1983

Session Law 83-118

Florida Senate & House of Representatives

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### LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

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| Committee of Ref. | Senate ECCA (both) | House Committee (Etc. Banking) |

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and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended and in effect on April 1, 1983.

Section 2. Subsection (2) of section 501.205, Florida Statutes, is amended to read:

501.205 Rulemaking power.--

(2) All substantive rules and regulations promulgated under this part shall be consistent with the rules, regulations, and decisions of the Federal Trade Commission and the federal courts in interpreting the provisions of s. 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended and in effect on April 1, 1983.

Section 3. Section 501.2075, Florida Statutes, is created to read:

501.2075 Civil penalty.--Any person, firm, corporation, association, or entity, or agent or employee of the foregoing, who engages in any act or practice declared in this part to be unlawful, or who violates any of the rules of the Department of Legal Affairs promulgated under this part, with actual knowledge or knowledge fairly implied on the basis of subjective circumstances that such act is unfair or deceptive or is prohibited by rule, shall be liable for a civil penalty of not more than $5,000 for each such violation. This civil penalty may be recovered in any action brought under this part by the enforcing authority, or the enforcing authority may terminate any investigation or action upon agreement by the person, firm, corporation, association, or entity, or agent or employee of the foregoing, to pay a stipulated civil penalty. The department or the court may waive any such civil penalty if the person, firm, corporation, association, or entity or agent or employee of the foregoing, has previously made full restitution or reimbursement, or has paid actual damages to the consumers who have been injured by the unlawful act or practice or rule violation. Civil penalties so collected shall accrue to the state and be deposited as received into the General Revenue Fund unallocated.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor June 13, 1983.

Filed in Office Secretary of State June 14, 1983.

CHAPTER 83-118

Committee Substitute for House Bill No. 145

An act relating to game promotions; amending s. 849.094(1)(a), (3), (4), (5), (8)(b), and (10), Florida Statutes, and adding paragraph (e) to subsection (2) thereof; redefining the term "game promotion"; providing that it is unlawful for a game operator to require an entry fee, payment, or proof of purchase as a condition of entering a game promotion; requiring a $100 filing fee with respect to certain game promotions; requiring game operators to establish trust accounts in a described
CHAPTER 83-118  LAWS OF FLORIDA  CHAPTER 83-118

manner; providing for surety bonds; authorizing the department to waive such requirements under certain circumstances; deleting the requirement of newspaper publication of winners' lists, providing an alternative method of informing the public, and extending times for filing; requiring operators to provide a copy of the list of winners upon request to any person; providing that the Department of Legal Affairs may enforce the provisions of the section in circuit court rather than in the Supreme Court; deleting exclusion pertaining to game promotions conducted in less than three retail outlets; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1), subsections (3), (4), and (5), paragraph (b) of subsection (8), and subsection (10) of section 849.094, Florida Statutes, are amended, and paragraph (e) is added to subsection (2) of said section, to read:

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

(1) As used in this section:

(a) "Game promotion" means, but is not limited to, "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 or guest games conducted pursuant to s. 849.093.

(2) It is unlawful for any operator:

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

(3) All rules and regulations promulgated by the Department of Legal Affairs a copy of the rules and regulations of the game promotion and a list of all prizes and prize categories offered at least 30 days prior to 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 posted 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 Consumer Frauds Trust Fund and utilized for the enforcement of this section or for the purposes specified in s. 501.2101(2).

(4)(a) Every operator of such a game promotion in which the total announced value of the prizes offered is greater than $5,000 conducted in the state 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 Legal Affairs, 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 Legal Affairs at least 30 days in advance of the commencement of the game promotion. In lieu of establishing such trust account, the operator may obtain a surety bond with sufficient sureties, in an amount equivalent to the total value of all prizes offered, and such bond shall be filed with the Department of Legal Affairs at least 30 days in advance of the commencement of the game promotion. A copy of a certificate of deposit indicating the balance of the trust account or of the bond shall be filed with the Department of Legal Affairs simultaneously with the filing of rules and regulations as herein provided, together with a list of all prizes and prize categories offered. However, the Department of Legal Affairs may waive the provisions of this paragraph 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 Department of Legal Affairs 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 Legal Affairs.

1. (b) The money so held in the trust account or the bond shall at all times equal the total amount of the prizes offered. Money may be withdrawn, from time to time, in order to pay the prizes offered only upon certification to the Department of Legal Affairs 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 obtains a surety bond in lieu of the trust account, the amount of the surety bond shall equal at all times the total amount of the prizes offered.

(b) The Department of Legal Affairs 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 Department of Legal Affairs 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 Legal Affairs.

(5) Every operator of such a game promotion in which the total announced value of the prizes offered is greater than $5,000 conducted in the state shall provide the Department of Legal Affairs with a certified list of the dates to the public names and addresses of all persons, whether from Florida or from another state, who have won prizes having a value of more than $25, the value of such prizes, and the dates when the prizes were won, by publication in a newspaper of general circulation within the local geographic area wherein such game was played, maintained, or operated, 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.
circulation within 60 days after such winners have been determined, and shall provide the Department of Legal Affairs a certified copy of the publication containing the information about the winners. The operator of a game promotion shall not be 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. A certified copy thereof shall be simultaneously filed with the Department of Legal Affairs. All winning entries shall be held by the operator for a period of 90 60 days after the close or completion of such game.

(b) Whenever the Department of Legal Affairs has reason to believe that such 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 anywhere within the state of such game promotion.

(10) This section shall not apply to a game promotion conducted in less than three retail outlets or at places where such game promotion may be played or participated in by the public. Nothing herein This section shall not apply to actions or transactions regulated by the Department of Business 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.

Section 2. This act shall take effect July 1, 1983.

Approved by the Governor June 13, 1983.

Filed in Office Secretary of State June 14, 1983.

CHAPTER 83-119

House Bill No. 429

An act relating to arrests; amending s. 901.15(1), Florida Statutes; changing peace officer to law enforcement officer; permitting arrests without warrant for violations of county ordinances, under certain circumstances; amending s. 901 25(1), Florida Statutes, redefining the term "fresh pursuit" to include violations of chapter 316, Florida Statutes, and county ordinances; providing an effective date.

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

Section 1. Subsection (1) of section 901.15, Florida Statutes, is amended to read:

901.15 When arrest by officer without warrant is lawful --A law enforcement peace officer may arrest a person without a warrant when:

(1) The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer.
Florida Legislature

History of Legislation
1983 Regular Session
1983 Special Sessions A, B, C
1982 Special Session Session H

RE: Chapter 83-112
(5/14 175 (Passed)
5B 682 (Substituted)

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826—488-4371
07/25/83 13:19

HISTORY OF SENATE BILLS

05/18/83 SENATE ON COMMITTEE AGENDA—HRS, NOT CONSIDERED
05/19/83 SENATE ON COMMITTEE AGENDA—HRS, 05/23/83, 2:00 PM, RM. A;
EXHIBITION OF TIME GRANTED COMMITTEE HEALTH AND
REHABILITATIVE SERVICES
05/23/83 SENATE COMM. REPORT: FAVORABLE BY HEALTH AND REHABILITATIVE
SERVICES -SJ 0035
05/25/83 SENATE NOW IN APPROPRIATIONS -SJ 0035
05/30/83 SENATE WITHDRAWN FROM APPROPRIATIONS -SJ 0052; PLACED ON
CALENDAR
06/03/83 SENATE INDEF. POSTPONED & W/D (SCR 1209); WAS ON CAL; ISC BILL
PASSED, SEE HB 1262 (CH. 83-274)

**S 0683**

GENERAL BILL BY GESTEN (SIMILAR CS/H 0145)
GAME PROMOTIONS; REDEFINES TERM *GAME PROMOTION*; PROHIBITS GAME
OPERATOR FROM REQUIRING FEE OR PROOF OF PURCHASE AS CONDITION FOR GAME
ENTRY; EXEMPTS CERTAIN GAME PROMOTIONS FROM REGISTRATION REQUIREMENT;
REQUIRES FILING FEE; PROVIDES WAIVER OF CERTAIN REQUIREMENTS, ETC.
AMENDS 849.094. EFFECTIVE DATE: 07/01/83.
04/11/83 SENATE Filed
04/13/83 SENATE INTRODUCED, REFERRED TO ECONOMIC, COMMUNITY AND
CONSUMER AFFAIRS, APPROPRIATIONS —SJ 00094
04/22/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE ECONOMIC, COMMUNITY
AND CONSUMER AFFAIRS; ON COMMITTEE AGENDA—CCA,
04/26/83 SENATE COMM. REPORT: FAVORABLE WITH AMEND. BY ECONOMIC,
COMMUNITY AND CONSUMER AFFAIRS —SJ 00181
05/03/83 SENATE NOW IN APPROPRIATIONS —SJ 00181
05/11/83 SENATE WITHDRAWN FROM APPROPRIATIONS —SJ 00240; PLACED ON
CALENDAR
05/30/83 SENATE PLACED ON SPECIAL ORDER CALENDAR
05/31/83 SENATE PLACED ON SPECIAL ORDER CALENDAR; AMENDMENTS ADOPTED
—SJ 00538; IDEN./SIM. HOUSE BILL SUBSTITUTED; LAID ON
TABLE UNDER RULE, IDEN./SIM./COMPARE BILL PASSED, REFER
TO C/S HB 145 (CH. 83-118) —SJ 00540

