

1 A bill to be entitled
 2 An act relating to game promotions; amending s.
 3 849.094, F.S.; providing and revising definitions;
 4 providing for the registration of electronic devices
 5 and computer terminals used to conduct electronic game
 6 promotions; prohibiting the Department of Agriculture
 7 and Consumer Services from accepting a filing from
 8 certain entities; establishing requirements for
 9 electronic game promotions; requiring certification of
 10 game promotion software; requiring that an operator of
 11 an electronic game production pay to the department an
 12 annual nonrefundable terminal fee per electronic
 13 device or computer terminal; requiring the department
 14 to remit the fees to the Department of Revenue for
 15 deposit into the General Revenue Fund; prohibiting
 16 certain conduct; limiting the applicability of the
 17 act; authorizing a county or municipality to adopt an
 18 ordinance, code, plan, rule, resolution, or other
 19 measure to regulate an operator that provides
 20 electronic devices or computer terminals for
 21 electronic game promotion or to prohibit the future
 22 operation of game promotions; providing an effective
 23 date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 849.094, Florida Statutes, is amended
 28 to read:

29 | 849.094 Game promotion in connection with sale of consumer
 30 | products or services.—

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

32 | (a) "Department" means the Department of Agriculture and
 33 | Consumer Services.

34 | (b) (a) "Game promotion" means, but is not limited to, a
 35 | contest, game of chance, or gift enterprise, conducted within or
 36 | throughout the state and other states in connection with the
 37 | sale of consumer products or services, and in which the elements
 38 | of chance and prize are present. However, the term does "game
 39 | ~~promotion" shall not be construed to~~ apply to bingo games
 40 | conducted pursuant to s. 849.0931.

41 | (c) (b) "Operator" means any person, firm, corporation, or
 42 | association or agent or employee thereof who ~~promotes,~~ operates,
 43 | or conducts a game promotion to promote the sale of its consumer
 44 | products or services, ~~except any charitable nonprofit~~
 45 | ~~organization.~~

46 | (2) It is unlawful for any operator:

47 | (a) To design, engage in, promote, or conduct such a game
 48 | promotion, in connection with the promotion or sale of consumer
 49 | products or services, wherein the winner may be predetermined or
 50 | the game may be manipulated or rigged so as to:

51 | 1. Allocate a winning game or any portion thereof to
 52 | certain lessees, agents, or franchises; or

53 | 2. Allocate a winning game or part thereof to a particular
 54 | period of the game promotion or to a particular geographic area;

55 | (b) Arbitrarily to remove, disqualify, disallow, or reject
 56 | any entry;

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

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

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

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

69 (b) Each operator of a game promotion who provides
 70 electronic devices or computer terminals with video display
 71 monitors that reveal or display the results of a game promotion
 72 must file with the department at least 7 days before
 73 commencement of the game promotion a copy of the rules and
 74 regulations of the game promotion and a list of all prizes and
 75 prize categories offered. The filing must include the physical
 76 location of each electronic device or computer terminal and a
 77 separate terminal fee pursuant to paragraph (11)(d) for each
 78 electronic device or computer terminal that is a component of
 79 the game promotion.

80 (c) Once filed, the ~~Such~~ rules and regulations may not
 81 ~~thereafter~~ be changed, modified, or altered. The operator of a
 82 game promotion shall conspicuously post the rules and
 83 regulations of such game promotion in each ~~and every~~ retail
 84 outlet or place where such game promotion is ~~may be~~ played or

85 participated in by the public and shall also publish the rules
 86 and regulations in all advertising copy used in connection with
 87 the game promotion therewith. However, the ~~such~~ advertising copy
 88 need ~~only~~ include only the material terms of the rules and
 89 regulations if the advertising copy includes a website address,
 90 a toll-free telephone number, or a mailing address where the
 91 full rules and regulations may be viewed, heard, or obtained for
 92 the full duration of the game promotion. The ~~Such~~ disclosures
 93 must be legible. Radio and television announcements may indicate
 94 that the rules and regulations are available at retail outlets
 95 or from the operator of the promotion.

