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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
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The Committee on Regulated Industries (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete lines 37 - 273

and insert:

Section 1. 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) "Department" means the Department of Agriculture and Consumer Services.

(b) ~~(a)~~ "Game promotion" means, but is not limited to, a



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13 contest, game of chance, or gift enterprise, conducted within or
14 throughout the state and other states in connection with the
15 sale of consumer products or services, and in which the elements
16 of chance and prize are present. However, the term does ~~"game~~
17 ~~promotion"~~ shall not be construed to apply to bingo games
18 conducted pursuant to s. 849.0931.

19 (c) ~~(b)~~ "Operator" means any person, firm, corporation, or
20 association or agent or employee thereof who ~~promotes, operates,~~
21 or conducts a game promotion to promote the sale of its consumer
22 products or services, except any charitable nonprofit
23 organization.

24 (2) It is unlawful for any operator:

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

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

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

33 (b) Arbitrarily to remove, disqualify, disallow, or reject
34 any entry;

35 (c) To fail to award any prizes offered;

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

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

41 (3) (a) The operator of a game promotion in which the total



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42 announced value of the prizes offered is greater than \$5,000
43 shall file with the department ~~of Agriculture and Consumer~~
44 ~~Services~~ a copy of the rules and regulations of the game
45 promotion and a list of all prizes and prize categories offered
46 at least 7 days before the commencement of the game promotion.

47 (b) Each operator of a game promotion who provides
48 electronic devices or computer terminals with video display
49 monitors that reveal or display the results of a game promotion
50 must file with the department at least 7 days before
51 commencement of the game promotion a copy of the rules and
52 regulations of the game promotion and a list of all prizes and
53 prize categories offered. The filing must include the physical
54 location of each electronic device or computer terminal and a
55 separate terminal fee pursuant to paragraph (11)(d) for each
56 electronic device or computer terminal that is a component of
57 the game promotion.

58 (c) Once filed, the ~~Such~~ rules and regulations may not
59 ~~thereafter~~ be changed, modified, or altered. The operator of a
60 game promotion shall conspicuously post the rules and
61 regulations of such game promotion in each ~~and every~~ retail
62 outlet or place where such game promotion is ~~may be~~ played or
63 participated in by the public and shall also publish the rules
64 and regulations in all advertising copy used in connection with
65 the game promotion ~~therewith~~. However, the ~~such~~ advertising copy
66 need ~~only~~ include only the material terms of the rules and
67 regulations if the advertising copy includes a website address,
68 a toll-free telephone number, or a mailing address where the
69 full rules and regulations may be viewed, heard, or obtained for
70 the full duration of the game promotion. The ~~Such~~ disclosures



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71 must be legible. Radio and television announcements may indicate
72 that the rules and regulations are available at retail outlets
73 or from the operator of the promotion.

74 (d) A nonrefundable filing fee of \$100 must ~~shall~~ accompany
75 each filing and must ~~shall~~ be used to pay the costs incurred in
76 administering and enforcing the provisions of this section.

77 (e) The department may not accept a filing from any
78 operator, person, firm, corporation, association, agent, or
79 employee who has been found guilty of or entered a plea of nolo
80 contendere to, regardless of adjudication, or who fails to
81 satisfy a judgment for, a violation of this section.

82 (4) (a) Each ~~Every~~ operator of ~~such~~ a game promotion in
83 which the total announced value of the prizes offered is greater
84 than \$5,000 shall establish a trust account, in a national or
85 state-chartered financial institution, with a balance equal to
86 ~~sufficient to pay or purchase~~ the total value of all prizes
87 offered. On a form supplied by the department ~~of Agriculture and~~
88 ~~Consumer Services~~, an official of the financial institution
89 holding the trust account shall provide ~~set forth~~ the account
90 number and dollar amount of the trust account, the identity of
91 the entity or individual establishing the trust account, and the
92 name of the game promotion for which the trust account has been
93 established. The ~~Such~~ form must ~~shall~~ be filed with the
94 department ~~of Agriculture and Consumer Services~~ at least 7 days
95 before ~~in advance of~~ the commencement of the game promotion. In
96 lieu of establishing a ~~such~~ trust account, the operator may
97 obtain a surety bond from a surety authorized to do business in
98 this state in an amount equal ~~equivalent~~ to the total value of
99 all prizes offered in the promotion. ~~The; and such~~ bond must



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100 ~~shall~~ be filed with the department of ~~Agriculture and Consumer~~
101 ~~Services~~ at least 7 days before ~~in advance~~ of the commencement
102 of the game promotion. Each operator of a game promotion who
103 provides electronic devices or computer terminals with video
104 display monitors that reveal or display the results of a game
105 promotion must obtain a surety bond in an amount equal to the
106 total value of all prizes offered, and the bond must be filed
107 with the department at least 7 days before the commencement of
108 the game promotion.