**S 0684**

DEPUTY SHERIFFS; PROVIDES FOR COUNTY SHERIFFS TO DEPUTIZE & AT CLUB
EXPENSE; TO TRAIN SPECIAL DEPUTIES TO BE EMPLOYED BY CERTAIN HUNTING/
FISHING CLUBS TO PROTECT CERTAIN CLUB PROPERTY FROM INFRINGEMENT;
REQUIRES THAT SUCH SPECIAL DEPUTIES BE EXEMPT FROM CERTAIN STATUTORY PROVISIONS,
Etc. AMENDS 30.09. EFFECTIVE DATE: 10/01/83.
04/11/83 SENATE Filed
04/13/83 SENATE INTRODUCED, REFERRED TO JUDICIARY-CRIMINAL —SJ 00094
04/26/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CRIMINAL
05/12/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CRIMINAL
05/18/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CRIMINAL
06/03/83 SENATE INDEFINITELY POSTPONED & W/D (SCR 1209); WAS IN
COMMITTEE ON JUDICIA L-CRIMINAL

**S 0684**

COMMERCIAL DEVELOPMENT; CREATES FLA. ACADEMIC/BUSINESS COALITION FOR
INTERNATIONAL DEVELOPMENT TO BE ADMINISTERED BY EDUCATION DEPARTMENT IN
CONJUNCTION WITH COMMERCE DEPARTMENT; PROVIDES FOR DUTIES OF COALITION.
CREATES 288.042. APPROPRIATION: $191,000. EFFECTIVE DATE: 07/01/83.
04/11/83 SENATE Filed
04/13/83 SENATE INTRODUCED, REFERRED TO EDUCATION; COMMERCE,
APPROPRIATIONS —SJ 00094
04/27/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION
05/03/83 SENATE ON COMMITTEE AGENDA—EDUCATION, NO ACTION
05/10/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION
05/16/83 SENATE ON COMMITTEE AGENDA—EDUCATION, 05/18/83, 2:00 PM, RM.
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05/18/83 SENATE COMM. REPORT: FAVORABLE WITH AMEND. BY EDUCATION
—SJ 00329
05/20/83 SENATE NOW IN COMMERCE —SJ 00329
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05/03/83  HOUSE  SUBREFERRED TO SUBCOMMITTEE ON EDUCATION/TRANSPORTATION (SW. III)
05/30/83  HOUSE  ON COMMITTEE AGENDA -- APPROPRIATIONS, 41 HOB, UPON HSE ADJ., 05/30/83
06/02/83  HOUSE  COMM. REPORT: FAVORABLE WITH AMEND., PLACED ON CALENDAR -- APPROPRIATIONS - HJ 01027
06/03/83  HOUSE  INDEF. POSTPUNED 4 W/D (SCR 1209); WAS ON CAL; ISC BILL PASSED, SEE C/S FOR C/S SB 110 (CH. 83-208)

H 0144  GENERAL BILL/CS BY CRIMINAL JUSTICE; HANSON, CARLTON AND OTHERS
(SIMILAR CS/S 0280, S 0734)
OBScenIcy: REDEFINES TERMS "JUVENILE" & "HARMFUL TO JUVENILES"; REDEFINES TERM "MINOR" TO INCREASE MAXIMUM AGE TO UNDER 18, RATHER THAN 17, YEARS; PROVIDES THAT MATERIAL IS HARMFUL IF IT IS WITHOUT SERIOUS LITERARY, ARTISTIC, POLITICAL, OR SCIENTIFIC VALUE, ETC. AMENDS 847.012, .0125, .013,.07. EFFECTIVE DATE: 10/01/83.
02/02/83  HOUSE PREFILED
04/05/83  HOUSE REFERRED TO CRIMINAL JUSTICE
04/06/83  HOUSE ON COMMITTEE AGENDA -- SUBCOMM, CRIM. JUSTICE, 314 HOB, 1 PM, 04/28/83
05/03/83  HOUSE INTRODUCED, REFERRED TO CRIMINAL JUSTICE - HJ 00025
05/06/83  HOUSE ON COMMITTEE AGENDA -- CRIMINAL JUSTICE, 314 HOB, 2:15PM, 04/11/83
06/20/83  HOUSE COMM. REPORT: C/S PLACED ON CALENDAR BY CRIMINAL JUSTICE - HJ 00226
05/17/83  HOUSE PLACED ON SPECIAL ORDER CALENDAR; IDEN./SIM. SENATE BILL SUBSTITUTED; LAID ON TABLE UNDER RULE, IDEN./SIM./COMPARE BILL PASSED, REFER TO C/S SB 286 (CH. 83-77) - HJ 00451

 breathing

GAME PROMOTION: REDEFINES "GAME PROMOTION"; PROVIDES THAT IT IS UNLAWFUL FOR GAME OPERATOR TO REQUIRE ENTRY FEE, PAYMENT OR PROOF OF PURCHASE AS CONDITION OF ENTERING GAME PROMOTION; REQUIRES $100 FILING FEE RE CERTAIN GAME PROMOTIONS; REQUIRES TRUST ACCOUNTS, ETC. AMENDS 849.094, EFFECTIVE DATE: 07/01/83.
02/02/83  HOUSE PREFILED
02/03/83  HOUSE REFERRED TO COMMERCE; APPROPRIATIONS
02/07/83  HOUSE SUBREFERRED TO SUBCOMMITTEE ON BANKING AND COMMERCE
03/11/83  HOUSE ON COMMITTEE AGENDA -- SUBCOMM., COMMERCE, 21 HOB, 8:30 AM, 03/29/83
04/05/83  HOUSE INTRODUCED, REFERRED TO COMMERCE, APPROPRIATIONS - HJ 00022; SUBREFERRED TO SUBCOMMITTEE ON BANKING AND COMMERCE; ON COMMITTEE AGENDA, PENDING SUBCOMMITTEE ACTION -- COMMERCE, 21 HOB, 1:00 PM, 04/05/83
04/07/83  HOUSE COMM. REPORT: C/S BY COMMERCE - HJ 00099; NOW IN APPROPRIATIONS
04/15/83  HOUSE ON COMMITTEE AGENDA -- APPROPRIATIONS, 21 HOB, 4:00 PM, 04/19/83
04/20/83  HOUSE COMM. REPORT: FAVORABLE, PLACED ON CALENDAR BY APPROPRIATIONS - HJ 00216
05/02/83  HOUSE PLACED ON SPECIAL ORDER CALENDAR
05/06/83  HOUSE C/S READ FIRST AND SECOND TIMES; AMENDMENT ADOPTED - HJ 00350
05/09/83  HOUSE READ THIRD TIME; C/S PASSED AS AMENDED; YEAS 118 NAYS 0 - HJ 00359
05/12/83  SENATE IN MESSAGES
05/17/83  SENATE RECEIVED, REFERRED TO ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS, APPROPRIATIONS - SJ 00285
05/31/83  SENATE WITHDRAWN FROM ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS, APPROPRIATIONS; SUBSTITUTED FOR SB 682; PASSED; YEAS 29 NAYS 5 - SJ 00540
05/31/83  HOUSE ORDERED ENROLLED
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H 0146 GENERAL BILL BY DANSON AND OTHERS (IDENTICAL S 10.28; COMPARE S 02.38)

CONTROLLED SUBSTANCES: AUTHORIZES COUNTIES & MUNICIPALITIES TO ADOPT MANDATORY MINIMUM TERMS OF IMPRISONMENT & OTHER MANDATORY FORMS OF PUNISHMENT FOR VIOLATIONS OF CERTAIN LAWS RE CONTROLLED SUBSTANCES WITHIN THEIR BORDERS; REQUIRES IMPOSITION OF SUCH SENTENCES. AMENDS 893.13. EFFECTIVE DATE: 10/01/83.

02/02/83 HOUSE PREFILED
02/03/83 HOUSE REFERRED TO CRIMINAL JUSTICE, APPROPRIATIONS
04/05/83 HOUSE INTRODUCED, REFERRED TO CRIMINAL JUSTICE, APPROPRIATIONS -HJ 00025
04/18/83 HOUSE SUBREFERRED TO SUBCOMMITTEE ON CRIMINAL JUSTICE
06/03/83 HOUSE INDEFINITELY POSTPONED & W/O (SCR 1209); WAS IN COMMITTEE ON CRIMINAL JUSTICE

H 0147 GENERAL BILL BY DANSON

COMMUNITY COLLEGES: REMOVES LIMITATION RE MANATEE COUNTY COMMUNITY COLLEGE DISTRICT BOARD OF TRUSTEES. EFFECTIVE DATE: 07/01/83.

02/02/83 HOUSE PREFILED
02/03/83 HOUSE REFERRED TO HIGHER EDUCATION
04/08/83 HOUSE ON COMMITTEE AGENDA -- HIGHER EDUCATION, 214 C, 3:00 PM, 04/12/83
04/13/83 HOUSE COMM. REPORT: UNFAVORABLE, LAID ON TABLE UNDER RULE BY HIGHER EDUCATION -HJ 00182

H 0148 GENERAL BILL/CS BY CRIMINAL JUSTICE, CARLTON, HANSON AND OTHERS (IDENTICAL CS/S 01.62; COMPARE H 1227)

CHILD ABUSE: PROVIDES PENALTIES FOR EMPLOYING, AUTHORIZING, OR INDUCING CHILD OF LESS THAN 18 YRS. OF AGE TO ENGAGE IN SEXUAL CONDUCT IN A SEXUAL PERFORMANCE; PROVIDES PENALTIES FOR CONSENTING TO PARTICIPATION OF SUCH CHILD IN SEXUAL PERFORMANCE, ETC. AMENDS CH. 827, 450, 948; REPEALS 847.014. EFFECTIVE DATE: 10/01/83.

