A bill to be entitled
An act relating to game promotions; amending s. 849.094, F.S.; providing and revising definitions; prohibiting the Department of Agriculture and Consumer Services from accepting a filing of a copy of the rules, prizes, prize categories, and regulations of a game promotion from certain persons, firms, corporations, or associations; requiring an operator of an electronic game promotion to file with the department a certification from an independent testing laboratory; requiring an operator of certain game promotions to establish a trust account with a balance equal to the total value of all prizes offered; requiring the official of the financial institution holding the trust account to set forth the account number of the trust account; authorizing the operator to obtain a surety bond from a surety authorized to do business in this state; providing that the moneys held in the trust account may be withdrawn only upon written approval by the department; requiring the operator to certify certain information to the department; providing requirements for a surety bond obtained in lieu of establishing a trust account; providing a date for the final determination of winners; deleting a provision that exempts the activities of nonprofit organizations and organizations engaged in enterprises other than the sale of consumer products or services from the requirements of operating a game promotion; providing that certain statutory provisions do not prohibit the use of certain electronic devices or...
computer terminals to conduct or display the results of a
game promotion; providing that each specified electronic
device or computer terminal is a separate game promotion;
requiring a statement of physical location and a separate
filing fee for each device or terminal; requiring an
operator of a game promotion that uses certain electronic
devices or computer terminals to comply with certain
requirements; providing an effective date.

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

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

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

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

(a) "Commencement of the game promotion" means the date
the game promotion begins as disclosed in the filing made to the
department pursuant to subsection (3).

(b) "Department" means the Department of Agriculture and
Consumer Services.

(c) "Game promotion" includes, but is not limited
to, a contest, game of chance, or gift enterprise, conducted
within or throughout the state and other states in connection
with the sale of consumer products or services, and in which the
elements of chance and prize are present. The term does however,
"game promotion" shall not include be construed to apply to
bingo games conducted pursuant to s. 849.0931.
(d) "Operator" means any person, firm, corporation, or association, or any agent or employee thereof, who promotes, sponsors, administers, operates, or conducts a game promotion, except any charitable nonprofit organization.

(e) "Sale of consumer products or services" means the completion of a retail sales transaction between a merchant or service provider and an end-use purchaser of the product or service. The term does not include any required fee, charge, or payment for an additional opportunity to participate in the game promotion before or after the sale.

(2) It is unlawful for any operator:

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

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

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

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

(c) To fail to award prizes offered;

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

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

(3)(a) Except as provided in paragraph (11)(c), the
operator of a game promotion in which the total announced value
of the prizes offered is greater than $5,000 shall file with the
department of Agriculture and Consumer Services a copy of the
rules and regulations of the game promotion and a list of all
prizes and prize categories offered at least 7 days before the
commencement of the game promotion. Such rules and regulations
may not thereafter be changed, modified, or altered. The
operator of a game promotion shall conspicuously post the rules
and regulations of such game promotion in each and every retail
outlet or place where such game promotion may be played or
participated in by the public and shall also publish the rules
and regulations in all advertising copy used in connection
therewith. However, such advertising copy need only include the
material terms of the rules and regulations if the advertising
copy includes a website address, a toll-free telephone number,
or a mailing address where the full rules and regulations may be
viewed, heard, or obtained for the full duration of the game
promotion. Such disclosures must be legible. Radio and
television announcements may indicate that the rules and
regulations are available at retail outlets or from the operator
of the promotion. A nonrefundable filing fee of $100 shall
accompany each filing and shall be used to pay the costs
incurred in administering and enforcing the provisions of this
section. The department may not accept a filing from any
operator, person, firm, corporation, or association, or any
agent or employee thereof, against whom there has been a
criminal or civil adjudication, or who has not satisfied a civil
fine, for any violation of this section.
(b) Each operator of an electronic game promotion, at least 7 days before commencement of the game promotion, shall file with the department a certification by an independent testing laboratory that such electronic game promotion contains a finite number of entries.

