

CHAPTER 2013-2

Committee Substitute for House Bill No. 155

An act relating to the prohibition of electronic gambling devices; providing legislative findings and a declaration of intent and construction; amending s. 849.0935, F.S., relating to drawings by chance offered by nonprofit organizations; revising the definition of the term “drawing by chance” to include the term “raffle” within the meaning of the term and exclude the term “game promotions”; revising conditions for exceptions to prohibitions on lotteries; amending s. 849.094, F.S., relating to game promotions in connection with sale of consumer products or services; revising definitions; providing that violations are deceptive and unfair trade practices; amending s. 849.16, F.S.; defining the term “slot machine or device” for purposes of specified gambling provisions; providing a rebuttable presumption that a device, system, or network is a prohibited slot machine; amending s. 849.161, F.S., relating to amusement games or machines; revising and providing definitions; revising provisions that exempt certain amusement games and centers from the application of specified provisions relating to gambling; amending s. 895.02, F.S.; revising the definition of the term “racketeering activity” to include violations of specified provisions; amending s. 721.111, F.S., relating to promotional offers; conforming cross-references; reenacting ss. 16.56(1)(a), 338.234(1), 655.50(3)(g), 849.19, 896.101(2)(g), and 905.34(3), F.S., relating to the Office of Statewide Prosecution, the Florida Turnpike, money laundering, seizure of property, the Florida Money Laundering Act, and a statewide grand jury, respectively, to incorporate changes made by the act in references thereto; providing an effective date.

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

Section 1. Findings and declarations of necessity.—

(1) The Legislature declares that s. 849.01, Florida Statutes, specifically prohibits the keeping or maintaining of a place for the purpose of gambling or gaming.

(2) The Legislature finds that s. 849.0935, Florida Statutes, was enacted to allow specified charitable or nonprofit organizations the opportunity to raise funds to carry out their charitable or nonprofit purpose by conducting a raffle for prizes by eliminating the element of monetary consideration and allowing the receipt of voluntary donations or contributions and was not intended to provide a vehicle for the establishment of places of gambling or gaming.

(3) The Legislature finds that s. 849.094, Florida Statutes, was enacted to regulate certain game promotions or sweepstakes conducted by for-profit commercial entities on a limited and occasional basis as an advertising and marketing tool and incidental to substantial bona fide sales of consumer

products or services, if the element of consideration is removed as no purchase necessary and they comply with the requirements and rules specified by law, and was not intended to provide a vehicle for the establishment of places of ongoing gambling or gaming.

(4) The Legislature finds that s. 849.161, Florida Statutes, was enacted to regulate the operation of skill-based arcade games offered at specified arcade amusement centers and truck stops if they comply with the requirements of law and was not provided as a vehicle for the conduct of casino-style gambling.

(5) Therefore, the Legislature finds that there is a compelling state interest in clarifying the operation and use of ss. 849.0935, 849.094, and 849.161, Florida Statutes, to ensure that a charitable drawing by chance, game promotion in connection with the sale of a consumer product or service, and arcade amusement games are not subject to abuse or interpreted in any manner as creating an exception to Florida's general prohibitions against gambling.

Section 2. Paragraph (a) of subsection (1) and subsections (2), (4), and (7) of section 849.0935, Florida Statutes, 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:

(a) “Drawing by chance,” or “drawing,” or “raffle” means 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 to win a prize. The term “drawing” does not include those enterprises, commonly known as “game promotions,” as defined by s. 849.094, “matching,” “instant winner,” or “preselected sweepstakes,” which involve the distribution of winning numbers, previously designated as such, to the public.