02/02/83 HOUSE PREFILED
02/03/83 HOUSE REFERRED TO CRIMINAL JUSTICE
02/09/83 HOUSE ON COMMITTEE AGENDA -- SUBCOMM. CRIM. JUSTICE, 314 HOB, 1 PM, 02/28/83
04/05/83 HOUSE INTRODUCED, REFERRED TO CRIMINAL JUSTICE -HJ 00025
04/06/83 HOUSE ON COMMITTEE AGENDA -- CRIMINAL JUSTICE, 314 HOB, 2:15PM, 04/11/83
04/20/83 HOUSE COMM. REPORT: C/S PLACED ON CALENDAR BY CRIMINAL JUSTICE -HJ 00216
05/17/83 HOUSE PLACEO ON SPECIAL ORDER CALENDAR; C/S READ FIRST AND SECOND TIMES -HJ 00451
05/19/83 HOUSE IDEN./SIM. SENATE BILL SUBSTITUTED; LAID ON TABLE UNDER RULE; IDEN./SIM./COMPARE BILL PASSED, REFER TO C/S SB 182 (CH. 83-75) -HJ 00472

H 0149 GENERAL BILL/CS BY REGULATORY REFORM, CARLTON, GRINOLLE, REYNOLDS AND OTHERS (SIMILAR CS/S 0046)

PRIVATE INVESTIGATORS: REQUIRES SELF-EMPLOYED INVESTIGATORS, REPOSESSORS, & CERTAIN PROCESS SERVERS TO HOLD CERTAIN LICENSES; REQUIRES DISPLAY OF COMPANY NAME & LICENSE NUMBER ON CARDS, STATIONERY, & ADVERTISING, ETC. AMENDS CH. 493; CREATES 493.3067, 493.3075; REENACTS 493.574. EFFECTIVE DATE: 10/01/83.

02/02/83 HOUSE PREFILED
02/03/83 HOUSE REFERRED TO REGULATORY REFORM, APPROPRIATIONS
03/11/83 HOUSE ON COMMITTEE AGENDA -- SUBCOM., REG. REFORM, 16 HOB, 9:00 AM, 03/31/83
04/05/83 HOUSE INTRODUCED, REFERRED TO REGULATORY REFORM, APPROPRIATIONS -HJ 00025; ON COMMITTEE AGENDA -- REGULATORY REFORM, 413 C, 8:00 AM, 04/07/83
04/15/83 HOUSE COMM. REPORT: C/S BY REGULATORY REFORM -HJ 00195; NOW IN APPROPRIATIONS
05/02/83 HOUSE SUBREFERRED TO SUBCOMMITTEE ON GENERAL GOVERNMENT (SUB. III); ON COMMITTEE AGENDA -- SUBCOM., APPROP., 214 C, 4:00 PM, 05/04/83

CONTINUED ON NEXT PAGE
A bill to be entitled
An act relating to game promotions; amending s. 849.094(1)(a), (3), (4), (5), (8)(b), and (10), Florida Statutes, and adding paragraph (e) to subsection (2) thereof; redefining the term "game promotion"; providing that it is unlawful for a game operator to require an entry fee, payment, or proof of purchase as a condition of entering a game promotion; requiring a $100 filing fee with respect to certain game promotions; requiring game operators to establish trust accounts in a described manner; providing for surety bonds; requiring that a list of all prizes and prize categories be filed with the Department of Legal Affairs; authorizing the department to waive such requirements under certain circumstances; deleting the requirement of newspaper publication of winners' lists, providing an alternative method of informing the public, and extending times for filing; requiring operators to provide a copy of the list of winners upon request to any person; providing that the Department of Legal Affairs may enforce the provisions of the section in circuit court rather than in the Supreme Court; deleting exclusion pertaining to game promotions conducted in less than three retail outlets; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:
Section 1. Paragraph (a) of subsection (1), subsections (3), (4), and (5), paragraph (b) of subsection (8), and subsection (10) of section 849.094, Florida Statutes, are amended, and paragraph (e) is added to subsection (2) of said section, to read:

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

(1) As used in this section:

(a) "Game promotion" means, but is not limited to, "contest," "game of chance," and "gift enterprise," in which the elements of chance and prize are present and which is conducted within or throughout the state or within or throughout the state and other states. However, "game promotion" shall not be construed to apply to bingo games or guest games conducted pursuant to s. 849.093.

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

(2) It is unlawful for any operator:

(c) All rules and regulations promulgated by the operator of such game promotion, where the total announced value of the prizes offered is greater than $5,000, must be filed with the Department of Legal Affairs at least 30 days in advance of the commencement of the game promotion. Such form shall be filed with the Department of Legal Affairs at least 30 days in advance of the commencement of the game promotion, In lieu of establishing such trust account, the operator may obtain a bond, with sufficient sureties, in an amount equivalent to the total value of all prizes offered and such surety bond shall be filed with the Department of Legal Affairs at least 30 days in advance of the commencement of the game promotion. A copy of a certificate of deposit indicating the balance of the trust account or of the bond shall be filed with the Department of Legal Affairs at least 30 days in advance of the commencement of the game promotion. Such certificate of deposit shall accompany each such filing and shall be deposited into the Consumer Frauds Trust Fund and utilized for the enforcement of this section or for the purposes specified in s. 501.2101(2).

(4)(a) Every operator of such a game promotion, where the total announced value of the prizes offered is greater than $5,000, conducted-in-the-state 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 Legal Affairs, 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 Legal Affairs at least 30 days in advance of the commencement of the game promotion. In lieu of establishing such trust account, the operator may obtain a bond, with sufficient sureties, in an amount equivalent to the total value of all prizes offered and such surety bond shall be filed with the Department of Legal Affairs at least 30 days in advance of the commencement of the game promotion. A copy of a certificate of deposit indicating the balance of the trust account or of the bond shall be filed with the Department of Legal Affairs at least 30 days in advance of the commencement of the game promotion. Such certificate of deposit shall accompany each such filing and shall be deposited into the Consumer Frauds Trust Fund and utilized for the enforcement of this section or for the purposes specified in s. 501.2101(2).
the Department of Legal Affairs 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 Legal Affairs.

(b) A list of all prizes and prize categories offered
shall also be filed with the Department of Legal Affairs at
least 30 days in advance of the commencement of the game.

(c) The moneys so held in the trust account or the surety bond
shall at all times equal the total amount of the prizes offered. Moneys may be withdrawn, from time to
time, in order to pay the prizes offered only upon

10 certification to the Department of Legal Affairs of the name
of the winner or winners and the amount of the prize or prizes
or the value thereof.

(d) However, the Department of Legal Affairs 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 Department
of Legal Affairs 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 Legal Affairs.

(5) Every operator of such a game promotion conducted
in the state, which game promotion is required to be
registered under this section, shall provide the Department of
Legal Affairs with a certified list of all persons, whether from Florida or
from another state, who have won prizes having a value of more
than $25, the value of such prizes, and the dates when the
prizes were won, by publication in a newspaper of general
circulation within the local geographic area wherein such game
was played, maintained, or operated, within 90 days after
such winners have been finally determined. The operator shall
provide, without charge, a copy of the list of winners to any
person who requests the same from the operator. A certified
list thereof shall be simultaneously filed with the Department
of Legal Affairs. All winning entries shall be held by the
operator for a period of 90 days after the close of
completion of such game.

(8) Whenever the Department of Legal Affairs has
reason to believe that such 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 Supreme Court in the name and on
behalf of the people of the state against any operator thereof
to enjoin the continued operation anywhere within the state of
such game promotion.

(10) This section shall not apply to a game promotion
conducted in less than three retail outlets or at places where
such game promotion may be played or participated in by the
public. Nothing herein shall apply to actions or transactions
regulated by the Department of Business Regulation.

Section 2. This act shall take effect July 1, 1981.
HOUSE SUMMARY

Provides that it is unlawful for any game promotion operator to require an entry fee, payment, or proof of purchase as a condition of entering a game promotion.

Requires game promotion operators to file a $100 nonrefundable fee and required information with the Department of Legal Affairs. Provides that the fee shall be used for the enforcement of the game promotion law.

Provides procedures for the requirements relating to surety bonds and trust accounts with respect to game promotions. Authorizes the Department of Legal Affairs to waive such requirements under described circumstances.

Requires game operators to provide a certified copy of lists of winners with respect to each game promotion within 60 days after the winners are finally determined.

Provides for enforcement of the act in circuit court rather than in the Supreme Court. Deletes the exclusion pertaining to game promotions conducted in less than three retail outlets.
A bill to be entitled
An act relating to game promotions; amending s. 849.094(1)(a), (3), (4), (5), (8), and (10), Florida Statutes, and adding paragraph (e) to subsection (2) thereof, defining the term "game promotion"; providing that it is unlawful for a game operator to require an entry fee, payment, or proof of purchase as a condition of entering a game promotion; requiring a $100 filing fee with respect to certain game promotions; requiring game operators to establish trust accounts in a described manner; providing for surety bonds; authorizing the department to waive such requirements under certain circumstances; deleting the requirement of newspaper publication of winners' lists, providing an alternative method of informing the public, and extending times for filing; requiring operators to provide a copy of the list of winners upon request to any person; providing that the Department of Legal Affairs may enforce the provisions of the section in circuit court rather than in the Supreme Court; deleting exclusion pertaining to game promotions conducted in less than three retail outlets; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1), subsections (3), (4), and (5), paragraph (b) of subsection 1

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
(8), and subsection (10) of section 849.094, Florida Statutes, are amended, and paragraph (e) is added to subsection (2) of said section, to read:

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

(1) As used in this section:

(a) "Game promotion" means, but is not limited to, a "contest," a game of chance, or a 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 or guest games conducted pursuant to s. 849.093.