(4)(a) Except as provided in paragraph (11)(c), every operator of such a game promotion in which the total announced value of the prizes offered is greater than $5,000 shall establish a trust account, in a national or state-chartered financial institution, with a balance equal to sufficient to pay or purchase the total value of all prizes offered. On a form supplied by the department of Agriculture and Consumer Services, an official of the financial institution holding the trust account shall set forth the account number and the dollar amount of the trust account, the identity of the entity or individual establishing the trust account, and the name of the game promotion for which the trust account has been established. Such form shall be filed with the department of Agriculture and Consumer Services at least 7 days in advance of the commencement of the game promotion. In lieu of establishing such trust account, the operator may obtain a surety bond from a surety authorized to do business in this state in an amount equivalent to the total value of all prizes offered; and such bond shall be filed with the department of Agriculture and Consumer Services at least 7 days in advance of the commencement of the game promotion.

1. The moneys held in the trust account may be withdrawn in order to pay the prizes offered only upon written approval by
certification to the department. This approval shall be provided only after the operator certifies to the department of Agriculture and Consumer Services of the name and address of each the winner, or winners and the amount of the prize or prizes to be awarded, and the value of each prize thereof.

2. If the operator of a game promotion has obtained a surety bond in lieu of establishing a trust account, the amount of the surety bond shall equal at all times the total amount of the prizes offered. The bond shall be in favor of the department for the use and benefit of any consumer who qualifies for the award of a prize under the rules and regulations of the game promotion but who is not awarded the prize. Such bond shall be applicable and liable for payment of the claims duly adjudicated by order of the department. The proceedings to adjudicate such claims shall be conducted in accordance with ss. 120.569 and 120.57.

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

(5) Except as provided in paragraph (11)(c), every operator of a game promotion in which the total announced value...
of the prizes offered is greater than $5,000 shall provide the department of Agriculture and Consumer Services with a certified list of the names and addresses of all persons, whether from this state or from another state, who have won prizes that have a value of more than $25, the value of such prizes, and the dates when the prizes were won within 60 days after such winners have been finally determined. The date for the final determination of winners shall be 60 days after the ending date of the game promotion disclosed in the original filing under subsection (3). The operator shall provide a copy of the list of winners, without charge, to any person who requests it. In lieu of the foregoing, the operator of a game promotion may, at his or her option, publish the same information about the winners in a Florida newspaper of general circulation within 60 days after such winners have been determined and shall provide to the department of Agriculture and Consumer Services a certified copy of the publication containing the information about the winners. The operator of a game promotion is not required to notify a winner by mail or by telephone when the winner is already in possession of a game card from which the winner can determine that he or she has won a designated prize. All winning entries shall be held by the operator for a period of 90 days after the close or completion of the game.

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

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

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

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

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

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

(10) This section does not apply to actions or transactions regulated by the Department of Business and Professional Regulation or to the activities of nonprofit organizations or to any other organization engaged in any enterprise other than the sale of consumer products or services.

Subsections (3), (4), (5), (6), and (7) and paragraph (8)(a) and any of the rules made pursuant thereto do not apply to television or radio broadcasting companies licensed by the Federal Communications Commission.

(11)(a) The provisions of ss. 551.102(8), 849.09, 849.15, and 849.16 do not prohibit the use of electronic devices or computer terminals that have video display monitors to conduct or display the results of a game promotion otherwise permitted by this section.

(b) Each electronic device or computer terminal that has a video display monitor provided by the operator for consumers to participate in a game promotion is considered a separate game promotion for purposes of this section. Each electronic device's or computer terminal's physical location must be stated in the filing specified in subsection (3), and a separate nonrefundable filing fee shall be paid for each device or terminal.

(c) The operator of a game promotion that uses an
electronic device or computer terminal having a video display monitor provided by the operator for use by consumers shall comply with all requirements of subsections (3), (4), and (5) regardless of the total announced value of the prizes offered.

Section 2. This act shall take effect July 1, 2010.