



140816

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/07/2012	.	
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	.	

The Committee on Regulated Industries (Diaz de la Portilla) recommended the following:

1 **Senate Amendment to Amendment (331510) (with title**
2 **amendment)**

3
4 Between lines 103 and 104

5 insert:

6 Section 3. Section 849.094, Florida Statutes, is amended to
7 read:

8 849.094 Game promotion in connection with sale of consumer
9 products or services.—

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

11 (a) "Department" means the Department of Agriculture and
12 Consumer Services.



140816

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

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

25 (2) It is unlawful for any operator:

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

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

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

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

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

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

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



140816

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

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

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



140816

71 the full duration of the game promotion. The ~~Such~~ disclosures
72 must be legible. Radio and television announcements may indicate
73 that the rules and regulations are available at retail outlets
74 or from the operator of the promotion.

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

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

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



140816

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

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

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

127 (b) The department ~~of Agriculture and Consumer Services~~ may
128 waive the provisions of this subsection for any operator who has



140816

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

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



140816

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

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

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

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

185 (b) If ~~Whenever~~ the department ~~of Agriculture and Consumer~~
186 ~~Services~~ or the Department of Legal Affairs has reason to



140816

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

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

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

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



140816

216 (11) Each operator of a game promotion who provides
217 electronic devices or computer terminals with video display
218 monitors that reveal or display the results of a game promotion
219 shall:

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

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

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

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

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

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

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

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

243 (d) Pay to the department annually a nonrefundable terminal
244 fee of \$100 per electronic device or computer terminal which



140816

245 must be remitted by the department to the Department of Revenue
246 for deposit into the General Revenue Fund.

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

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

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

262 (15) Electronic devices or computer terminals with video
263 display monitors that reveal or display the results of a game
264 promotion which are in compliance with this section may not be
265 construed as slot machines or devices as defined in s.
266 551.102(8), s. 849.15, or s. 849.16.

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



140816

274 with video display monitors that reveal or display the results
275 of a game promotion or electronic game promotion.

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

278 And the title is amended as follows:

279 Delete line 123

280 and insert:

281 from wagering on a shared result; amending s. 849.094,
282 F.S.; adding and revising definitions; providing for
283 the registration of electronic devices and computer
284 terminals used to conduct electronic game promotions;
285 prohibiting the Department of Agriculture and Consumer
286 Services from accepting a filing from certain
287 entities; establishing requirements for electronic
288 game promotions; requiring certification of game
289 promotion software; requiring that an operator of an
290 electronic game production pay to the department an
291 annual nonrefundable terminal fee per electronic
292 device or computer terminal; requiring the department
293 to remit the fees to the Department of Revenue for
294 deposit into the General Revenue Fund; prohibiting
295 certain conduct; limiting the applicability of the
296 act; authorizing a county or municipality to adopt an
297 ordinance, code, plan, rule, resolution, or other
298 measure to regulate an operator that provides
299 electronic devices or computer terminals for
300 electronic game promotion or to prohibit the future
301 operation of game promotions; providing an