(2) It is unlawful for any operator:

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

(3) All rules and regulations promulgated by the operator of a such game promotion in which the total announced value of the prizes offered is greater than $5,000 shall file with the Department of Legal Affairs a copy of the rules and regulations and a list of all prizes and prize categories offered at least 30 days prior to the commencement of the game promotion. Such rules and regulations may not thereafter be changed, modified, or altered. The operator of a game promotion such rules and regulations shall be conspicuously post the rules and regulations of such game promotion posted 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 be-published in all advertising copy used in connection therewith. Radio and television

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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 Consumer Trust Fund and utilized for the enforcement of this section or for the purposes specified in s. 501.2101(2).

(4)(a) Every operator of such a game promotion in which the total announced value of the prizes offered is greater than $5,000 conducted-in-the-state 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 Legal Affairs, 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 Legal Affairs at least 30 days in advance of the commencement of the game promotion. In lieu of establishing such trust account, the operator may obtain a surety bond, with sufficient sureties, in an amount equivalent to the total value of all prizes offered, and such bond shall be filed with the Department of Legal Affairs at least 30 days in advance of the commencement of the game promotion. A copy of-a certificate-of-deposit-indicating-the-balance-of-the-trust account-or-of-the-bond-shall-be-filed-with-the-Department-of-Legal-Affairs-simultaneously-with-the-filing-of-rules-and regulations-as-herein-provided,--However-the-Department-of-Legal-Affairs-may-waive-the-provisions-of-this-paragraph
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 Department of Legal Affairs 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 Legal Affairs.

(b) The Department of Legal Affairs 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 Department of Legal Affairs 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 Legal Affairs.

(5) Every operator of such a game promotion in which the total announced value of the prizes offered is greater than $5,000 conducted in the state shall provide the

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Department of Legal Affairs with a certified list of the names and addresses of all persons, whether from Florida or from another state, who have won prizes having a value of more than $25, the value of such prizes, and the dates when the prizes were won, by-publication in a newspaper of general circulation within the local geographic area wherein such game was played, maintained, or operated, 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 the Department of Legal Affairs a certified copy of the publication containing the information about the winners. The operator of a game promotion shall, in any event, notify all winners of prizes with a value of more than $25 that such winners have won prizes and the value thereof. A certified list thereof shall be simultaneously filed with the Department of Legal Affairs. All winning entries shall be held by the operator for a period of 90 days after the close or completion of such game.

(b) Whenever the Department of Legal Affairs has reason to believe that such 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 anywhere within the state of
such game promotion.

(10) This section shall not apply to a game promotion conducted in less than three retail outlets or at places where such game promotion may be played or participated in by the public.--Nothing herein shall not apply to actions or transactions regulated by the Department of Business 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.

Section 2. This act shall take effect July 1, 1983.

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HOUSE SUMMARY

Provides that it is unlawful for any game promotion 6.82
operator to require an entry fee, payment, or proof of 7.2
purchase as a condition of entering a game promotion. 7.5
Requires game promotion operators to file a $100 7.8
nonrefundable fee and required information with the 7.12
Department of Legal Affairs. Provides that the fee shall 7.15
be used for the enforcement of the game promotion law. 7.18
Provides procedures for the requirements relating to 7.22
surety bonds and trust accounts with respect to game 7.25
promotions. Authorizes the Department of Legal Affairs 7.29
to waive such requirements under described circumstances. 7.33
Requires game operators to provide a certified copy of 7.37
lists of winners with respect to each game promotion 7.40
within 60 days after the winners are finally determined. 7.44
Provides for enforcement of the act in circuit court 7.48
rather than in the Supreme Court. Deletes the exclusion 7.52
pertaining to game promotions conducted in less than 7.56
three retail outlets.

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A bill to be entitled
An act relating to game promotions; amending s.
849.0941(a), (3), (4), (5), (8)(b), and (10),
Florida Statutes, and adding paragraph (e) to:
subsection (2) thereof; redefining the term
"game promotion"; providing that it is unlawful
for a game operator to require an entry fee,
payment, or proof of purchase as a condition of
entering a game promotion; requiring a $100
filing fee with respect to certain game
promotions; requiring game operators to
establish trust accounts in a described manner;
providing for surety bonds; authorizing the
department to waive such requirements under
certain circumstances; deleting the requirement
of newspaper publication of winners' lists,
providing an alternative method of informing
the public, and extending times for filing;
requiring operators to provide a copy of the
list of winners upon request to any person;
providing that the Department of Legal Affairs
may enforce the provisions of the section in
circuit court rather than in the Supreme Court;
deleting exclusion pertaining to game
promotions conducted in less than three retail
outlets; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1),
subsections (3), (4), and (5), paragraph (b) of subsection
(8), and subsection (10) of section 849.094, Florida Statutes, are amended, and paragraph (e) is added to subsection (2) of said section, to read:

170-422-4-3

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

(1) As used in this section:

(a) "Game promotion" means, but is not limited to, a contest, a game of chance, or a 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 or guest games conducted pursuant to s. 849.093.

(2) It is unlawful for any operator:

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

(3) All rules and regulations promulgated by the operator of a such game promotion in which the total announced value of the prizes offered is greater than $5,000 shall be filed with the Department of Legal Affairs a copy of the rules and regulations of the game promotion and a list of all prizes and prize categories offered at least 30 days prior to the commencement of the game promotion. Such rules and regulations may not thereafter be changed, modified, or altered. The operator of a game promotion such rules and regulations shall be conspicuously posted 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 Consumer Frauds Trust Fund and utilized for the enforcement of this section or for the purposes specified in s. 501.2101(2).

(4) (a) Every operator of such a game promotion in which the total announced value of the prizes offered is greater than $5,000 conducted in the state 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 Legal Affairs, 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 Legal Affairs at least 30 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 Legal Affairs at least 30 days in advance of the commencement of the game promotion. A copy of a certificate of deposit or certificate of the bond shall be filed with the Department of Legal Affairs at the time of the filing of the rules and regulations promulgated by the operator of the game promotion. A copy of all surety bonds, certificates of deposit, or certificates of the bond filed with the Department of Legal Affairs shall be maintained by the Department of Legal Affairs in a manner so as to make such copy available for public examination at all times. A copy of all surety bonds, certificates of deposit, or certificates of the bond filed with the Department of Legal Affairs shall be maintained by the Department of Legal Affairs in a manner so as to make such copy available for public examination at all times.

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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 Department of Legal Affairs 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 Legal Affairs.

(b) The Department of Legal Affairs 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 Department of Legal Affairs 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 Legal Affairs.

(5) Every operator of such a game promotion in which the total announced value of the prizes offered is greater than $5,000 conducted in the state shall provide the Department of Legal Affairs with a certified list of the disclose-to-the-public names and addresses of all persons, whether from Florida or from another state, who have won prizes having a value of more than $25, the value of such prizes, and the dates when the prizes were won, by publication in a newspaper of general circulation within the local geographic area where the game was played, maintained, or operated, 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 the Department of Legal Affairs a certified copy of the publication containing the information about the winners. The operator of a game promotion shall, in any event, notify all winners of prizes with a value of more than $25 that such winners have won prizes and the value thereof. A certified list thereof shall be simultaneously filed with the Department of Legal Affairs. All winning entries shall be held by the operator for a period of 90 days after the close or completion of such game.

(b) Whenever the Department of Legal Affairs has reason to believe that such 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 anywhere within the state of
such game promotion.

(10) This section shall not apply to

can be paid or participated in by the

public. Nothing herein this section shall not apply to
actions or transactions regulated by the Department of
Business 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.

Section 2. This act shall take effect July 1, 1983.

**HOUSE SUMMARY**

Provides that it is unlawful for any game promotion
operator to require an entry fee, payment, or proof of
purchase as a condition of entering a game promotion.
Requires game promotion operators to file a $100
nonrefundable fee and required information with the
Department of Legal Affairs. Provides that the fee shall
be used for the enforcement of the game promotion law.
Provides procedures for the requirements relating to
surety bonds and trust accounts with respect to game
promotions. Authorizes the Department of Legal Affairs
to waive such requirements under described circumstances.
Requires game operators to provide a certified copy of
lists of winners with respect to each game promotion
within 60 days after the winners are finally determined.
Provides for enforcement of the act in circuit court
rather than in the Supreme Court. Deletes the exclusion
pertaining to game promotions conducted in less than
three retail outlets.
I. SUMMARY AND PURPOSE

The main purpose of the bill is to clean up the language in section 849.094, Florida Statutes, so as to eliminate any confusion which may arise. In addition, the bill does make three changes which rise above the level of a clarification. First is the imposition of a $100 filing fee for those games which must be registered. Second, game promotions with less than $5,000 in total prizes are excluded from the filing requirements and, finally, an exemption for promotions held in less than three locations or at places where the promotion may be played by the public is deleted.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

Lotteries are prohibited by Article 10, section 7 of the Florida Constitution. A statutory prohibition has been in place since 1895. The current provision is found at s. 849.09, Florida Statutes.