~~(2) Section The provisions of s. 849.09 does 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, if provided the organization has complied with all applicable provisions of chapter 496 and this section.~~

(4) It is unlawful for any organization that ~~which~~, pursuant to the authority granted by this section, promotes, operates, or conducts a drawing by chance:

(a) To design, engage in, promote, or conduct any drawing in which the winner is predetermined by means of matching, instant win, or preselected sweepstakes or otherwise or in which the selection of the winners is in any way rigged;

(b) To require an entry fee, donation, substantial consideration, payment, proof of purchase, or contribution as a condition of entering the drawing or of being selected to win a prize. However, this ~~paragraph does provision shall~~ not prohibit an organization from suggesting a minimum donation or from including a statement of such suggested minimum donation on any printed material ~~used~~ utilized in connection with the fundraising event or drawing;

(c) To condition the drawing on a minimum number of tickets having been disbursed to contributors or on a minimum amount of contributions having been received;

(d) To arbitrarily remove, disqualify, disallow, or reject any entry or to discriminate in any manner between entrants who gave contributions to the organization and those who did not give such contributions;

(e) To fail to promptly notify, at the address set forth on the entry blank, any person, whose entry is selected to win, of the fact that he or she won;

(f) To fail to award all prizes offered;

(g) To print, publish, or circulate literature or advertising material used in connection with the drawing which is false, deceptive, or misleading;

(h) To cancel a drawing; or

(i) To condition the acquisition or giveaway of any prize upon the receipt of voluntary donations or contributions.

(7) Any organization ~~that which~~ engages in any act or practice in violation of this section ~~commits is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. ~~However, Any~~ Any organization or other person who sells or offers for sale in this state a ticket or entry blank for a raffle or other drawing by chance, without complying with the requirements of paragraph (3)(d), ~~commits is guilty of~~ a misdemeanor of the second degree, punishable by fine only as provided in s. 775.083.

Section 3. Subsections (1) and (8) of section 849.094, Florida Statutes, are amended, and subsection (11) is added to that section, 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, ~~sweepstakes~~, or gift enterprise, conducted by an operator within or throughout the state and other states in connection with and incidental to the sale of consumer products or services, and in which the elements of chance and prize are present. However, “game promotion” ~~may~~ shall not be construed to apply to bingo games conducted pursuant to s. 849.0931.

(b) “Operator” means a retailer who operates a game promotion or any person, firm, corporation, organization, or association or agent or employee thereof who promotes, operates, or conducts a nationally advertised game promotion,~~except any charitable nonprofit organization.~~

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

(b) Compliance with the rules of the Department of Agriculture and Consumer Services does not authorize and is not a defense to a charge of possession of a slot machine or device or any other device or a violation of any other law.

~~(c)~~(b) Whenever the Department of Agriculture and Consumer Services 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.

(11) A violation of this section, or soliciting another to commit an act that violates this section, constitutes a deceptive and unfair trade practice actionable under the Florida Deceptive and Unfair Trade Practices Act.

Section 4. Section 849.16, Florida Statutes, is amended to read:

849.16 Machines or devices which come within provisions of law defined.

(1) As used in this chapter, the term “slot machine or device” means any machine or device or system or network of devices is a slot machine or device within the provisions of this chapter if it is one that is adapted for use in such a way that, upon activation, which may be achieved by, but is not limited to, as a result of the insertion of any piece of money, coin, account number, code, or other object or information, such machine or device or system is directly or indirectly caused to operate or may be operated and if the user, whether by application of skill or by reason of any element of chance or of any other outcome of such operation unpredictable by the user ~~him or her~~, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though the device or system ~~it~~ may be available for free play or, in addition to any element of chance or unpredictable outcome of such operation, may also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value. The term “slot machine or

device” includes, but is not limited to, devices regulated as slot machines pursuant to chapter 551.

(2) ~~Nothing contained in~~ This chapter ~~may not shall~~ be construed, interpreted, or applied to the possession of a reverse vending machine. As used in this section, the term a “reverse vending machine” means is a machine into which empty beverage containers are deposited for recycling and which provides a payment of money, merchandise, vouchers, or other incentives. At a frequency less than upon the deposit of each beverage container, a reverse vending machine may pay out a random incentive bonus greater than that guaranteed payment in the form of money, merchandise, vouchers, or other incentives. The deposit of any empty beverage container into a reverse vending machine does not constitute consideration, and ~~nor shall~~ a reverse vending machine may not be deemed ~~to be~~ a slot machine as defined in ~~within~~ this section.

(3) There is a rebuttable presumption that a device, system, or network is a prohibited slot machine or device if it is used to display images of games of chance and is part of a scheme involving any payment or donation of money or its equivalent and awarding anything of value.