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

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

105 (4) (a) Each ~~Every~~ operator of ~~such~~ a game promotion in
 106 which the total announced value of the prizes offered is greater
 107 than \$5,000 shall establish a trust account, in a national or
 108 state-chartered financial institution, with a balance equal to
 109 ~~sufficient to pay or purchase~~ the total value of all prizes
 110 offered. On a form supplied by the department ~~of Agriculture and~~
 111 ~~Consumer Services~~, an official of the financial institution
 112 holding the trust account shall provide ~~set forth~~ the account

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113 | number and dollar amount of the trust account, the identity of
114 | the entity or individual establishing the trust account, and the
115 | name of the game promotion for which the trust account has been
116 | established. ~~The~~ ~~Such~~ form must ~~shall~~ be filed with the
117 | department of Agriculture and Consumer Services at least 7 days
118 | before in advance of the commencement of the game promotion. In
119 | lieu of establishing a ~~such~~ trust account, the operator may
120 | obtain a surety bond from a surety authorized to do business in
121 | this state in an amount equal ~~equivalent~~ to the total value of
122 | all prizes offered in the promotion. The; ~~and such~~ bond must
123 | ~~shall~~ be filed with the department of Agriculture and Consumer
124 | Services at least 7 days before in advance of the commencement
125 | of the game promotion. Each operator of a game promotion who
126 | provides electronic devices or computer terminals with video
127 | display monitors that reveal or display the results of a game
128 | promotion must obtain a surety bond in an amount equal to the
129 | total value of all prizes offered, and the bond must be filed
130 | with the department at least 7 days before the commencement of
131 | the game promotion.

132 | 1. The moneys held in the trust account may be withdrawn
133 | in order to pay the prizes offered only upon certification to
134 | the department of Agriculture and Consumer Services of the name
135 | of the winner ~~or winners~~ and the amount and value of the prize
136 | ~~or prizes and the value thereof.~~

137 | 2. If the operator of a game promotion obtains ~~has~~
138 | ~~obtained~~ a surety bond in lieu of establishing a trust account,
139 | the amount of the surety bond shall equal at all times the total
140 | amount of the prizes offered. The bond must be in favor of the

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141 department for the use and benefit of any consumer who qualifies
142 for the award of a prize under the rules and regulations of the
143 game promotion but who does not receive the prize awarded, and
144 must be in effect until 30 days after filing the list of winners
145 pursuant to subsection (5). The bond must be applicable and
146 liable only for the payment of the claims duly adjudicated by
147 order of the department. The proceedings to adjudicate the claim
148 must be conducted in accordance with ss. 120.569 and 120.57.

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

160 (5) Each ~~Every~~ operator of a game promotion in which the
161 total announced value of the prizes offered is greater than
162 \$5,000 shall provide the department ~~of Agriculture and Consumer~~
163 ~~Services~~ with a certified list of the names and addresses of all
164 persons, whether from this state or from another state, who have
165 won prizes that ~~which~~ have a value of more than \$25, the value
166 of the ~~such~~ prizes, and the dates when the prizes were won
167 within 60 days after the ~~such~~ winners are ~~have been finally~~
168 determined. The date for the final determination of winners must

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

187 | (6) The department ~~of Agriculture and Consumer Services~~
188 | shall keep the certified list of winners for a period of ~~at~~
189 | ~~least~~ 6 months after receipt of the certified list. The
190 | department thereafter may dispose of all records and lists.

191 | (7) An ~~No~~ operator may not ~~shall~~ force, directly or
192 | indirectly, a lessee, agent, or franchise dealer to purchase or
193 | participate in any game promotion. For the purpose of this
194 | section, coercion or force is ~~shall be~~ presumed in these
195 | circumstances in which a course of business extending over a
196 | period of 1 year or longer is materially changed coincident with

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197 a failure or refusal of a lessee, agent, or franchise dealer to
198 participate in such game promotions. Such force or coercion is
199 ~~shall further be~~ presumed when an operator advertises generally
200 that game promotions are available at its lessee dealers or
201 agent dealers.

