

CHAPTER 97-108

Committee Substitute for House Bill No. 249

An act relating to gambling; amending s. 849.0935, F.S.; providing additional tax-exempt organizations which are authorized to conduct drawings by chance under said section, including civic organizations, employees' associations, clubs, fraternal benefit societies, fraternal lodges, and armed forces and veterans' organizations; amending s. 849.094, F.S., which regulates game promotions in connection with the sale of products or services; providing that specified provisions of said section do not apply to television or radio broadcasting companies licensed by the Federal Communications Commission; providing an effective date.

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

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

849.0935 Charitable, nonprofit organizations; drawings by chance; required disclosures; unlawful acts and practices; penalties.—

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

(b) "Organization" means 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.

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

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

849.094 Game promotion in connection with sale of consumer products or services.—

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

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

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

(2) It is unlawful for any operator:

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

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

2. Allocate a winning game or part thereof to a particular period of the game promotion or to a particular geographic area;

(b) Arbitrarily to remove, disqualify, disallow, or reject any entry;

(c) To fail to award prizes offered;

(d) To print, publish, or circulate literature or advertising material used in connection with such game promotions which is false, deceptive, or misleading; or

(e) To require an entry fee, payment, or proof of purchase as a condition of entering a game promotion.

(3) The operator of a game promotion in which the total announced value of the prizes offered is greater than \$5,000 shall file with the Department of State a copy of the rules and regulations of the game promotion and a list of all prizes and prize categories offered at least 7 days before the commencement of the game promotion. Such rules and regulations may not thereafter be changed, modified, or altered. The operator of a game promotion shall conspicuously post the rules and regulations of such game promotion in each and every retail outlet or place where such game promotion may be played or participated in by the public and shall also publish the rules and regulations in all advertising copy used in connection therewith. Radio and television announcements may indicate that the rules and regulations are available at retail outlets or from the operator of the promotion. A nonrefundable filing fee of \$100 shall accompany each filing and shall be deposited into the Division of Licensing Trust Fund to be used to pay the costs incurred in administering and enforcing the provisions of this section.

(4)(a) Every operator of such a game promotion in which the total announced value of the prizes offered is greater than \$5,000 shall establish a trust account, in a national or state-chartered financial institution, with a balance sufficient to pay or purchase the total value of all prizes offered. On a form supplied by the Department of State, an official of the financial institution holding the trust account shall set forth the dollar amount of the trust account, the identity of the entity or individual establishing the trust account, and the name of the game promotion for which the trust account has been established. Such form shall be filed with the Department of State at least 7 days in advance of the commencement of the game promotion. In lieu of establishing such trust account, the operator may obtain a surety bond in an amount equivalent to the total value of all prizes offered; and such bond shall be filed with the Department of State at least 7 days in advance of the commencement of the game promotion.

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

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

(b) The Department of State may waive the provisions of this subsection for any operator who has conducted game promotions in the state for not less than 5 consecutive years and who has not had any civil, criminal, or administrative action instituted against him by the state or an agency of the state for violation of this section within that 5-year period. Such waiver may be revoked upon the commission of a violation of this section by such operator, as determined by the Department of State.

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

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

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

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

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

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

(b) Any person, firm, corporation, association, agent, or employee who violates any provision of this section or any of the rules and regulations made pursuant to this section shall be liable for a civil penalty of not more than \$1,000 for each such violation, which shall accrue to the state and may be recovered in a civil action brought by the Department of State or the Department of Legal Affairs.

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

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

Became a law without the Governor's approval May 24, 1997.

Filed in Office Secretary of State May 23, 1997.