

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 authorizing local governments to regulate electronic
7 game promotions; providing an effective date.
8

9 Be It Enacted by the Legislature of the State of Florida:
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11 Section 1. Section 849.094, Florida Statutes, is amended to
12 read:

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

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

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

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

27 (2) It is unlawful for any operator:

28 (a) To design, engage in, promote, or conduct such a game
29 promotion, in connection with the promotion or sale of consumer

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30 products or services, wherein the winner may be predetermined or
31 the game may be manipulated or rigged so as to:

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

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

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

38 (c) To fail to award prizes offered;

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

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

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

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

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

86 1. The moneys held in the trust account may be withdrawn in
87 order to pay the prizes offered only upon certification to the

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88 Department of Agriculture and Consumer Services of the name of
89 the winner or winners and the amount of the prize or prizes and
90 the value thereof.

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

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

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

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117 newspaper of general circulation within 60 days after such
118 winners have been determined and shall provide to the Department
119 of Agriculture and Consumer Services a certified copy of the
120 publication containing the information about the winners. The
121 operator of a game promotion is not required to notify a winner
122 by mail or by telephone when the winner is already in possession
123 of a game card from which the winner can determine that he or
124 she has won a designated prize. All winning entries shall be
125 held by the operator for a period of 90 days after the close or
126 completion of the game.

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

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

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

145 (b) Whenever the Department of Agriculture and Consumer

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

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

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

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

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175 (11) Each operator of an electronic-based game promotion
176 that offers prizes having an announced value greater than \$1
177 must comply with subsections (3), (4), (5), and (7) and with
178 rules adopted by the department under paragraph (8)(a).

179 (12) Subject to the provisions of this section and chapter
180 166, local governments may adopt ordinances, codes, plans,
181 rules, resolutions, or other measures that limit or regulate
182 electronic game promotions, including, but not limited to,
183 permitting, fees, fines, location, signage, security, or other
184 enforcement provisions.

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