

By Senator Horne

6-1342-00

1 A bill to be entitled
2 An act relating to public records; providing
3 legislative findings of public necessity;
4 amending s. 24.105, F.S.; providing that
5 information made available to the public by the
6 Department of the Lottery through 1-900
7 telephone service is exempt from public records
8 requirements; providing for future legislative
9 review and repeal; providing for severability;
10 providing an effective date.

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

13
14 Section 1. Legislative Findings.--

15 (1) Pursuant to Article I, Section 24 of the State
16 Constitution, the Legislature declares a public necessity to
17 clarify a legal ambiguity that has developed in relation to
18 the provision of winning lottery numbers and payout
19 information through a 1-900 telephone service by the
20 Department of the Lottery. Currently, the department
21 disseminates winning-number information on television nightly.
22 Upon drawing the numbers, the department widely distributes
23 winning lottery numbers and payout information to the media.
24 This same information is distributed to all lottery retailers
25 who make the information available to customers and lottery
26 players. The information is immediately posted on the
27 department's website at www.floridalottery.com. The department
28 provides the public with copies of documents that contain
29 winning lottery numbers and payout information upon request at
30 cost both by mail and at department offices. The department
31 also offers, through a competitively bid contract with a

1 service provider, the winning lottery numbers and payout
2 information via a 1-900 telephone service. The department
3 instituted this service at the direction of proviso language
4 to Specific Appropriation 1893 in the 1995-1996 General
5 Appropriations Act.

6 (2) Legal ambiguity has developed in the provision of
7 this service because of a class action complaint seeking
8 damages against the state. DeLuise v. Department of the
9 Lottery, et al., Second Judicial Circuit Court Case No.
10 99-3999, Leon County, Florida. The complaint demands refunds
11 for every person who has used the 1-900 service since October
12 1995, as well as attorneys' fees for alleged violation of
13 chapter 119, Florida Statutes. This act clarifies that the
14 department has the legal authority to provide winning lottery
15 numbers and payout information via a 1-900 service,
16 notwithstanding chapter 119, Florida Statutes. This act
17 further declares that winning lottery numbers and payout
18 information when provided by a 1-900 telephone service is not
19 a public record; does not constitute access to any public
20 record by remote electronic means; and that revenue may be
21 produced by the 1-900 service.

22 (3) Prior to 1995, the department provided winning
23 lottery number and payout information through a costly 1-800
24 service. In 1995, the Legislature made a policy decision to
25 require the users of the instant-access telephone service to
26 pay for this convenience and to allow the department to
27 generate revenue by providing the 1-900 service. Since the
28 1-900 service was instituted, the Educational Enhancement
29 Trust Fund has received nearly \$8 million in revenue, while
30 the costs of the 1-800 service to the public have been
31 avoided.

1 (4) This act is no broader than necessary to
2 accomplish its stated purpose because access to public records
3 has not been impeded or restricted. The department will
4 continue to provide documents containing winning number and
5 payout information as otherwise required by chapter 119,
6 Florida Statutes, and will continue to widely distribute
7 lottery information to the media. This act does nothing
8 greater than to clarify the department's authority under
9 chapter 24, Florida Statutes, and the Legislature's original
10 intent in the passage of proviso language to Specific
11 Appropriation 1893 of the 1995-1996 General Appropriations Act
12 to use 1-900 services under these circumstances and to
13 generate revenue for education. Thus, this act does not create
14 new rights or eliminate previously established rights.

15 Section 2. Subsection (13) of section 24.105, Florida
16 Statutes, is amended to read:

17 24.105 Powers and duties of department.--The
18 department shall:

19 (13)(a) Determine by rule information relating to the
20 operation of the lottery which is confidential and exempt from
21 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
22 State Constitution. Such information includes trade secrets;
23 security measures, systems, or procedures; security reports;
24 information concerning bids or other contractual data, the
25 disclosure of which would impair the efforts of the department
26 to contract for goods or services on favorable terms; employee
27 personnel information unrelated to compensation, duties,
28 qualifications, or responsibilities; and information obtained
29 by the Division of Security pursuant to its investigations
30 which is otherwise confidential. To be deemed confidential,
31 the information must be necessary to the security and

1 integrity of the lottery. Confidential information may be
2 released to other governmental entities as needed in
3 connection with the performance of their duties. The
4 receiving governmental entity shall retain the confidentiality
5 of such information as provided for in this subsection.

6 (b) Maintain the confidentiality of the street address
7 and the telephone number of a winner, in that such information
8 is confidential and exempt from the provisions of s. 119.07(1)
9 and s. 24(a), Art. I of the State Constitution, unless the
10 winner consents to the release of such information or as
11 provided for in s. 24.115(4) or s. 409.2577.

12 (c) Maintain the confidentiality of winning lottery
13 numbers and payout information provided to the public through
14 a 1-900 telephone service, in that such information is
15 confidential and exempt from the provisions of s. 119.07(1)
16 and s. 24(a), Art. I of the State Constitution. This paragraph
17 is subject to the Open Government Sunset Review Act of 1995 in
18 accordance with s. 119.15, and shall stand repealed on October
19 2, 2005, unless reviewed and saved from repeal through
20 reenactment of the Legislature.

21 (d)~~(c)~~ Any information made confidential and exempt
22 from the provisions of s. 119.07(1) under this subsection
23 shall be disclosed to a member of the commission, to the
24 Auditor General, or to the independent auditor selected under
25 s. 24.123 upon such person's request therefor. If the
26 President of the Senate or the Speaker of the House of
27 Representatives certifies that information made confidential
28 under this subsection is necessary for effecting legislative
29 changes, the requested information shall be disclosed to him
30 or her, and he or she may disclose such information to members
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