

By the Committee on Regulated Services and Representative
Fasano

1 A bill to be entitled
2 An act relating to gambling; amending s.
3 849.0935, F.S.; providing additional tax-exempt
4 organizations which are authorized to conduct
5 drawings by chance under said section,
6 including civic organizations, employees'
7 associations, clubs, fraternal benefit
8 societies, fraternal lodges, and armed forces
9 and veterans' organizations; amending s.
10 849.094, F.S., which regulates game promotions
11 in connection with the sale of products or
12 services; providing that specified provisions
13 of said section do not apply to television or
14 radio broadcasting companies licensed by the
15 Federal Communications Commission; providing an
16 effective date.

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

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20 Section 1. Paragraph (b) of subsection (1) and
21 subsection (2) of section 849.0935, Florida Statutes, 1996
22 Supplement, are amended to read:

23 849.0935 Charitable, nonprofit organizations; drawings
24 by chance; required disclosures; unlawful acts and practices;
25 penalties.--

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

27 (b) "Organization" means an organization which is
28 exempt from federal income taxation pursuant to 26 U.S.C. s.
29 501(c)(3), (4), (7), (8), (10), or (19), and which has a
30 current determination letter from the Internal Revenue
31 Service, and its bona fide members or officers.

1 (2) The provisions of s. 849.09 shall not be construed
2 to prohibit an organization qualified under 26 U.S.C. s.
3 501(c)(3), (4), (7), (8), (10), or (19) from conducting
4 drawings by chance pursuant to the authority granted by this
5 section, provided the organization has complied with all
6 applicable provisions of chapter 496.

7 Section 2. Subsection (10) of section 849.094, Florida
8 Statutes, is amended to read:

9 849.094 Game promotion in connection with sale of
10 consumer products or services.--

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

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

19 (b) "Operator" means any person, firm, corporation, or
20 association or agent or employee thereof who promotes,
21 operates, or conducts a game promotion, except any charitable
22 nonprofit organization.

23 (2) It is unlawful for any operator:

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

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

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1 2. Allocate a winning game or part thereof to a
2 particular period of the game promotion or to a particular
3 geographic area;
4 (b) Arbitrarily to remove, disqualify, disallow, or
5 reject any entry;
6 (c) To fail to award prizes offered;
7 (d) To print, publish, or circulate literature or
8 advertising material used in connection with such game
9 promotions which is false, deceptive, or misleading; or
10 (e) To require an entry fee, payment, or proof of
11 purchase as a condition of entering a game promotion.
12 (3) The operator of a game promotion in which the
13 total announced value of the prizes offered is greater than
14 \$5,000 shall file with the Department of State a copy of the
15 rules and regulations of the game promotion and a list of all
16 prizes and prize categories offered at least 7 days before the
17 commencement of the game promotion. Such rules and
18 regulations may not thereafter be changed, modified, or
19 altered. The operator of a game promotion shall conspicuously
20 post the rules and regulations of such game promotion in each
21 and every retail outlet or place where such game promotion may
22 be played or participated in by the public and shall also
23 publish the rules and regulations in all advertising copy used
24 in connection therewith. Radio and television announcements
25 may indicate that the rules and regulations are available at
26 retail outlets or from the operator of the promotion. A
27 nonrefundable filing fee of \$100 shall accompany each filing
28 and shall be deposited into the Division of Licensing Trust
29 Fund to be used to pay the costs incurred in administering and
30 enforcing the provisions of this section.
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1 (4)(a) Every operator of such a game promotion in
2 which the total announced value of the prizes offered is
3 greater than \$5,000 shall establish a trust account, in a
4 national or state-chartered financial institution, with a
5 balance sufficient to pay or purchase the total value of all
6 prizes offered. On a form supplied by the Department of
7 State, an official of the financial institution holding the
8 trust account shall set forth the dollar amount of the trust
9 account, the identity of the entity or individual establishing
10 the trust account, and the name of the game promotion for
11 which the trust account has been established. Such form shall
12 be filed with the Department of State at least 7 days in
13 advance of the commencement of the game promotion. In lieu of
14 establishing such trust account, the operator may obtain a
15 surety bond in an amount equivalent to the total value of all
16 prizes offered; and such bond shall be filed with the
17 Department of State at least 7 days in advance of the
18 commencement of the game promotion.

19 1. The moneys held in the trust account may be
20 withdrawn in order to pay the prizes offered only upon
21 certification to the Department of State of the name of the
22 winner or winners and the amount of the prize or prizes and
23 the value thereof.

24 2. If the operator of a game promotion has obtained a
25 surety bond in lieu of establishing a trust account, the
26 amount of the surety bond shall equal at all times the total
27 amount of the prizes offered.

28 (b) The Department of State may waive the provisions
29 of this subsection for any operator who has conducted game
30 promotions in the state for not less than 5 consecutive years
31 and who has not had any civil, criminal, or administrative

1 action instituted against him by the state or an agency of the
2 state for violation of this section within that 5-year period.
3 Such waiver may be revoked upon the commission of a violation
4 of this section by such operator, as determined by the
5 Department of State.

6 (5) Every operator of a game promotion in which the
7 total announced value of the prizes offered is greater than
8 \$5,000 shall provide the Department of State with a certified
9 list of the names and addresses of all persons, whether from
10 this state or from another state, who have won prizes which
11 have a value of more than \$25, the value of such prizes, and
12 the dates when the prizes were won within 60 days after such
13 winners have been finally determined. The operator shall
14 provide a copy of the list of winners, without charge, to any
15 person who requests it. In lieu of the foregoing, the
16 operator of a game promotion may, at his option, publish the
17 same information about the winners in a Florida newspaper of
18 general circulation within 60 days after such winners have
19 been determined and shall provide to the Department of State a
20 certified copy of the publication containing the information
21 about the winners. The operator of a game promotion is not
22 required to notify a winner by mail or by telephone when the
23 winner is already in possession of a game card from which the
24 winner himself can determine that he has won a designated
25 prize. All winning entries shall be held by the operator for
26 a period of 90 days after the close or completion of the game.

27 (6) The Department of State shall keep the certified
28 list of winners for a period of at least 6 months after
29 receipt of the certified list. The department thereafter may
30 dispose of all records and lists.

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

12 (8)(a) The Department of State shall have the power to
13 promulgate such rules and regulations respecting the operation
14 of game promotions as it may deem advisable.

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

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

29 (b) Any person, firm, corporation, association, agent,
30 or employee who violates any provision of this section or any
31 of the rules and regulations made pursuant to this section

1 shall be liable for a civil penalty of not more than \$1,000
2 for each such violation, which shall accrue to the state and
3 may be recovered in a civil action brought by the Department
4 of State or the Department of Legal Affairs.

5 (10) This section does not apply to actions or
6 transactions regulated by the Department of Business and
7 Professional Regulation or to the activities of nonprofit
8 organizations or to any other organization engaged in any
9 enterprise other than the sale of consumer products or
10 services. Subsections (3), (4), (5), (6), and (7) and
11 paragraph (8)(a) of this section and any of the rules made
12 pursuant thereto do not apply to television or radio
13 broadcasting companies licensed by the Federal Communications
14 Commission.

15 Section 3. This act shall take effect upon becoming a
16 law.

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