A lottery is a scheme which contains three elements: a prize, awarded by chance, for consideration. Florida has adopted the minority view of consideration in this area. Most states have viewed consideration narrowly to mean a giving of a tangible asset such as money. Florida views consideration in a much broader sense as the conferring of a benefit. In Little River Theatre Corporation v. State ex rel. Modge, 135 Fla. 854, 185 So. 855, the Florida Supreme Court determined that consideration was present because the promotion advertised the theatre, increased the attendance and materially enhanced the receipts. This is, of course, exactly what game promotions are designed to do.

To allow promotions which would otherwise be illegal lotteries, the Legislature over the years has carried out several narrow exceptions to s. 849.09, Florida Statutes. One exception
is for game promotions, s. 849.094, Florida Statutes. The major requirement for promotion is that the sponsor must file with the Department of Legal Affairs a copy of the game's rules and regulations and place in a trust account an amount of money large enough to pay the total amount of prizes. In lieu of the trust account, the sponsor may file a surety bond with DLA.

DLA may waive the trust and bond requirements for promotion sponsors who have had no civil, criminal or administrative action taken against them in the five previous years for a violation of this section.

Other provisions include a requirement that the names of winners be published in a local newspaper and be filed with DLA and a provision that DLA may sue for an injunction to stop a violation of the section.

**B. EFFECT OF PROPOSED CHANGES**

The bill is not intended to impose any major additional requirements on sponsors who operate game promotions in this state.

First, the bill makes explicit that a game promotion may not require that a consumer purchase anything or pay an entry fee as a condition of entering the promotion.

Second, the bill would require that the rules and regulations of the game, evidence of the trust account or surety bond if required, and a list of the prizes and prize categories be filed with the department at least 30 days before the promotion begins and that a $100 filing fee be paid. The fee is to be deposited in the Consumer Frauds Trust Fund and utilized for the enforcement of this section as well as the other purposes for which the fund was established.

Within 60 days of the final determination of the winners, the sponsor must file with DLA a list of all winners of prizes over $25 regardless of where located. The requirement that the sponsor publish a list of the winners in a local newspaper is deleted.

Finally, the bill corrects an apparent misstatement. The law now allows the department to sue to enjoin a violation in the Supreme Court rather than in the appropriate circuit court. This section seems to have been patterned initially after a similar New York law. In New York, the trial court is named the Supreme Court. Apparently, this reference was not made consistent with Florida's court system.

**III. ECONOMIC IMPACT CONSIDERATIONS**

**A. PRIVATE SECTOR CONSIDERATIONS**

In all likelihood the imposition of the filing fee will not create any additional expenses for the sponsors because the elimination of the publishing requirement should offset the filing fee. Where the two amounts are not equal, the cost should be minimal; however, it is quite possible that overall costs for a promotion might be reduced.

**B. PUBLIC SECTOR CONSIDERATIONS**

The state should receive additional revenue of about $80,000 (approximately 200 games are registered each quarter). This money, however, will be earmarked for the prevention of consumer fraud.
A secondary benefit to the state might be a reduction of time spent by the department's staff answering questions concerning ambiguous portions of the statute.

IV. COMMENTS

V. AMENDMENTS

Prepared by: Chuck Pratt

Staff Director: Wyatt T. Martin
I. SUMMARY AND PURPOSE

The main purpose of the bill is to clean up the language in section 849.094, Florida Statutes, so as to eliminate any confusion which may arise. In addition, the bill does make three changes which rise above the level of a clarification. First is the imposition of a $100 filing fee for those games which must be registered. Second, game promotions with less than $5,000 in total prizes are excluded from the filing requirements. Finally, an exemption for promotions held in less than three locations or at places where the promotion may be played by the public is deleted.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

Lotteries are prohibited by Article 10, section 7 of the Florida Constitution. A statutory prohibition has been in place since 1895. The current provision is found at s. 849.09, Florida Statutes.

A lottery is a scheme which contains three elements: a prize, awarded by chance, for consideration. Florida has adopted the minority view of consideration in this area. Most states have viewed consideration narrowly to mean a giving of a tangible asset such as money. Florida views consideration in a much broader sense as the conferring of a benefit. In Little River Theatre Corporation v. State ex rel. Hodge, 135 Fla. 854, 185 So. 855, the Florida Supreme Court determined that consideration was present because the promotion advertised the theatre, increased the attendance and materially enhanced the receipts. This is, of course, exactly what game promotions are designed to do.
To allow promotions which would otherwise be illegal lotteries, the Legislature over the years has carried out several narrow exceptions to s. 849.09, Florida Statutes. One exception is for game promotions, s. 849.094, Florida Statutes. The major requirement for a promotion is that the sponsor must file with the Department of Legal Affairs (DLA) a copy of the game's rules and regulations and place in a trust account an amount of money large enough to pay the total amount of prizes. In lieu of the trust account, the sponsor may file a surety bond with DLA.

DLA may waive the trust and bond requirements for promotion sponsors who have had no civil, criminal or administrative action taken against them in the five previous years for a violation of this section.

Other provisions include a requirement that the names of winners be published in a local newspaper and be filed with DLA and a provision that DLA may sue for an injunction to stop a violation of the section.

B. EFFECT OF PROPOSED CHANGES

The bill is not intended to impose any additional major requirements on sponsors who operate game promotions in this state.

First, the bill makes explicit that a game promotion may not require that a consumer purchase anything or pay an entry fee as a condition of entering the promotion.

Second, the bill would require that the rules and regulations of the game, evidence of the trust account or surety bond if required, and a list of the prizes and prize categories be filed with DLA at least 30 days before the promotion begins and that a $100 filing fee be paid. The fee is to be deposited in the Consumer Frauds Trust Fund and utilized for the enforcement of this section as well as the other purposes for which the fund was established.

The operator may either file a certified list of all winners of prizes over $25, regardless of where they are located, and provide a list to anyone who asks for one or publish a winners' list in a local newspaper and file a certified copy of the publication with DLA. Also, the operator must notify all winners of prizes valued at more than $25.

The bill also corrects an apparent misstatement. The law now allows the department to sue to enjoin a violation in the Supreme Court rather than in the appropriate circuit court. This section seems to have been patterned initially after a similar New York law. In New York, the trial court is named the Supreme Court. Apparently, this reference was not made consistent with Florida's court system.

Finally, there are the changes intended to clarify which game promotions are subject to the act. The definition of game promotion is amended to make clear that the sponsor of any game promotion conducted in Florida must comply with this act. There was a concern that the current definition would exclude interstate promotions from these provisions. The second of these changes is a statement that this act will not affect promotions operated by an operator other than a business engaged in the sale of consumer goods.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS
The imposition of the filing fee should be a minor additional expense for a sponsor because the amount is relatively small. Also, if an operator chooses to send a certified copy of the list of winners to DLA, the publishing expense will be eliminated.

B. PUBLIC SECTOR CONSIDERATIONS

The state should receive additional revenue of about $80,000 (approximately 200 games are registered each quarter). This money will be earmarked for the prevention of consumer fraud.

A secondary benefit to the state might be a reduction of time spent by DLA's staff answering questions concerning ambiguous portions of the statute.

IV. COMMENTS

Statement of Substantial Changes in Committee Substitute

The changes made by the committee substitute include the granting of the option concerning the notification of winners. Existing law requires publication in a newspaper. The original bill requires the filing of a certified list of the winners with DLA. The committee substitute allows an operator the option of choosing either method; but in any event, the operator must notify all winners of prizes over $25.

V. AMENDMENTS

Prepared by: Chuck Pratt

Staff Director: Wyatt T. Martin
offered the following amendment: to amendment #1

and insert: after the period:

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 the Department of Legal Affairs a copy of the publication containing the information about the winners.

adopted

failed of adoption
Representative Danson

offered the following amendment: to amendment #1

On page 4, line 1, insert: before the word "All"

The operator of a game promotion shall, in any event, notify all winners that such winners have won prizes and the value thereof.
Representative / The Committee on __________________________

offered the following amendment.

On page 2, line 9-15, strike all of said lines

and insert:

(a) "Game promotion" means, but is not limited to, a contest, game of chance, or gift enterprise "contest"-"game-of-chance" and "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 or guest games conducted pursuant to s. 849.093.
Representative / The Committee on

offered the following amendment:

On page 5, lines 24-25, strike both such lines and insert:

public. This section Nothing-hereina shall not apply to actions or transactions regulated by the Department of Business 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.

failed of adoption
1. HB 145 is a bill filed by Rep. Larry Hawkins on behalf of the Attorney General's office to revise and strengthen the law governing game promotions. It requires a filing fee of $100 for all game promotions; requires that the rules governing the contest be filed with the Department of Legal Affairs; revises the requirements for establishing a trust account or posting a surety bond to cover the value of all prizes offered; and exempts promotions in which the total value of all prizes is less than $5,000.

The Proposed Committee Substitute makes a number of changes that are intended only to clarify the bill's provisions, and it also establishes a requirement that each winner of a prize worth more than $25 be notified individually by the promoter.
CS/HB 145 by Commerce and Hawkins
(as enacted by the Legislature)
relating to game promotions

Date: June 6, 1983
Became Law: June 13, 1983

Committee Consideration:
House Commerce
House Appropriations

Identical*/Similar Bills:
SB 682*

Effective Date:
July 1, 1983

I. SUMMARY AND PURPOSE

The primary purpose of the bill is to clean up the language in section 849.094, Florida Statutes, to eliminate confusion which had arisen in its operation. In addition, the bill makes three changes which rise above the level of a clarification. First the bill imposes a $100 filing fee for those games which must be registered. Second, game promotions with less than $5,000 in total prizes are excluded from the filing requirements. Finally, an exemption for promotions held in less than three locations or at places where the promotion may be played by the public is deleted.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

Lotteries are prohibited by Article 10, section 7 of the Florida Constitution. A statutory prohibition has been in place since 1895. The current provision is found at s. 849.09, Florida Statutes.

