

22.18 UNLAWFUL OPERATION OF A GAME PROMOTION

§ 849.094(2), Fla. Stat.

To prove the crime of Unlawful Operation of a Game Promotion, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) was an operator of a game promotion.

Give one or more as applicable. § 849.094(2)(a)–(2)(e), Fla. Stat.

2. (Defendant)
 - a. designed, engaged in, promoted, or conducted a game promotion, in connection with the promotion or sale of consumer products or services, wherein [the winner could be predetermined] [or] [the game could be manipulated or rigged so as to allocate a winning game or [any portion thereof to certain lessees, agents, or franchises] [or] [part thereof to a particular period of the game promotion or to a particular geographic area]].
 - b. arbitrarily removed, disqualified, disallowed, or rejected any entry in the game promotion.
 - c. failed to award prizes offered in the game promotion.
 - d. printed, published, or circulated literature or advertising material used in connection with the game promotion that was false, deceptive, or misleading.
 - e. required an entry fee, payment, or proof of purchase as a condition of entering the game promotion.

Definitions.

§ 849.094(1)(b), Fla. Stat.

“Operator” means a retailer who operates a game promotion or any person, firm, corporation, organization, or association or agent or employee thereof who promotes, operates, or conducts a nationally advertised game promotion.

§ 849.094(1)(a), Fla. Stat.

“Game promotion” means, but is not limited to, a contest, game of chance, sweepstakes, or gift enterprise, conducted by an operator within or throughout the state and other states in connection with and incidental to the sale of consumer products or services, and in which the elements of chance and prize are present. [However, a “game promotion” does not apply to bingo games.]

“Prize” means money, property of any kind, or any other thing of value, or anything that could be exchanged for something of value, or to obtain a credit of value.

Lesser Included Offenses

UNLAWFUL OPERATION OF A GAME PROMOTION — 849.094(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt or Solicitation or Conspiracy	777.04	5.1 or 5.2 or 5.3

Comments

Pursuant to § 849.094(10), Fla. Stat., this “game promotion” statute does not apply to actions or transactions regulated by the Department of Business and Professional Regulation or to any other organization engaged in any enterprise other than the sale of consumer products or services or to television or radio broadcasting companies licensed by the Federal Communications Commission.

This instruction was adopted in 2016.