

By Senator Diaz de la Portilla

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1 A bill to be entitled
2 An act relating to game promotion; amending s.
3 849.094, F.S.; adding and revising definitions;
4 requiring a game promotion operator who provides
5 electronic devices that reveal or display the results
6 of a game promotion that offers certain prize amounts
7 to file certain information with the Department of
8 Agriculture and Consumer Services; prohibiting the
9 department from accepting filings from certain persons
10 against whom there is a criminal or civil adjudication
11 or unsatisfied civil judgment for certain violations;
12 requiring financial institution officials to provide
13 the department with the account number of trust
14 accounts of game promotion operators who offer prizes
15 greater than a certain amount; requiring certain game
16 promotion operators who offer total prize amounts of
17 more than \$1 to obtain a surety bond and file it
18 before a time certain with the department; providing
19 criteria for the surety bonds; providing a date
20 certain for the final determination of winners;
21 removing an exemption provided for certain not-for-
22 profit and other organizations from application of the
23 act; allowing counties and municipalities to regulate
24 game promotions consistent with the act; requiring a
25 game promotion operator to provide certain
26 certifications regarding game promotion software and
27 remit to the department annual fees for each
28 electronic device or computer terminal; requiring the
29 department to remit the fees to the Department of

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30 Revenue for deposit into the General Revenue Fund;
31 prohibiting the use of mechanical or electromechanical
32 reels in connection with a game promotion; providing
33 an effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Section 849.094, Florida Statutes, is amended to
38 read:

39 849.094 Game promotion in connection with sale of consumer
40 products or services.—

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

42 (a) "Department" means the Department of Agriculture and
43 Consumer Services.

44 (b) ~~(a)~~ "Game promotion" means, but is not limited to, a
45 contest, game of chance, or gift enterprise, conducted within or
46 throughout the state and other states in connection with the
47 sale of consumer products or services, and in which the elements
48 of chance and prize are present. However, the term does "game
49 promotion" shall not be construed to apply to bingo games
50 conducted pursuant to s. 849.0931.

51 (c) ~~(b)~~ "Operator" means any person, firm, corporation, or
52 association or agent or employee thereof who promotes, operates,
53 or conducts a game promotion, ~~except any charitable nonprofit~~
54 organization.

55 (2) It is unlawful for any operator:

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

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

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

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

64 (b) Arbitrarily to remove, disqualify, disallow, or reject
65 any entry;

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

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

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

72 (3) (a) The operator of a game promotion in which the total
73 announced value of the prizes offered is greater than \$5,000
74 shall file with the department ~~of Agriculture and Consumer~~
75 ~~Services~~ a copy of the rules and regulations of the game
76 promotion and a list of all prizes and prize categories offered
77 at least 7 days before the commencement of the game promotion.

78 (b) Each operator of a game promotion who provides
79 electronic devices or computer terminals with video display
80 monitors that reveal or display the results of a game promotion
81 offering total prize amounts of more than \$1 shall file with the
82 department at least 7 days before commencement of the game
83 promotion a copy of the rules and regulations of the game
84 promotion and a list of all prizes and prize categories offered.
85 The filing shall include the physical location of each
86 electronic device or computer terminal and a separate terminal
87 fee pursuant to paragraph (12) (b) for each electronic device or

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88 computer terminal that is a component of the game promotion.

89 (c) Once filed, the ~~Such~~ rules and regulations may not
90 ~~thereafter~~ be changed, modified, or altered. The operator of a
91 game promotion shall conspicuously post the rules and
92 regulations of such game promotion in each ~~and every~~ retail
93 outlet or place where such game promotion is ~~may be~~ played or
94 participated in by the public and shall also publish the rules
95 and regulations in all advertising copy used in connection with
96 the game promotion therewith. However, the ~~such~~ advertising copy
97 need ~~only~~ include only the material terms of the rules and
98 regulations if the advertising copy includes a website address,
99 a toll-free telephone number, or a mailing address where the
100 full rules and regulations may be viewed, heard, or obtained for
101 the full duration of the game promotion. The ~~Such~~ disclosures
102 must be legible. Radio and television announcements may indicate
103 that the rules and regulations are available at retail outlets
104 or from the operator of the promotion.

105 (d) A nonrefundable filing fee of \$100 shall accompany each
106 filing and shall be used to pay the costs incurred in
107 administering and enforcing the provisions of this section.

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

113 (4) (a) Each ~~Every~~ operator of ~~such~~ a game promotion in
114 which the total announced value of the prizes offered is greater
115 than \$5,000 shall establish a trust account, in a national or
116 state-chartered financial institution, with a balance equal to

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117 ~~sufficient to pay or purchase~~ the total value of all prizes
118 offered. On a form supplied by the department ~~of Agriculture and~~
119 ~~Consumer Services~~, an official of the financial institution
120 holding the trust account shall provide ~~set forth~~ the account
121 number and dollar amount of the trust account, the identity of
122 the entity or individual establishing the trust account, and the
123 name of the game promotion for which the trust account has been
124 established. ~~The~~ ~~Such~~ form shall be filed with the department ~~of~~
125 ~~Agriculture and Consumer Services~~ at least 7 days before ~~in~~
126 ~~advance~~ of the commencement of the game promotion. In lieu of
127 establishing a ~~such~~ trust account, the operator may obtain a
128 surety bond from a surety authorized to do business in this
129 state in an amount equal ~~equivalent~~ to the total value of all
130 prizes offered in the promotion. ~~The; and such~~ bond shall be
131 filed with the department ~~of Agriculture and Consumer Services~~
132 at least 7 days before ~~in advance~~ of the commencement of the
133 game promotion. Each operator of a game promotion who provides
134 electronic devices or computer terminals with video display
135 monitors that reveal or display the results of a game promotion
136 offering total prize amounts of more than \$1 shall obtain a
137 surety bond in an amount equal to the total value of all prizes
138 offered, and the bond shall be filed with the department at
139 least 7 days before the commencement of the game promotion.