A lottery is a scheme which contains three elements: a prize, awarded by chance, for consideration. Florida has adopted the minority view of consideration in this area. Most states have viewed consideration narrowly to mean the giving of a tangible asset such as money. Florida views consideration in a much broader sense as the conferring of any benefit. In Little River Theatre Corporation v. State ex rel. Hodge, 135 Fla. 854, 185 So. 855, the Florida Supreme Court determined that consideration was present because the promotion advertised the theatre, increased the attendance and materially enhanced the
interstate promotions from these provisions. The second of these
changes is a statement that this act does not affect promotions
operated by an operator other than a business engaged in the sale
of consumer goods.

III. ECONOMIC IMPACT

A. PRIVATE SECTOR CONSIDERATIONS

The imposition of the filing fee should be a minor
additional expense for a sponsor because the amount is relatively
small. Also, if an operator chooses to send a certified copy of
the list of winners to DLA, the publishing expense will be
eliminated.

B. PUBLIC SECTOR CONSIDERATIONS

The state should receive additional revenue of about
$80,000 a year (approximately 200 games are registerPd each
quarter). This money will be earmarked for the prevention of
consumer fraud.

A secondary benefit to the state might be a reduction of
time spent by DLA’s staff answering questions concerning
ambiguous portions of the statute.

IV. COMMENTS

V. LEGISLATIVE HISTORY

A. ENACTED BILL

The bill was reported out of the Commerce Committee as a
committee substitute. The bill was then reported favorably by
the Appropriations Committee. On May 9, 1983, it was amended and
then passed by the House 118-0 (HJ 359). In the Senate it was
substituted for SB 682, its companion, and passed 29-5 (SJ 540).

B. DISPOSITION OF COMPANION

Senate Bill 682 was reported out of the Senate Commerce
Committee with amendments. It was referred and subsequently
withdrawn from the Appropriations Committee. When the bill came
to the Senate floor, House Bill 145 was substituted for it and
passed (SJ 540).

Prepared by: Chuck Pratt
Staff Director: Wyatt T. Martin
TO: Leonard Elias, Consumer Counsel
FROM: Joanna R. Martin, Assistant Attorney General
RE: Draft Bill Amending §849.094, F.S. (Game Promotions)
DATE: December 3, 1982

1. My proposed bill is attached. I have attempted to clear up a number of uncertainties in the existing statute of which I have become aware through innumerable telephone calls from the industry and their attorneys, and through helpful discussions with George Georgieff. More specifically,

(a) §849.094(1)(a): I have understood George to say that, strictly speaking, §849.094 (as it now exists) applies only to "national" games (i.e., Florida and at least one other state). As you know, Florida case law defines lotteries as containing 3 elements: chance, consideration, and prize. The "kicker" is that Florida has adopted the minority view that consideration sufficient to constitute a simple contract suffices to convert an enterprise which also contains the elements of chance and prize, into an unlawful lottery. In other words, Florida has adopted the "contract theory," rather than the "pecuniary theory," of consideration.

"Contract consideration" (good will, advertising, increased traffic into one's place of business, and so forth) is necessarily inherent in all such "giveaways." However, the legislature has carved out a few specific exceptions to the lottery laws (e.g., §§849.092, 849.093, 849.094, 721.11(3)-(5), F.S.). These sections permit "contract consideration" in conjunction with chance and prize. If a "giveaway" does not fall within the four corners of one of these carved out exceptions, it is a lottery.

We have (apparently for years) registered game promotions which were conducted only within Florida. Strictly speaking, these are lotteries if they don't fall squarely within the exception provided by §849.094 or one of the
other carved out exceptions. Therefore, I propose to amend §849.094 so as to permit in-state game promotions.

(b) My proposal is that the legislature permit all game promotions which are conducted in connection with the sale of consumer products and services, and which involve chance, prize, and only "contract consideration"; but require registration only if the total value of prizes offered is greater than $5,000 (most games award prizes in excess of $5,000) and if the game is conducted in 3 or more retail outlets or places where the public may play. As the law now stands (see subsection 10), a "Mom and Pop" shop which conducts a drawing (even if no purchase is necessary) is conducting an unlawful lottery.

(c) I urge that we impose a filing fee. New York (1982 statutes) imposes a filing fee of $50; and Rhode Island [statute sent to me by Rhode Island Secretary of State in January 1982] imposes a filing fee of $100. This can be an important source of revenue for us. As it now stands, we lose money enforcing §849.094 (the civil penalties we collect go to the General Revenue Fund and we spend lots of money on postage and returning phone calls, to say nothing of the amount of my time this takes, much more so now that Yvette, alas, is gone; and the time of the secretaries.)

I submit that it is eminently reasonable for us to keep the registration fees. Perhaps we could hire a person to replace Yvette and fund that position with the registration fees. I also think it is eminently reasonable for us to keep the civil penalties we collect for late filings. I have briefly discussed with Phil Maher the depositing of such funds into the Consumer Frauds Trust Fund. I realize that the Legislature may prefer that such funds go into the General Revenue Fund, but I believe that there is precedent for agencies which enforce statutes retaining registration fees under said statutes. I could explore this with some experts if you like.

(d) §849.094(4). I rewrote this because the existing language is "pregnant with phone calls and problems." The industry interprets the existing language to authorize the filing with us of actual Certificates of Deposit. We have had situations wherein original
certificates of deposit, with maturity dates coming before the expiration of the contest, were filed with us and the sponsor's agent has INSISTED that I return the certificate of deposit to him, so that he could roll it over and return the new CD to me. My doing so would constitute a violation of existing §849.094(4)(b). The form to which I refer (copy attached) is virtually identical to the one New York uses.

§849.094(5). I propose to delete the requirement of newspaper publication. Neither New York nor Rhode Island require newspaper publication. It is a pain. The sponsors of the games frequently call me and ask me in what newspaper they should publish; in what format should they publish; and so forth. I honestly see no need for it, and do not see how it protects the public. Deletion will please the industry and will probably offset any objection which they may have to the filing fee. A lawyer told me last week that it would cost him $150 to advertise winners in the Miami Herald.

§849.094(5). I extended the dates for filing the certified winners list with us. The industry calls me and complains that they can't meet the 30 day requirement. For example, in many contests, wherein, say, an automobile is a prize, the winner of the car must execute an affidavit that he is at least 18 years of age. The "winner" is not finally determined until the sponsor receives the affidavit of eligibility. The industry tells me that it sometimes takes a long time to get back the signed affidavit. Yet other winners may have already executed and returned their affidavits. Anyway, New York gives the industry 90 days in which to file the winners list, and Rhode Island merely requires that the industry maintain such information within its own files for 6 months following the completion of the game so that the information is available to the state if the state decides to ask for it.
TO: Ken Detzner, Executive Assistant
FROM: Joanna Martin
RE: §849.094, F.S., Registration Fees for Game Promotions
DATE: December 20, 1982

Pursuant to your request, I offer the following in support of my proposal to amend §849.094, F.S., so as to impose a registration fee of $50.00 for every game registered under that section.

We register approximately 200 games per quarter. Our costs in time, long-distance telephone calls, paper, xeroxing, and postage are considerable. Every game promotion involves a number of mailings from our office, with the attendant costs of time, paper, xeroxing and postage. Attached is a sample of the game promotion registration packet which we send out to anyone who requests it. Note that the cover letter encourages recipient to xerox the enclosures for recipient's use in registering future games. (Yvette suggested this in order to reduce our mailings). Once we receive all of the registration materials, we send out another letter acknowledging receipt. At the conclusion of the game, and after we receive the winners' lists, we send out another letter, wherein we notify sponsor that we are closing our files, and at this time, we return the surety bond. If a trust account has been established instead of a surety bond, we send to the financial institution holding the trust account, a letter authorizing release of the account. We send a copy of this letter to the sponsor. If the registration materials have been filed late, we prepare (for word processing) a stipulation imposing civil penalties. Once these are prepared, we mail the stipulations to the sponsor. When the signed stipulation and the check are returned to me, I mail the stipulation (with a cover memo) to Lenny Elias for his signature. Lenny signs them and mails them back to me. We xerox the fully executed stipulation, and mail a copy back to the sponsor. We then prepare a memo, attach another copy of the stipulation, and send this, along with the check, to Finance.
During the 2nd and 3rd quarter of 1982, we collected $16,200 in civil penalties. Pursuant to §849.094(9)(b), these funds are all deposited into the General Revenue Fund.

Also attendant to our enforcement of §849.094, are a large number of long-distance telephone calls. In order to save money, I try to take these calls when they come in. But often, I am unable to, which means that I must return the call at the State's expense.

Enforcement of §849.094 also takes up a great amount of time. Until October 15, 1982, we had a full-time Staff Assistant I whose primary duty was to handle the registrations of these games. Because, due to the freeze, we were unable to fill this position when it was vacated, the duties of enforcing this statute have been divided up among the 3 secretaries in our unit and me. We have tried our best to keep up, but are falling woefully behind. For example, we have several instances of late registrations for which we need to prepare and mail out stipulations, but have not had the time. We have a number of registrations which we haven't acknowledged because there hasn't been time to review them (e.g., the rules for each game must be reviewed carefully in order to ensure that a lottery is not involved).