Section 5. Section 849.161, Florida Statutes, is amended to read:

849.161 Amusement games or machines; when chapter inapplicable.—

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

(a) “Amusement games or machines” means games which operate by means of the insertion of a coin, and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons, the cost value of which does not exceed 75 cents on any game played, which may be exchanged for merchandise. The term does not include casino-style games in which the outcome is determined by factors unpredictable by the player or games in which the player may not control the outcome of the game through skill.

(b) “Arcade amusement center” means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.

(c) “Game played” means the event occurring from the initial activation of the machine until the results of play are determined without payment of additional consideration. Free replays do not constitute additional consideration.

(d) “Merchandise” means noncash prizes, including toys and novelties. The term does not include cash or any equivalent thereof, including gift cards or certificates, or alcoholic beverages.

(e) “Truck stop” means any dealer registered pursuant to chapter 212, excluding marinas, which:

1. Declared its primary fuel business to be the sale of diesel fuel;
2. Operates a minimum of six functional diesel fuel pumps; and
3. Has coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as bona fide amusement games or machines.

~~(2)(1)(a)1. Nothing contained in this chapter shall be taken or construed to prohibit as applicable to an arcade amusement center or truck stop from operating having amusement games or machines in conformance with this section which operate by means of the insertion of a coin and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise only, excluding cash and alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played.~~

~~2. Nothing contained in this chapter shall be taken or construed as applicable to any retail dealer who operates as a truck stop, as defined in chapter 336 and which operates a minimum of 6 functional diesel fuel pumps, having amusement games or machines which operate by means of the insertion of a coin or other currency and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise limited to noncash prizes, toys, novelties, and Florida Lottery products, excluding alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played.~~

~~(3) This section subparagraph applies only to games and machines which are operated for the entertainment of the general public and tourists as bona fide amusement games or machines.~~

~~(4) This section subsection shall not be construed to authorize apply, however, to any game or device defined as a gambling device in 15 24 U.S.C. s. 1171, which requires identification of each device by permanently affixing seriatim numbering and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under s. 1178, or. This subsection shall not be construed to authorize video poker games or any other game or machine that may be construed as a gambling device under Florida law.~~

~~(5)(b) This section does not apply Nothing in this subsection shall be taken or construed as applicable to a coin-operated game or device designed and manufactured only for bona fide amusement purposes which game or device may by application of skill entitle the player to replay the game or~~

device at no additional cost, if the game or device: can accumulate and react to no more than 15 free replays; can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay; can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as a gambling device in 15 24 U.S.C. s. 1171, which requires identification of each device by permanently affixing seriatim numbering and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under s. 1178. This subsection shall not be construed to authorize video poker games, or any other game or machine that may be construed as a gambling device under Florida law.

~~(2) The term “arcade amusement center” as used in this section means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.~~

Section 6. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) “Racketeering activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.
3. Section 403.727(3)(b), relating to environmental control.
4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.
5. Section 414.39, relating to public assistance fraud.
6. Section 440.105 or s. 440.106, relating to workers’ compensation.
7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.
8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.
9. Section 499.0051, relating to crimes involving contraband and adulterated drugs.

10. Part IV of chapter 501, relating to telemarketing.
11. Chapter 517, relating to sale of securities and investor protection.
12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.
13. Chapter 550, relating to jai alai frontons.
14. Section 551.109, relating to slot machine gaming.
15. Chapter 552, relating to the manufacture, distribution, and use of explosives.
16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.
17. Chapter 562, relating to beverage law enforcement.
18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.
20. Chapter 687, relating to interest and usurious practices.
21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.
22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.
23. Section 777.03, relating to commission of crimes by accessories after the fact.
24. Chapter 782, relating to homicide.
25. Chapter 784, relating to assault and battery.
26. Chapter 787, relating to kidnapping or human trafficking.
27. Chapter 790, relating to weapons and firearms.
28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.
29. Section 796.03, s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution and sex trafficking.

