

By the Committee on Regulated Industries; and Senators Diaz de la Portilla and Smith

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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 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 to
28 read:

29 849.094 Game promotion in connection with sale of consumer

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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

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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

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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~~ accompany
97 each filing and must ~~shall~~ be used to pay the costs incurred in
98 administering and enforcing the provisions of this section.

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

104 (4) (a) Each ~~Every~~ operator of ~~such~~ a game promotion in
105 which the total announced value of the prizes offered is greater
106 than \$5,000 shall establish a trust account, in a national or
107 state-chartered financial institution, with a balance equal to
108 ~~sufficient to pay or purchase~~ the total value of all prizes
109 offered. On a form supplied by the department ~~of Agriculture and~~
110 ~~Consumer Services~~, an official of the financial institution
111 holding the trust account shall provide ~~set forth~~ the account
112 number and dollar amount of the trust account, the identity of
113 the entity or individual establishing the trust account, and the
114 name of the game promotion for which the trust account has been
115 established. The ~~Such~~ form must ~~shall~~ be filed with the
116 department ~~of Agriculture and Consumer Services~~ at least 7 days

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

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

136 2. If the operator of a game promotion obtains ~~has obtained~~
137 a surety bond in lieu of establishing a trust account, the
138 amount of the surety bond shall equal at all times the total
139 amount of the prizes offered. The bond must be in favor of the
140 department for the use and benefit of any consumer who qualifies
141 for the award of a prize under the rules and regulations of the
142 game promotion but who does not receive the prize awarded, and
143 must be in effect until 30 days after filing the list of winners
144 pursuant to subsection (5). The bond must be applicable and
145 liable only for the payment of the claims duly adjudicated by

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146 order of the department. The proceedings to adjudicate the claim
147 must be conducted in accordance with ss. 120.569 and 120.57.

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

159 (5) Each ~~Every~~ operator of a game promotion in which the
160 total announced value of the prizes offered is greater than
161 \$5,000 shall provide the department ~~of Agriculture and Consumer~~
162 ~~Services~~ with a certified list of the names and addresses of all
163 persons, whether from this state or from another state, who have
164 won prizes that ~~which~~ have a value of more than \$25, the value
165 of the ~~such~~ prizes, and the dates when the prizes were won
166 within 60 days after the ~~such~~ winners are ~~have been finally~~
167 ~~determined.~~ The date for the final determination of winners must
168 be 60 days after the ending date of the game promotion stated in
169 the original filing required in subsection (3). The operator
170 shall provide a copy of the list of winners, without charge, to
171 any person who requests it or shall. ~~In lieu of the foregoing,~~
172 ~~the operator of a game promotion may, at his or her option,~~
173 publish the same information about the winners in a ~~Florida~~
174 newspaper of general circulation in this state within 60 days

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175 after the ~~such~~ winners are ~~have been~~ determined. If the operator
176 publishes the list of winners in a newspaper, the operator must
177 ~~and shall~~ provide to the department ~~of Agriculture and Consumer~~
178 ~~Services~~ a certified copy of the publication containing the
179 information about the winners. The operator of a game promotion
180 is not required to notify a winner by mail or by telephone when
181 the winner is already in possession of a game card from which
182 the winner can determine that he or she has won a designated
183 prize. All winning entries must ~~shall~~ be held by the operator
184 for ~~a period of~~ 90 days after the close or completion of the
185 game.

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

190 (7) An ~~No~~ operator may not ~~shall~~ force, directly or
191 indirectly, a lessee, agent, or franchise dealer to purchase or
192 participate in any game promotion. For the purpose of this
193 section, coercion or force is ~~shall be~~ presumed in these
194 circumstances in which a course of business extending over a
195 period of 1 year or longer is materially changed coincident with
196 a failure or refusal of a lessee, agent, or franchise dealer to
197 participate in such game promotions. Such force or coercion is
198 ~~shall further be~~ presumed when an operator advertises generally
199 that game promotions are available at its lessee dealers or
200 agent dealers.

201 (8) (a) The department may adopt ~~Department of Agriculture~~
202 ~~and Consumer Services shall have the power to promulgate such~~
203 rules regulating ~~and regulations respecting~~ the operation of

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204 game promotions which are necessary to administer this section
205 ~~as it may deem advisable.~~

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

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

220 (b) Any person, firm, corporation, association, agent, or
221 employee who violates any provision of this section or any of
222 the rules adopted ~~and regulations made~~ pursuant to this section
223 is shall be liable for a civil penalty of not more than \$1,000
224 for each such violation, which shall accrue to the state and may
225 be recovered in a civil action brought by the department ~~of~~
226 ~~Agriculture and Consumer Services~~ or the Department of Legal
227 Affairs.

228 (10) ~~This section does not apply to actions or transactions~~
229 ~~regulated by the Department of Business and Professional~~
230 ~~Regulation or to the activities of nonprofit organizations or to~~
231 ~~any other organization engaged in any enterprise other than the~~
232 ~~sale of consumer products or services.~~ Subsections (3), (4),

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233 (5), (6), and (7) and paragraph (8) (a) and ~~any of~~ the rules
234 adopted made pursuant to these subsections thereto do not apply
235 to television or radio broadcasting companies licensed by the
236 Federal Communications Commission.

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

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

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

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

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

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

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

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

259 (c) Affix signage that must include the following language
260 in at least 10-point type on each piece of electronic equipment:
261 "The video displays are for amusement and entertainment only.

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262 The video displays do not determine the result of your game
263 promotion entries."

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

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

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

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

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

288 (16) A county or municipality may adopt an ordinance, code,
289 plan, rule, resolution, or other measure that further regulates
290 an existing or future operator who provides electronic devices

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291 or computer terminals with video display monitors that reveal or
292 display the results of a game promotion or electronic game
293 promotion. A county or municipality may prohibit a future
294 operator from providing electronic devices or computer terminals
295 with video display monitors that reveal or display the results
296 of a game promotion or electronic game promotion.

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