Because of these costs in time, paper, xeroxing, postage, and long-distance telephone calls, and because the civil penalties we collect go into the General Revenue Fund, our Department loses money—enforcing §849.094, F.S.

New York imposes a game promotion filing fee of $50.00 and Rhode Island, a filing fee of $100.00. (Apparently, no other state in the union requires game promotions to be registered.) For Florida to impose a filing fee of $50.00, is this not a novel idea.

I think that if we impose a filing fee of only $50.00 (note that I would exempt the small games from the registration requirement), and delete the requirement for newspaper publication of the winners' lists, the industry would realize a savings. (This would also cut down on my long-distance telephone calls. I now get calls from people who want to know in which Florida newspaper should they publish, what format should they use, and so forth.) A Miami lawyer recently complained to me that it would cost his client $150.00 to advertise the winners' lists in the Miami Herald.
Please feel free to call or visit me at any time reference the above.

Thank you for your interest and support!
A bill to be entitled
An act relating to game promotions, amending s. 849.094, Florida Statutes, redefining the term "game promotion"; prohibiting a game operator from requiring a fee or proof of purchase as a condition for game entry, exempting certain game promotions from registration requirement; requiring a filing fee; requiring financial institutions holding game promotion trust accounts and game operators who obtain a surety bond in lieu of establishing a trust account to file certain information with the Department of Legal Affairs; providing for waiver of certain requirements; providing methods for informing the public of prizes offered and prize winners and extending the filing deadline for such information; transferring jurisdiction over violations of game promotion laws; providing an effective date

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

Section 1. 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:
(a) "Game promotion" means, but is not limited to, a contest, game of chance, or gift enterprise conducted within or throughout the state, or within or throughout the state and other states, in connection with the sale of consumer products

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
or services, and "contest," "game of chance," and "gift enterprise," in which the elements of chance and prize are present. However, "game promotion" shall not be construed to apply to bingo games or guest games conducted pursuant to s. 849.093.

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

(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 said 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. To 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; or

(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 for entering the game promotion.

(3) The Ali rules and regulations promulgated by the operator of a such game promotion, where the total announced value of the prizes offered is greater than $5,000, shall file...
must be filed with the Department of Legal Affairs copies of
the rules and regulations of the game promotion and a list of
all prizes and prize categories offered at least 30 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 such
rules and regulations shall be conspicuously posted the rules
and regulations of such game promotion posted 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 be published 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 Consumer Frauds
Trust Fund and used for the enforcement of this section or for
the purposes specified in s. 501.2101(2).

(4)(a) Every operator of such a game promotion, where
the total announced value of the prizes offered is greater
than $5,000, conducted in the state 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 Legal Affairs, 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
Legal Affairs at least 30 days before the commencement of the
game promotion. In lieu of establishing such trust account, the operator may obtain a surety bond, with sufficient sureties in an amount equivalent to the total value of all prizes offered and such bond shall be filed with the Department of Legal Affairs at least 30 days before the commencement of the game promotion. A copy of a certificate of deposit indicating the balance of the trust account or of the bond shall be filed with the Department of Legal Affairs simultaneously with the filing of rules and regulations as herein provided; together with a list of all prizes and prize categories offered. However, the Department of Legal Affairs may waive the provisions of this paragraph 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 or administrative action instituted against him by the Department of Legal Affairs 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 Legal Affairs.

1. (b) The moneys so held in the trust account or the bond shall at all times equal the total amount of the prizes offered. Moneys may be withdrawn from time to time in order to pay the prizes offered only upon certification to the Department of Legal Affairs of the name of the winner or winners and the amount of the prize and of the value thereof.

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

(b) The Department of Legal Affairs 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 Department
of Legal Affairs 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 Legal Affairs.

(5) Every operator of such a game promotion who must
comply with this section conducted in the state shall provide
the Department of Legal Affairs with a certified list of
database to the public the names and addresses of all persons,
whether from Florida or from another state, who have won
prizes having a value of more than $25, the value of such
prizes, and the dates when the prizes were won, by publication
in a newspaper of general circulation within the local
geographic area wherein such game was played, maintained, or
operated, within 60 days after such winners have been
finally determined. The operator shall provide, without
charge, a copy of the list of winners to any person who
requests the same from the operator. A certified list thereof
shall be simultaneously filed with the Department of Legal
Affairs. All winning entries shall be held by the operator
for a period of 90 days after the close or completion of
such game.

(6) The Department of Legal Affairs 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 Attorney General shall have the power to
promulgate such rules and regulations respecting the operation
of game promotions as he may deem advisable

(b) Whenever the Department of Legal Affairs has
reason to believe that such 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 is
being operated, Supreme Court in the name and on behalf of the
people of the state against any operator thereof to enjoin the
continued operation anywhere within the state of such game
promotion.

(c) An action for violation of this section may be
instituted by the Department of Legal Affairs in the name of
the people of the state; and in any such action, the
department shall exercise all of the powers and perform all
the duties which any state attorney would otherwise be
authorized to exercise or to perform therein

(9)(a) Any person, firm, 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 of the Attorney
General 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 of the Attorney General made
pursuant to this section shall be liable to 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 Legal Affairs.

(10) This section shall not apply to a game promotion
conducted in less than three retail outlets or at places where
such game promotion may be played or participated in by the
public. This section does not require herein shall apply to
actions or transactions regulated by the Department of
Business Regulation or to activities of nonprofit
organizations or any other organization engaged in any
enterprise other than the sale of consumer products or
services.

Section 2. This act shall take effect July 1, 1983

SENATE SUMMARY

Prohibits game operators from requiring an entry fee or
proof of purchase as a condition for game entry. Exempts
certain game promotions from registration requirements
Requires game operators to pay a nonrefundable filing
fee. Requires financial institutions holding game
promotion trust accounts and game operators who obtain a
surety bond in lieu of establishing a trust account to
file certain information with the Department of Legal
Affairs. Provides methods for informing the public of
prizes offered and prize winners and extends the filing
deadline for such information. Transfers jurisdiction
over violations of game promotion laws from the Supreme
Court to the circuit court.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST
1. Malloy
2. 
3. 

STAFF DIRECTOR
Burnside

REFERENCE
1. ECCA
2. 
3. 

ACTION

SUBJECT:
Game Promotions

BILL NO. AND SPONSOR:
SB 682 by Senator Gersten

SUMMARY:

A. Present Situation:

A game promotion includes a contest, game of chance, or gift enterprise in which the elements of chance and a prize are present. Section 849.094, F.S., specifies that it is unlawful for an operator of a game promotion, in connection with the promotion or sale of consumer products or services, to: manipulate or rig the game promotion or predetermine the winner; arbitrarily remove, disqualify, disallow, or reject any entry; fail to award the prizes; or use any false, deceptive, or misleading advertising.

All operators of game promotions, except those game promotions conducted in less than 3 retail outlets, must file certain documents and information with the Department of Legal Affairs at least 30 days in advance of commencement of the game promotion. The documents and information required are: a copy of the rules and regulations of the game; a list of the prizes and prize categories; and a copy of a certificate of deposit indicating the balance of a trust account or a surety bond to guarantee that funds are available to purchase the prizes offered. The department may waive the bond or trust account requirement in certain cases. The statute does not provide for a filing fee.

Operators of game promotions must disclose to the public the names, addresses, and other information of persons who win prizes having values in excess of $25. The disclosure must be made by publication in a newspaper of general circulation in any local geographic areas where the game was played, maintained, or operated. The disclosure must be made within 30 days after determination of the winners. A certified list of the winners must also be filed with the department.

Section 849.094, F.S., provides that the department may bring actions for injunctive relief in the Supreme Court.

B. Effect of Proposed Changes:

The definition of game promotion is changed to clarify that any game promotion conducted in Florida must comply with s. 849.094, F.S. In addition, new language is inserted to make it unlawful for an operator of a game promotion to require any entry fee, payment, or purchase as a condition for entering a game promotion.

Only those game promotions where the value of the prizes is greater than $5,000 and the game promotion is conducted in 3 or more retail outlets must register and file information with the Department of Legal Affairs. If a trust account is
established, an officer of the financial institution where the account is located must supply the following information to the department: amount of the trust account, identity of the individual establishing the account, and the name of the game promotion for which the account has been established.

A $100 non-refundable filing fee is added. The revenues collected under this provision must be deposited into the Consumer Frauds Trust Fund for enforcement of this section and other authorized purposes.

A new method of disclosing the winners to the public is included in the bill. A certified list of all winners shall be provided by the operator of the game promotion to the department within 60 days. The operator must also supply, without charge, a copy of this list to any person so requesting.

The circuit court is given jurisdiction for injunctive actions by the department.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Persons who participate in game promotions would no longer be required to expend any funds to enter these games.

Operators of game promotions which include prizes valued at $5,000 or less would no longer bear the cost of compliance with this section, particularly the establishment of a trust account or the cost of a surety bond, which cost would depend on the value of the prizes offered. Those game promotions which have prizes in excess of $5,000 would, in addition to the present costs, also pay a non-refundable filing fee of $100 per game. However, operators would no longer bear the expenses of publishing a list of winners in local newspapers. This savings could be substantial when game promotions are carried out over a large geographical area.

B. Government:

According to the Department of Legal Affairs, approximately 800 game promotions are registered each year; thus the state should receive approximately $80,000 in additional revenues. This money would be deposited in a trust fund for enforcement of this section and other activities which are related to the prevention of consumer fraud.