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

207 (b) If ~~Whenever~~ the department of ~~Agriculture and Consumer~~
208 ~~Services~~ or the Department of Legal Affairs has reason to
209 believe that a game promotion is being operated in violation of
210 this section, it may bring an action in the circuit court of any
211 judicial circuit in which the game promotion is being operated
212 in the name and on behalf of the people of the state against any
213 operator thereof to enjoin the continued operation of such game
214 promotion anywhere within the state.

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

221 (b) Any person, firm, corporation, association, agent, or
222 employee who violates any provision of this section or any of
223 the rules adopted ~~and regulations made~~ pursuant to this section
224 is ~~shall be~~ liable for a civil penalty of not more than \$1,000

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225 | for each such violation, which shall accrue to the state and may
226 | be recovered in a civil action brought by the department of
227 | ~~Agriculture and Consumer Services~~ or the Department of Legal
228 | Affairs.

229 | (10) ~~This section does not apply to actions or~~
230 | ~~transactions regulated by the Department of Business and~~
231 | ~~Professional Regulation or to the activities of nonprofit~~
232 | ~~organizations or to any other organization engaged in any~~
233 | ~~enterprise other than the sale of consumer products or services.~~
234 | Subsections (3), (4), (5), (6), and (7) and paragraph (8)(a) and
235 | ~~any of the rules adopted~~ made pursuant to such subsections
236 | ~~thereto~~ do not apply to television or radio broadcasting
237 | companies licensed by the Federal Communications Commission.

238 | (11) Each operator of a game promotion who provides
239 | electronic devices or computer terminals with video display
240 | monitors that reveal or display the results of a game promotion
241 | shall:

242 | (a) File with the department, at least 7 days before the
243 | commencement of the game promotion, a certification from an
244 | independent testing laboratory that the electronic game
245 | promotion software:

246 | 1. Operates only games having a preconfigured finite pool
247 | or pools of entries;

248 | 2. Provides an entrant with the ability to participate in
249 | the absence of a purchase;

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

252 | 4. Uses video displays that do not determine the result;

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253 | and

254 | 5. Complies with the requirements of subsection (2).

255 | (b) Post a sign inside the premise which must include the
256 | following language in at least 26-point type: "The video
257 | displays are for amusement and entertainment only. The video
258 | displays do not determine the result of your game promotion
259 | entries."

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

265 | (d) Pay to the department annually a nonrefundable
266 | terminal fee of \$100 per electronic device or computer terminal
267 | which must be remitted by the department to the Department of
268 | Revenue for deposit into the General Revenue Fund.

269 | (12) Operators that provide electronic devices or computer
270 | terminals with video display monitors that reveal or display the
271 | results of a game promotion or electronic game promotion shall
272 | limit the advertisement on the exterior of the premise to the
273 | consumer product or service sold on the premise and to game
274 | promotions that are offered in connection with the sale of the
275 | consumer product or service. A sign may not be posted on the
276 | exterior of the premises which suggests gambling takes place on
277 | the premise or which displays any image commonly associated with
278 | slot machines.

279 | (13) Electronic devices or computer terminals with video
280 | display monitors that reveal or display the results of a game

281 promotion may not dispense coins or currency.

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

284 (15) Electronic devices or computer terminals with video
 285 display monitors that reveal or display the results of a game
 286 promotion which are in compliance with this section may not be
 287 construed as slot machines or devices as defined in s.
 288 551.102(8), s. 849.15, or s. 849.16.

289 (16) A county or municipality may adopt an ordinance,
 290 code, plan, rule, resolution, or other measure that further
 291 regulates an existing or future operator who provides electronic
 292 devices or computer terminals with video display monitors that
 293 reveal or display the results of a game promotion or electronic
 294 game promotion. A county or municipality may prohibit a future
 295 operator from providing electronic devices or computer terminals
 296 with video display monitors that reveal or display the results
 297 of a game promotion or electronic game promotion.

298 Section 2. This act shall take effect July 1, 2013