

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Regulated Industries Committee

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BILL: CS/SB 2538

SPONSOR: Regulated Industries Committee and Senator Argenziano

SUBJECT: Drawings by Chance

DATE: April 19, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Section 849.09, F.S., prohibits the conduct and promotion of lotteries. Section 489.0935(2), F.S., exempts qualified organizations from that prohibition. This committee substitute (CS) extends the exemption to permit community associations and local chambers of commerce to conduct drawings by chance, provided that the proceeds from a drawing are used for a charitable purpose or a community benefit. The exemption applies to condominium associations under ch. 718, F.S., cooperatives under ch. 719, F.S., homeowner's associations under ch. 720, F.S., and mobile home associations under ch. 723, F.S.

This CS substantially amends section 849.0935, Florida Statutes.

## II. Present Situation:

### Drawings by Chance

Section 849.09, F.S., prohibits the conduct and promotion of lotteries. Section 849.0935(2), F.S., exempts qualified organizations from the prohibition in s. 849.09, F.S. It permits certain organizations to conduct drawings by chance, provided the organization has complied with all applicable provisions of ch. 496, F.S.<sup>1</sup>

Section 489.0935(2)(a), F.S., defines the terms "drawing by chance" and "drawing" to mean:

an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance

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<sup>1</sup> Chapter 496, F.S., provides registration and disclosure requirements for the solicitation of contributions by charitable organizations.

to win a prize. The term “drawing” does not include those enterprises, commonly known as “matching,” “instant winner,” or “preselected sweepstakes,” which involve the distribution of winning numbers, previously designated as such, to the public.

Section 849.0935(2)(b), F.S., defines the term “organization” to mean:

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

### **Community Associations**

Chapter 718, F.S., provides statutory recognition to condominium associations, and provides procedures for operating homeowners’ associations.

Chapter 719, F.S., provides statutory recognition for the cooperative form of real property ownership. In a cooperative, “legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.”<sup>2</sup>

Chapter 720, F.S., provides statutory recognition to homeowner’s associations, and provides procedures for operating homeowners’ associations.

Chapter 723, F.S., known as the “Florida Mobile Home Act,” provides for the regulation of mobile home park lot tenancies.

### **III. Effect of Proposed Changes:**

The bill amends s. 849.0935, F.S., to permit homeowner’s associations or associations as defined in chs. 718, 719, 720, and 723, F.S., (community association) and local chambers of commerce to conduct drawings by chance.

The bill extends the exemption to s. 849.09, F.S., provided in s. 849.0935, F.S., by amending the definition of the term “organization” in s. 849.0935(1)(b), F.S., to include community associations and local chambers of commerce. The CS provides that an organization that is exempt from federal income taxation pursuant to 26 U.S.C. s. 501(c)(3), (4), (7), (8), (10), or (19), (charitable organizations) in s. 849.0935(1)(b), F.S., must comply with all applicable provisions of ch. 496, F.S. The CS does not require that community associations or local chambers of commerce must comply with the applicable provisions of ch. 496, F.S.

It also amends s. 849.0935(2), F.S., to delete provisions in current law that are relevant to charitable organizations in order to conform the provision to the broader exemption in the CS.

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<sup>2</sup> Section 719.103(12), F.S.

A community association or local chamber of commerce may conduct a drawing pursuant to s. 849.0935, F.S., if the proceeds from the drawing are used for a charitable purpose or a community benefit.

The bill also amends s. 849.0935(2), F.S., to provide that s. 849.09, F.S., shall not be construed to prohibit organizations as defined in s. 849.0935, F.S., from conducting drawings by chance.

The bill defines the term charitable purpose to mean any “benevolent, philanthropic, patriotic, educational, humane, scientific, artistic, public health, social welfare or advocacy, environmental conservation, civic, or other eleemosynary (relating to, or supported by charity) objective.”<sup>3</sup>

This bill would take effect July 1, 2005.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

None.

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<sup>3</sup> This definition of the term is identical to the definition of the term “charitable purpose” in s. 496.404(2), F.S.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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