III. COMMENTS:

An identical bill, HB 145, has been introduced in the House this year.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

A game promotion includes a contest, game of chance, or gift enterprise in which the elements of chance and a prize are present. Section 849.094, F.S., specifies that it is unlawful for an operator of a game promotion, in connection with the promotion or sale of consumer products or services, to: manipulate or rig the game promotion or predetermine the winner; arbitrarily remove, disqualify, disallow, or reject any entry; fail to award the prizes; or use any false, deceptive, or misleading advertising.

All operators of game promotions, except those game promotions conducted in less than 3 retail outlets, must file certain documents and information with the Department of Legal Affairs at least 30 days in advance of commencement of the game promotion. The documents and information required are: a copy of the rules and regulations of the game; a list of the prizes and prize categories; and a copy of a certificate of deposit indicating the balance of a trust account or a surety bond to guarantee that funds are available to purchase the prizes offered. The department may waive the bond or trust account requirement in certain cases. The statute does not provide for a filing fee.

Operators of game promotions must disclose to the public the names, addresses, and other information of persons who win prizes having values in excess of $25. The disclosure must be made by publication in a newspaper of general circulation in any local geographic areas where the game was played, maintained, or operated. The disclosure must be made within 30 days after determination of the winners. A certified list of the winners must also be filed with the department.

Section 849.094, F.S., provides that the department may bring actions for injunctive relief in the Supreme Court.

B. Effect of Proposed Changes:

The definition of game promotion is changed to clarify that any game promotion conducted in Florida must comply with s. 849.094, F.S. In addition, new language is inserted to make it unlawful for an operator of a game promotion to require any entry fee, payment, or purchase as a condition for entering a game promotion.

Only those game promotions where the value of the prizes is greater than $5,000 and the game promotion is conducted in 3 or more retail outlets must register and file information with the Department of Legal Affairs. If a trust account is
established, an officer of the financial institution where the account is located must supply the following information to the department: amount of the trust account, identity of the individual establishing the account, and the name of the game promotion for which the account has been established.

A $100 non-refundable filing fee is added. The revenues collected under this provision must be deposited into the Consumer Frauds Trust Fund for enforcement of this section and other authorized purposes.

A new method of disclosing the winners to the public is included in the bill. A certified list of all winners shall be provided by the operator of the game promotion to the department within 60 days. The operator must also supply, without charge, a copy of this list to any person so requesting.

The circuit court is given jurisdiction for injunctive actions by the department.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Persons who participate in game promotions would no longer be required to expend any funds to enter these games.

Operators of game promotions which include prizes valued at $5,000 or less would no longer bear the cost of compliance with this section, particularly the establishment of a trust account or the cost of a surety bond, which cost would depend on the value of the prizes offered. Those game promotions which have prizes in excess of $5,000 would, in addition to the present costs, also pay a non-refundable filing fee of $100 per game. However, operators would no longer bear the expenses of publishing a list of winners in local newspapers. This savings could be substantial when game promotions are carried out over a large geographical area.

B. Government:

According to the Department of Legal Affairs, approximately 800 game promotions are registered each year; thus the state should receive approximately $80,000 in additional revenues. This money would be deposited in a trust fund for enforcement of this section and other activities which are related to the prevention of consumer fraud.

III. COMMENTS:

An identical bill, HB 145, has been introduced in the House this year.

IV. AMENDMENTS:

#1 by ECCA: Deletes the exemption for game promotions conducted in less than three retail outlets or at places where game promotions may be played or participated in by the public.

#2 by ECCA: In regard to notifying winners of game promotions, operators may, in addition to notifying the Department of Legal Affairs, either publish a list of winners in a newspaper of general circulation or provide, without charge, a copy of the list to any person who requests it.

#3 by ECCA: Provides that operators of game promotions who register under s. 849.094, F.S., must comply with the requirements for notification of winners.
#4 by ECCA: Allows operators of game promotions 90 days within which to provide a certified list of winners to the Department of Legal Affairs and comply with the other notification requirements of this section.
The Committee on ECCA recommended the following amendment which was moved by Senator and adopted:

Amendment

On page ..., line ..., after operator

and insert:

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 the Department of Legal Affairs a certified copy of the publication containing the information about the winners.
The Committee on ECCA recommended the following amendment which was moved by Senator and adopted:

Amendment

On page lines , strike all of said lines

and insert:

(10) This section shall not apply to a game-promotion conducted-in-lessthan-three-retail-outlets-or-at-places-where such-game-promotion-may-be-played-or-participated-in-by-the public. This section does not Nothing-herewithin-shall apply to
The Committee on........ECCA.........recommended the following amendment which was moved by Senator.............and adopted:

**Amendment**

On page ....5....., line .....9...., strike comply with

and insert:

register under

<table>
<thead>
<tr>
<th>Amendment No. 03, taken up by committee:</th>
<th>Adopted x</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offered by Senator Stuart</td>
<td>Failed</td>
</tr>
</tbody>
</table>

(Amendment No. _____ Adopted ___ Failed ___ Date ___/___/___)

CODING: Words in struck through type are deletions from existing law, words underlined are additions.

* Amendment No. 03, taken up by committee: Adopted x *
* Offered by Senator Stuart Failed *
The Committee on...ECCA...............recommended the following amendment which was moved by Senator...............and adopted:

Amendment

On page ....5....., line ...17....., strike

and insert:

*****************************************************************
Amendment No. 04, taken up by committee: Adopted x *
Offered by Senator Myers Failed *
(Amendment No. ____ Adopted ____ Failed ____ Date __/__/____)
I. SUMMARY:

A. Present Situation:

A game promotion includes a contest, game of chance, or gift enterprise in which the elements of chance and a prize are present. Section 849.094, F.S., specifies that it is unlawful for an operator of a game promotion, in connection with the promotion or sale of consumer products or services, to: manipulate or rig the game promotion or predetermine the winner; arbitrarily remove, disqualify, disallow, or reject any entry; fail to award the prizes; or use any false, deceptive, or misleading advertising.

All operators of game promotions, except those game promotions conducted in less than 3 retail outlets, must file certain documents and information with the Department of Legal Affairs at least 30 days in advance of commencement of the game promotion. The documents and information required are: a copy of the rules and regulations of the game; a list of the prizes and prize categories; and a copy of a certificate of deposit indicating the balance of a trust account or a surety bond to guarantee that funds are available to purchase the prizes offered. The department may waive the bond or trust account requirement in certain cases. The statute does not provide for a filing fee.

Operators of game promotions must disclose to the public the names, addresses, and other information of persons who win prizes having values in excess of $25. The disclosure must be made by publication in a newspaper of general circulation in any local geographic areas where the game was played, maintained, or operated. The disclosure must be made within 30 days after determination of the winners. A certified list of the winners must also be filed with the department.

Section 849.094, F.S., provides that the department may bring actions for injunctive relief in the Supreme Court.

B. Effect of Proposed Changes:

The definition of game promotion is changed to clarify that any game promotion conducted in Florida must comply with s. 849.094, F.S. In addition, new language is inserted to make it unlawful for an operator of a game promotion to require any entry fee, payment, or purchase as a condition for entering a game promotion.

Only those game promotions where the value of the prizes is greater than $5,000 and the game promotion is conducted in 3 or more retail outlets must register and file information with the Department of Legal Affairs. If a trust account is
established, an officer of the financial institution where the account is located must supply the following information to the department: amount of the trust account, identity of the individual establishing the account, and the name of the game promotion for which the account has been established.

A $100 non-refundable filing fee is added. The revenues collected under this provision must be deposited into the Consumer Frauds Trust Fund for enforcement of this section and other authorized purposes.

A new method of disclosing the winners to the public is included in the bill. A certified list of all winners shall be provided by the operator of the game promotion to the department within 60 days. The operator must also supply, without charge, a copy of this list to any person so requesting.

The circuit court is given jurisdiction for injunctive actions by the department.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Persons who participate in game promotions would no longer be required to expend any funds to enter these games.

Operators of game promotions which include prizes valued at $5,000 or less would no longer bear the cost of compliance with this section, particularly the establishment of a trust account or the cost of a surety bond, which cost would depend on the value of the prizes offered. Those game promotions which have prizes in excess of $5,000 would, in addition to the present costs, also pay a non-refundable filing fee of $100 per game. However, operators would no longer bear the expenses of publishing a list of winners in local newspapers. This savings could be substantial when game promotions are carried out over a large geographical area.

B. Government:

According to the Department of Legal Affairs, approximately 800 game promotions are registered each year; thus the state should receive approximately $80,000 in additional revenues. This money would be deposited in a trust fund for enforcement of this section and other activities which are related to the prevention of consumer fraud.

III. COMMENTS:

Many of the provisions contained in this bill, or similar provisions, are in CS/HB 145, which was passed by the Legislature. CS/HB 145 was signed by the Officers of the House and Senate and presented to the Governor on June 6, 1983.

IV. AMENDMENTS:

§1 by ECRA: Deletes the exemption for game promotions conducted in less than three retail outlets or at places where game promotions may be played or participated in by the public.

§2 by ECRA: In regard to notifying winners of game promotions, operators may, in addition to notifying the Department of Legal Affairs, either publish a list of winners in a newspaper of general circulation or provide, without charge, a copy of the list to any person who requests it.
3 by ECCA: Provides that operators of game promotions who register under s. 849.094, F.S., must comply with the requirements for notification of winners.

4 by ECCA: Allows operators of game promotions 90 days within which to provide a certified list of winners to the Department of Legal Affairs and comply with the other notification requirements of this section.