140 1. The moneys held in the trust account may be withdrawn in
141 order to pay the prizes offered only upon certification to the
142 department ~~of Agriculture and Consumer Services~~ of the name of
143 the winner ~~or winners~~ and the amount and value of the prize ~~or~~
144 ~~prizes and the value thereof~~.

145 2. If the operator of a game promotion obtains ~~has obtained~~

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146 a surety bond in lieu of establishing a trust account, the
147 amount of the surety bond shall equal at all times the total
148 amount of the prizes offered. The bond shall be in favor of the
149 department for the use and benefit of any consumer who qualifies
150 for the award of a prize under the rules and regulations of the
151 game promotion but who does not receive the prize awarded, and
152 shall be in effect until 30 days after filing the list of
153 winners pursuant to subsection (5). The bond shall be applicable
154 and liable only for the payment of the claims duly adjudicated
155 by order of the department. The proceedings to adjudicate the
156 claim shall be conducted in accordance with ss. 120.569 and
157 120.57.

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

169 (5) Each ~~Every~~ operator of a game promotion in which the
170 total announced value of the prizes offered is greater than
171 \$5,000 shall provide the department ~~of Agriculture and Consumer~~
172 ~~Services~~ with a certified list of the names and addresses of all
173 persons, whether from this state or from another state, who have
174 won prizes that ~~which~~ have a value of more than \$25, the value

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175 of the ~~such~~ prizes, and the dates when the prizes were won
176 within 60 days after the ~~such~~ winners are ~~have been finally~~
177 determined. The date for the final determination of winners
178 shall be 60 days after the ending date of the game promotion
179 stated in the original filing required in subsection (3). The
180 operator shall provide a copy of the list of winners, without
181 charge, to any person who requests it or shall. ~~In lieu of the~~
182 ~~foregoing, the operator of a game promotion may, at his or her~~
183 ~~option,~~ publish the same information about the winners in a
184 ~~Florida~~ newspaper of general circulation in this state within 60
185 days after the ~~such~~ winners are ~~have been~~ determined. If the
186 operator publishes the list of winners in a newspaper, the
187 operator ~~and~~ shall provide to the department of ~~Agriculture and~~
188 ~~Consumer Services~~ a certified copy of the publication containing
189 the information about the winners. The operator of a game
190 promotion is not required to notify a winner by mail or by
191 telephone when the winner is already in possession of a game
192 card from which the winner can determine that he or she has won
193 a designated prize. All winning entries shall be held by the
194 operator for ~~a period of~~ 90 days after the close or completion
195 of the game.

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

200 (7) An ~~No~~ operator may not ~~shall~~ force, directly or
201 indirectly, a lessee, agent, or franchise dealer to purchase or
202 participate in any game promotion. For the purpose of this
203 section, coercion or force is ~~shall be~~ presumed in these

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204 circumstances in which a course of business extending over a
205 period of 1 year or longer is materially changed coincident with
206 a failure or refusal of a lessee, agent, or franchise dealer to
207 participate in such game promotions. Such force or coercion is
208 ~~shall further be~~ presumed when an operator advertises generally
209 that game promotions are available at its lessee dealers or
210 agent dealers.

211 (8) (a) The department may adopt ~~of Agriculture and Consumer~~
212 ~~Services shall have the power to promulgate such rules~~
213 regulating and regulations respecting the operation of game
214 promotions which are necessary to administer this section as it
215 ~~may deem advisable.~~

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

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

230 (b) Any person, firm, corporation, association, agent, or
231 employee who violates any provision of this section or any of
232 the rules adopted ~~and regulations made~~ pursuant to this section

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233 ~~is shall be~~ liable for a civil penalty of not more than \$1,000
234 for each such violation, which shall accrue to the state and may
235 be recovered in a civil action brought by the department ~~of~~
236 ~~Agriculture and Consumer Services~~ or the Department of Legal
237 Affairs.

238 (10) This section does not apply to actions or transactions
239 regulated by the Department of Business and Professional
240 Regulation ~~or to the activities of nonprofit organizations or to~~
241 ~~any other organization engaged in any enterprise other than the~~
242 ~~sale of consumer products or services~~. Subsections (3), (4),
243 (5), (6), and (7) and paragraph (8) (a) and ~~any of the~~ rules
244 adopted ~~made~~ pursuant thereto do not apply to television or
245 radio broadcasting companies licensed by the Federal
246 Communications Commission.

247 (11) Subject to the provisions of this part and chapter
248 166, a county or municipality may adopt an ordinance, code,
249 plan, rule, resolution, or other measure that limits or
250 regulates electronic game promotions, including, but not limited
251 to, permitting, fees, fines, location, signage, security, or
252 other enforcement provisions.

253 (12) Each operator of a game promotion who provides
254 electronic devices or computer terminals with video display
255 monitors that reveal or display the results of a game promotion
256 shall:

257 (a) File with the department, at least 7 days before the
258 commencement of the game promotion, a certification from an
259 independent testing laboratory that the electronic game
260 promotion software:

261 1. Operates only games with a preconfigured finite pool of

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262 entries;

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

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

267 4. Uses video displays that do not determine the result.

268 (b) Pay to the department annually a nonrefundable terminal
269 fee of \$100 per electronic device or computer terminal which
270 shall be remitted by the department to the Department of Revenue
271 for deposit into the General Revenue Fund.

272 (13) This section does not allow the use of mechanical or
273 electromechanical reels in connection with a game promotion.

274 Section 2. This act shall take effect July 1, 2012.