109 1. The moneys held in the trust account may be withdrawn in
110 order to pay the prizes offered only upon certification to the
111 department of ~~Agriculture and Consumer Services~~ of the name of
112 the winner ~~or winners~~ and the amount and value of the prize ~~or~~
113 ~~prizes and the value thereof.~~

114 2. If the operator of a game promotion obtains ~~has obtained~~
115 a surety bond in lieu of establishing a trust account, the
116 amount of the surety bond shall equal at all times the total
117 amount of the prizes offered. The bond must be in favor of the
118 department for the use and benefit of any consumer who qualifies
119 for the award of a prize under the rules and regulations of the
120 game promotion but who does not receive the prize awarded, and
121 must be in effect until 30 days after filing the list of winners
122 pursuant to subsection (5). The bond must be applicable and
123 liable only for the payment of the claims duly adjudicated by
124 order of the department. The proceedings to adjudicate the claim
125 must be conducted in accordance with ss. 120.569 and 120.57.

126 (b) The department of ~~Agriculture and Consumer Services~~ may
127 waive the provisions of this subsection for any operator who has
128 conducted game promotions in the state for ~~not less than 5 or~~



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129 more consecutive years and who has not had any civil, criminal,
130 or administrative action instituted against him or her by the
131 state or an agency of the state for violation of this section
132 within that 5-year period. The department may revoke a waiver if
133 it finds that an operator committed a violation of this section.
134 ~~Such waiver may be revoked upon the commission of a violation of~~
135 ~~this section by such operator, as determined by the Department~~
136 ~~of Agriculture and Consumer Services.~~

137 (5) Each ~~Every~~ operator of a game promotion in which the
138 total announced value of the prizes offered is greater than
139 \$5,000 shall provide the department ~~of Agriculture and Consumer~~
140 ~~Services~~ with a certified list of the names and addresses of all
141 persons, whether from this state or from another state, who have
142 won prizes that ~~which~~ have a value of more than \$25, the value
143 of the ~~such~~ prizes, and the dates when the prizes were won
144 within 60 days after the ~~such~~ winners are ~~have been finally~~
145 ~~determined.~~ The date for the final determination of winners must
146 be 60 days after the ending date of the game promotion stated in
147 the original filing required in subsection (3). The operator
148 shall provide a copy of the list of winners, without charge, to
149 any person who requests it or shall. ~~In lieu of the foregoing,~~
150 ~~the operator of a game promotion may, at his or her option,~~
151 publish the same information about the winners in a ~~Florida~~
152 newspaper of general circulation in this state within 60 days
153 after the ~~such~~ winners are ~~have been~~ determined. If the operator
154 publishes the list of winners in a newspaper, the operator must
155 ~~and shall~~ provide to the department ~~of Agriculture and Consumer~~
156 ~~Services~~ a certified copy of the publication containing the
157 information about the winners. The operator of a game promotion



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158 is not required to notify a winner by mail or by telephone when
159 the winner is already in possession of a game card from which
160 the winner can determine that he or she has won a designated
161 prize. All winning entries must ~~shall~~ be held by the operator
162 for ~~a period of~~ 90 days after the close or completion of the
163 game.

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

168 (7) An ~~No~~ operator may not ~~shall~~ force, directly or
169 indirectly, a lessee, agent, or franchise dealer to purchase or
170 participate in any game promotion. For the purpose of this
171 section, coercion or force is ~~shall be~~ presumed in these
172 circumstances in which a course of business extending over a
173 period of 1 year or longer is materially changed coincident with
174 a failure or refusal of a lessee, agent, or franchise dealer to
175 participate in such game promotions. Such force or coercion is
176 ~~shall further be~~ presumed when an operator advertises generally
177 that game promotions are available at its lessee dealers or
178 agent dealers.

179 (8) (a) The department may adopt ~~Department of Agriculture~~
180 ~~and Consumer Services shall have the power to promulgate such~~
181 ~~rules~~ regulating and regulations respecting the operation of
182 game promotions which are necessary to administer this section
183 ~~as it may deem advisable.~~

184 (b) If ~~Whenever~~ the department ~~of Agriculture and Consumer~~
185 ~~Services~~ or the Department of Legal Affairs has reason to
186 believe that a game promotion is being operated in violation of



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187 this section, it may bring an action in the circuit court of any
188 judicial circuit in which the game promotion is being operated
189 in the name and on behalf of the people of the state against any
190 operator thereof to enjoin the continued operation of such game
191 promotion anywhere within the state.

192 (9) (a) Any person, firm, or corporation, or association or
193 agent or employee thereof, who engages in any acts or practices
194 stated in this section to be unlawful, or who violates any of
195 the rules adopted ~~and regulations made~~ pursuant to this section,
196 commits ~~is guilty of~~ a misdemeanor of the second degree,
197 punishable as provided in s. 775.082 or s. 775.083.