30. Chapter 806, relating to arson and criminal mischief.
31. Chapter 810, relating to burglary and trespass.
32. Chapter 812, relating to theft, robbery, and related crimes.
33. Chapter 815, relating to computer-related crimes.
34. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.
36. Section 827.071, relating to commercial sexual exploitation of children.
37. Chapter 831, relating to forgery and counterfeiting.
38. Chapter 832, relating to issuance of worthless checks and drafts.
39. Section 836.05, relating to extortion.
40. Chapter 837, relating to perjury.
41. Chapter 838, relating to bribery and misuse of public office.
42. Chapter 843, relating to obstruction of justice.
43. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
44. Chapter 849 Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.
45. Chapter 874, relating to criminal gangs.
46. Chapter 893, relating to drug abuse prevention and control.
47. Chapter 896, relating to offenses related to financial transactions.
48. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.
49. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 7. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is reenacted to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate “budget entity” as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the provisions of the Florida Anti-Fencing Act;

5. Any violation of the provisions of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of the provisions of chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of the provisions of the Florida Motor Fuel Tax Relief Act of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and Investor Protection Act; or

15. Any violation of the provisions of chapter 787, as well as any and all offenses related to a violation of the provisions of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 8. For the purpose of incorporating the amendment made by this act to section 849.16, Florida Statutes, in a reference thereto, subsection (1) of section 338.234, Florida Statutes, is reenacted to read:

338.234 Granting concessions or selling along the turnpike system; immunity from taxation.—

(1) The department may enter into contracts or licenses with any person for the sale of services or products or business opportunities on the turnpike system, or the turnpike enterprise may sell services, products, or business opportunities on the turnpike system, which benefit the traveling public or provide additional revenue to the turnpike system. Services, business opportunities, and products authorized to be sold include, but are not limited to, motor fuel, vehicle towing, and vehicle maintenance services; food with attendant nonalcoholic beverages; lodging, meeting rooms, and other business services opportunities; advertising and other promotional opportunities, which advertising and promotions must be consistent with the dignity and integrity of the state; state lottery tickets sold by authorized retailers; games and amusements that operate by the application of skill, not including games of chance as defined in s. 849.16 or other illegal gambling games; Florida citrus, goods promoting the state, or handmade goods produced within the state; and travel information, tickets, reservations, or other related services. However, the department, pursuant to the grants of authority to the turnpike enterprise under this section, shall not exercise the power of eminent domain solely for the purpose of acquiring real property in order to provide business services or opportunities, such as lodging and meeting-room space on the turnpike system.

Section 9. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (g) of subsection (3) of section 655.50, Florida Statutes, is reenacted to read:

655.50 Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.—

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

(g) “Specified unlawful activity” means any “racketeering activity” as defined in s. 895.02.

Section 10. For the purpose of incorporating the amendment made by this act to section 849.16, Florida Statutes, in a reference thereto, section 849.19, Florida Statutes, is reenacted to read:

849.19 Property rights in confiscated machine.—The right of property in and to any machine, apparatus or device as defined in s. 849.16 and to all money and other things of value therein, is declared not to exist in any person, and the same shall be forfeited and such money or other things of value shall be forfeited to the county in which the seizure was made and shall be delivered forthwith to the clerk of the circuit court and shall by her or him be placed in the fine and forfeiture fund of said county.

Section 11. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section 896.101, Florida Statutes, is reenacted to read:

896.101 Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.—

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

(g) “Specified unlawful activity” means any “racketeering activity” as defined in s. 895.02.

Section 12. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, in a reference thereto, subsection (3) of section 905.34, Florida Statutes, is reenacted to read:

905.34 Powers and duties; law applicable.—The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of:

(3) Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

or any attempt, solicitation, or conspiracy to commit any violation of the crimes specifically enumerated above, when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction or when any such offense is connected with an organized criminal conspiracy

affecting two or more judicial circuits. The statewide grand jury may return indictments and presentments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed. The powers and duties of, and law applicable to, county grand juries shall apply to a statewide grand jury except when such powers, duties, and law are inconsistent with the provisions of ss. 905.31-905.40.

Section 13. This act shall take effect upon becoming a law.

Approved by the Governor April 10, 2013.

Filed in Office Secretary of State April 10, 2013.