

STORAGE NAME: h4025c.cjc

DATE: April 20, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4025

RELATING TO: Commercial Game Promotions

SPONSOR(S): Representative Carlton and others

COMPANION BILL(S): SB 2224(S), HB 4227(C)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REGULATED SERVICES YEAS 12 NAYS 0
 - (2) CIVIL JUSTICE & CLAIMS YEAS 8 NAYS 1
 - (3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

This bill reflects changes to the game promotions statute which were requested by the Department of State and the Department of Legal Affairs to clarify the manner in which game promotions in connection with the sale of consumer products and services are conducted. The game promotions statute is rewritten to clarify the conditions and prohibitions which apply to such promotions. That section of law is essentially reorganized without substantial change, except for the addition of specific prohibitions which are intended to address sweepstakes issues. These changes in the statute are designed to make the law more understandable and enforcement easier. Certain definitions have been added, the list of prohibited activities has been expanded, the registration fee has been increased, and penalties for violations of this section have been increased.

The bill has no fiscal impact.

The act takes effect upon becoming a law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Certain promotions, such as contests, games of chance, and gift enterprises, are authorized in connection with the sale of consumer products and services pursuant to section 849.094, Florida Statutes. That section provides conditions which must be met while conducting such promotions and specifies prohibited activities.

Florida has recently experienced allegedly fraudulent or misleading actions with regard to certain sweepstakes promotions. Generally, these sweepstakes announce to recipients that they have won a particular prize, usually a multi-million dollar prize, but the disclaimers are small in size and are easily overlooked or misunderstood. In the past several years, many people, usually elderly, have either spent large sums of money in order to win a prize or have flown to this state to claim large prizes which they believed from the promotional materials that they had won because the disclaimers were of questionable sufficiency.

The Department of State and the Department of Legal Affairs have experienced problems in enforcing the provisions of that statute due to its ambiguity.

B. EFFECT OF PROPOSED CHANGES:

The game promotions statute, s. 849.094, F.S., is rewritten to clarify the conditions and prohibitions which apply to such promotions. That section of law is essentially reorganized without substantial change, except for the addition of specific prohibitions which are intended to address sweepstakes issues. These changes in the statute are designed to make the law more understandable and enforcement easier. Certain definitions have been added, the list of prohibited activities has been expanded, the registration fee has been increased, and the penalties for violations have been increased.

In addition to the activities currently prohibited by law, this bill would prohibit promotional materials which indicate that the recipient is a winner or that the person has been specially selected to win without a statement that certain conditions must be met in order to win. Among its provisions, the bill would:

- * Require the disclosure of the odds of winning and conditions which must be met in order to win in a clear and conspicuous manner and in at least 12-point type;
- * Require a statement on promotional materials which indicates that the game is registered with the Department of State and includes the registration number of the game, the toll-free telephone number for the department, and a statement directing individuals to contact the department regarding game registrations information;
- * Prohibit false or misleading information on promotional materials; and
- * Prohibit the conduct of a game promotion in which the sale of a consumer good or service is incidental to the promotion itself.

The rules for the game promotions must provide for the award and distribution of all prizes in which the total value of advertised or announced prizes exceeds \$1,000.

The filing fee for game promotion registrations is increased from a maximum of \$100 to a maximum of \$250. A list of winners is required to be submitted within 90 days of the ending date of the promotion and the awarding of prizes is not to exceed 90 days.

The Department of State is authorized to adopt rules for the implementation of these provisions, it has the power to investigate game promotions and applicants for registration to assure compliance, and it has the authority to bring administrative action under chapter 120, F.S., or to impose fines for violations.

The Department of State and the Department of Legal Affairs may bring a civil action seeking a penalty of up to \$10,000 for each violation, to seek a judicial order for the award of prizes, and to seek compensatory damages on behalf of any party. A penalty of \$15,000 per violation may be sought if the civil action also seeks compensatory damages on behalf of a senior citizen.

Section 721.111, F.S., relating to prize and gift promotional offers, is amended to reflect cross references.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

Yes. The filing fee for registering a game promotion has been increased from a maximum of \$100 to a maximum of \$250.

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 721.111 and 849.094, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The increase in the filing fee provided by the bill will cover the Department of State's cost for processing registrations. The Department of Legal Affairs reports no fiscal impact; rather, the Attorney General's staff considers this bill clarifying in nature and will help make it easier for them to enforce the provisions of this section.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The filing fee for registration of a game promotion may increase from a maximum of \$100 to a maximum of \$250.

2. Direct Private Sector Benefits:

Enhanced enforcement may serve to provide additional protection to the public.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities

V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Regulated Services took up the bill on March 23, 1998. An amendment by Representative Morroni was adopted which was technical in nature and replaced language inadvertently removed from bill during drafting. The bill received a unanimously favorable vote.

The Committee on Civil Justice and Claims at its meeting on April 14, 1998, adopted one "strike-everything" amendment. The amendment modifies several definitions contained in the original bill, including definitions of "game promotion" and "operation". In addition the amendment eliminates several definitions contained in the original bill. The amendment narrows the types of conduct which are prohibited under the original bill, more directly targeting sweepstakes materials distributed through the mail. Certain disclosures are required with respect to such materials.

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

Legislative Research Director:

J Paul Whitfield Jr

Paul Liepshutz

AS REVISED BY THE COMMITTEE ON CIVIL JUSTICE & CLAIMS:

Prepared by:

Legislative Research Director:

Charles Boning

Richard Hixson

AS REVISED BY THE COMMITTEE ON CIVIL JUSTICE & CLAIMS:

Prepared by:

Legislative Research Director: