,000 shall establish a trust account, in a national or state-  
70 chartered financial institution, with a balance sufficient to  
71 pay or purchase the total value of all prizes offered. On a form  
72 supplied by the Department of Agriculture and Consumer Services,  
73 an official of the financial institution holding the trust  
74 account shall set forth the dollar amount of the trust account,  
75 the identity of the entity or individual establishing the trust  
76 account, and the name of the game promotion for which the trust  
77 account has been established. Such form shall be filed with the  
78 Department of Agriculture and Consumer Services at least 7 days  
79 in advance of the commencement of the game promotion. In lieu of  
80 establishing such trust account, the operator may obtain a  
81 surety bond in an amount equivalent to the total value of all  
82 prizes offered; and such bond shall be filed with the Department  
83 of Agriculture and Consumer Services at least 7 days in advance  
84 of the commencement of the game promotion.

85 1. The moneys held in the trust account may be withdrawn in  
86 order to pay the prizes offered only upon certification to the  
87 Department of Agriculture and Consumer Services of the name of

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88 the winner or winners and the amount of the prize or prizes and  
89 the value thereof.

90 2. If the operator of a game promotion has obtained a  
91 surety bond in lieu of establishing a trust account, the amount  
92 of the surety bond shall equal at all times the total amount of  
93 the prizes offered.

94 (b) The Department of Agriculture and Consumer Services may  
95 waive the provisions of this subsection for any operator who has  
96 conducted game promotions in the state for not less than 5  
97 consecutive years and who has not had any civil, criminal, or  
98 administrative action instituted against him or her by the state  
99 or an agency of the state for violation of this section within  
100 that 5-year period. Such waiver may be revoked upon the  
101 commission of a violation of this section by such operator, as  
102 determined by the Department of Agriculture and Consumer  
103 Services.

104 (5) Every operator of a game promotion in which the total  
105 announced value of the prizes offered is greater than \$5,000  
106 shall provide the Department of Agriculture and Consumer  
107 Services with a certified list of the names and addresses of all  
108 persons, whether from this state or from another state, who have  
109 won prizes which have a value of more than \$25, the value of  
110 such prizes, and the dates when the prizes were won within 60  
111 days after such winners have been finally determined. The  
112 operator shall provide a copy of the list of winners, without  
113 charge, to any person who requests it. In lieu of the foregoing,  
114 the operator of a game promotion may, at his or her option,  
115 publish the same information about the winners in a Florida  
116 newspaper of general circulation within 60 days after such

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117 winners have been determined and shall provide to the Department  
118 of Agriculture and Consumer Services a certified copy of the  
119 publication containing the information about the winners. The  
120 operator of a game promotion is not required to notify a winner  
121 by mail or by telephone when the winner is already in possession  
122 of a game card from which the winner can determine that he or  
123 she has won a designated prize. All winning entries shall be  
124 held by the operator for a period of 90 days after the close or  
125 completion of the game.

126 (6) The Department of Agriculture and Consumer Services  
127 shall keep the certified list of winners for a period of at  
128 least 6 months after receipt of the certified list. The  
129 department thereafter may dispose of all records and lists.

130 (7) No operator shall force, directly or indirectly, a  
131 lessee, agent, or franchise dealer to purchase or participate in  
132 any game promotion. For the purpose of this section, coercion or  
133 force shall be presumed in these circumstances in which a course  
134 of business extending over a period of 1 year or longer is  
135 materially changed coincident with a failure or refusal of a  
136 lessee, agent, or franchise dealer to participate in such game  
137 promotions. Such force or coercion shall further be presumed  
138 when an operator advertises generally that game promotions are  
139 available at its lessee dealers or agent dealers.

140 (8) (a) The Department of Agriculture and Consumer Services  
141 shall have the power to promulgate such rules and regulations  
142 respecting the operation of game promotions as it may deem  
143 advisable.

144 (b) Whenever the Department of Agriculture and Consumer  
145 Services or the Department of Legal Affairs has reason to

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146 believe that a game promotion is being operated in violation of  
147 this section, it may bring an action in the circuit court of any  
148 judicial circuit in which the game promotion is being operated  
149 in the name and on behalf of the people of the state against any  
150 operator thereof to enjoin the continued operation of such game  
151 promotion anywhere within the state.

152 (9) (a) Any person, firm, or corporation, or association or  
153 agent or employee thereof, who engages in any acts or practices  
154 stated in this section to be unlawful, or who violates any of  
155 the rules and regulations made pursuant to this section, is  
156 guilty of a misdemeanor of the second degree, punishable as  
157 provided in s. 775.082 or s. 775.083.

158 (b) Any person, firm, corporation, association, agent, or  
159 employee who violates any provision of this section or any of  
160 the rules and regulations made pursuant to this section shall be  
161 liable for a civil penalty of not more than \$1,000 for each such  
162 violation, which shall accrue to the state and may be recovered  
163 in a civil action brought by the Department of Agriculture and  
164 Consumer Services or the Department of Legal Affairs.

165 (10) This section does not apply to actions or transactions  
166 regulated by the Department of Business and Professional  
167 Regulation or to the activities of nonprofit organizations or to  
168 any other organization engaged in any enterprise other than the  
169 sale of consumer products or services. Subsections (3), (4),  
170 (5), (6), and (7) and paragraph (8) (a) and any of the rules made  
171 pursuant thereto do not apply to television or radio  
172 broadcasting companies licensed by the Federal Communications  
173 Commission.

174 (11) Each operator of an electronic-based game promotion

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175 that offers prizes having an announced value greater than \$1  
176 must comply with subsections (3), (4), (5), and (7) and with  
177 rules adopted by the department under paragraph (8) (a).

178 Section 2. This act shall take effect July 1, 2011.