198 (b) Any person, firm, corporation, association, agent, or
199 employee who violates any provision of this section or any of
200 the rules adopted ~~and regulations made~~ pursuant to this section
201 is ~~shall be~~ liable for a civil penalty of not more than \$1,000
202 for each such violation, which shall accrue to the state and may
203 be recovered in a civil action brought by the department ~~of~~
204 ~~Agriculture and Consumer Services~~ or the Department of Legal
205 Affairs.

206 (10) ~~This section does not apply to actions or transactions~~
207 ~~regulated by the Department of Business and Professional~~
208 ~~Regulation or to the activities of nonprofit organizations or to~~
209 ~~any other organization engaged in any enterprise other than the~~
210 ~~sale of consumer products or services.~~ Subsections (3), (4),
211 (5), (6), and (7) and paragraph (8) (a) and ~~any of~~ the rules
212 adopted ~~made~~ pursuant to these subsections ~~there~~ do not apply
213 to television or radio broadcasting companies licensed by the
214 Federal Communications Commission.

215 (11) Each operator of a game promotion who provides



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216 electronic devices or computer terminals with video display
217 monitors that reveal or display the results of a game promotion
218 shall:

219 (a) File with the department, at least 7 days before the
220 commencement of the game promotion, a certification from an
221 independent testing laboratory that the electronic game
222 promotion software:

223 1. Operates only games having a preconfigured finite pool
224 or pools of entries;

225 2. Provides an entrant with the ability to participate in
226 the absence of a purchase;

227 3. Does not distinguish an entrant who has made a purchase
228 from one who has not, with respect to all advertised prizes;

229 4. Uses video displays that do not determine the result;
230 and

231 5. Complies with the requirements of subsection (2).

232 (b) Post a sign inside the premise which must include the
233 following language in at least 26-point type: "The video
234 displays are for amusement and entertainment only. The video
235 displays do not determine the result of your game promotion
236 entries."

237 (c) Affix signage that must include the following language
238 in at least 10-point type on each piece of electronic equipment:
239 "The video displays are for amusement and entertainment only.
240 The video displays do not determine the result of your game
241 promotion entries."

242 (d) Pay to the department annually a nonrefundable terminal
243 fee of \$100 per electronic device or computer terminal which
244 must be remitted by the department to the Department of Revenue



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245 for deposit into the General Revenue Fund.

246 (12) Operators that provide electronic devices or computer
247 terminals with video display monitors that reveal or display the
248 results of a game promotion or electronic game promotion shall
249 limit the advertisement on the exterior of the premise to the
250 consumer product or service sold on the premise, and that game
251 promotions are offered in connection with the sale of the
252 consumer product or service. A sign may not be posted on the
253 exterior of the premises which suggests gambling takes place on
254 the premise or which displays any image commonly associated with
255 slot machines.

256 (13) Electronic devices or computer terminals with video
257 display monitors that reveal or display the results of a game
258 promotion may not dispense coins or currency.

259 (14) This section does not allow the use of mechanical or
260 electromechanical reels in connection with a game promotion.

261 (15) Electronic devices or computer terminals with video
262 display monitors that reveal or display the results of a game
263 promotion which are in compliance with this section may not be
264 construed as slot machines or devices as defined in s.
265 551.102(8), s. 849.15, or s. 849.16.

266 (16) A county or municipality may adopt an ordinance, code,
267 plan, rule, resolution, or other measure that further regulates
268 an existing or future operator who provides electronic devices
269 or computer terminals with video display monitors that reveal or
270 display the results of a game promotion or electronic game
271 promotion. A county or municipality may prohibit a future
272 operator from providing electronic devices or computer terminals
273 with video display monitors that reveal or display the results



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274 of a game promotion or electronic game promotion.

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276 ===== T I T L E A M E N D M E N T =====

277 And the title is amended as follows:

278 Delete lines 4 - 32

279 and insert:

280 providing for the registration of electronic devices
281 and computer terminals used to conduct electronic game
282 promotions; prohibiting the Department of Agriculture
283 and Consumer Services from accepting a filing from
284 certain entities; establishing requirements for
285 electronic game promotions; requiring certification of
286 game promotion software; requiring that an operator of
287 an electronic game production pay to the department an
288 annual nonrefundable terminal fee per electronic
289 device or computer terminal; requiring the department
290 to remit the fees to the Department of Revenue for
291 deposit into the General Revenue Fund; prohibiting
292 certain conduct; limiting the applicability of the
293 act; authorizing a county or municipality to adopt an
294 ordinance, code, plan, rule, resolution, or other
295 measure to regulate an operator that provides
296 electronic devices or computer terminals for
297 electronic game promotion or to prohibit a future
298 operator; providing