

CHAPTER 849
GAMBLING

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849.01

Keeping gambling houses, etc.

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Whoever by herself or himself, her or his servant, clerk or agent, or in any other manner has, keeps, exercises or maintains a gaming table or room, or gaming implements or apparatus, or house, booth, tent, shelter or other place for the purpose of gaming or gambling or in any place of which she or he may directly or indirectly have charge, control or management, either exclusively or with others, procures, suffers or permits any person to play for money or other valuable thing at any game whatever, whether heretofore prohibited or not, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.

—

s. 1, ch. 3764, 1887; RS 2644; GS 3572; RGS 5499; CGL 7657; s. 1059, ch. 71-136; s. 1355, ch. 97-102.

849.02

Agents or employees of keeper of gambling house.

Whoever acts as servant, clerk, agent, or employee of any person in the violation of s. 849.01 shall be punished in the manner and to the extent therein mentioned.

History.

s. 2, ch. 3764, 1887; RS 2645; GS 3573; RGS 5500; CGL 7658.

849.03

Renting house for gambling purposes.

Whoever, whether as owner or agent, knowingly rents to another a house, room, booth, tent, shelter or place for the purpose of gaming shall be punished in the manner and to the extent mentioned in s. 849.01.

History.

s. 3, ch. 3764, 1887; RS 2646; GS 3574; RGS 5501; CGL 7659.

849.04

Permitting minors and persons under guardianship to gamble.

Whoever being the proprietor, owner or keeper of any E. O., keno or pool table, or billiard table, wheel of fortune, or other game of chance, kept for the purpose of betting, willfully and knowingly allows any minor or any person who is mentally incompetent or under guardianship to play at such game or to bet on such game of chance or whoever aids or abets or otherwise encourages such playing or betting of any money or other valuable thing upon the result of such game of chance by any minor or any person who is mentally incompetent or under guardianship shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For the purpose of this section, a “mentally incompetent person” is one who because of mental illness, mental retardation, senility, excessive use of drugs or alcohol, or other mental incapacity is incapable of either managing his or her property or caring for himself or herself or both.

History.

s. 1, ch. 3145, 1879; RS 2647; s. 9, ch. 4322, 1895; GS 3575; RGS 5502; CGL 7660; s. 1060, ch. 71-136; s. 5, ch. 88-33; s. 1356, ch. 97-102.

849.05

Prima facie evidence.

—

If any of the implements, devices or apparatus commonly used in games of chance in gambling houses or by gamblers, are found in any house, room, booth, shelter or other place it shall be prima facie evidence that the said house, room, booth, shelter or other place where the same are found is kept for the purpose of gambling.

History.

—

s. 4, ch. 3764, 1887; RS 2648; GS 3576; RGS 5503; CGL 7661; s. 243, ch. 77-104.

849.07

Permitting gambling on billiard or pool table by holder of license.

—

If any holder of a license to operate a billiard or pool table shall permit any person to play billiards or pool or any other game for money, or any other thing of value, upon such tables, she or he shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.

—

s. 14, ch. 6421, 1913; RGS 5505; CGL 7663; s. 1062, ch. 71-136; s. 1357, ch. 97-102.

849.08

Gambling.

—

Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.

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RS 2651; s. 1, ch. 4514, 1895; GS 3579; RGS 5508; CGL 7666; s. 1063, ch. 71-136.

849.085

Certain penny-ante games not crimes; restrictions.

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(1)

Notwithstanding any other provision of law, it is not a crime for a person to participate in a game described in this section if such game is conducted strictly in accordance with this section.

(2)

As used in this section:

(a)

“Penny-ante game” means a game or series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winnings of any player in a single round, hand, or game do not exceed \$10 in value.

(b)

“Dwelling” means residential premises owned or rented by a participant in a penny-ante game and occupied by such participant or the common elements or common areas of a condominium, cooperative, residential subdivision, or mobile home park of which a participant in a penny-ante game is a unit owner, or the facilities of an organization which is tax-exempt under s. 501(c)(7) of the Internal Revenue Code. The term “dwelling” also includes a college dormitory room or the common recreational area of a college dormitory or a publicly owned community center owned by a municipality or county.

(3)

A penny-ante game is subject to the following restrictions:

(a)

The game must be conducted in a dwelling.

(b)

A person may not receive any consideration or commission for allowing a penny-ante game to occur in his or her dwelling.

(c)

A person may not directly or indirectly charge admission or any other fee for participation in the game.

(d)

A person may not solicit participants by means of advertising in any form, advertise the time or place of any penny-ante game, or advertise the fact that he or she will be a participant in any penny-ante game.

(e)

A penny-ante game may not be conducted in which any participant is under 18 years of age.

(4)

A debt created or owed as a consequence of any penny-ante game is not legally enforceable.

(5)

The conduct of any penny-ante game within the common elements or common area of a condominium, cooperative, residential subdivision, or mobile home park or the conduct of any penny-ante game within the dwelling of an eligible organization as defined in subsection (2) or within a publicly owned community center owned by a municipality or county creates no civil liability for damages arising from the penny-ante game on the part of a condominium association, cooperative association, a homeowners' association as defined in s. 720.301, mobile home owners' association, dwelling owner, or municipality or county or on the part of a unit owner who was not a participant in the game.

History.

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s. 1, ch. 89-366; s. 33, ch. 91-197; s. 1358, ch. 97-102; s. 12, ch. 99-382; ss. 58, 70, ch. 2000-258.

849.086

Cardrooms authorized.

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(1)

LEGISLATIVE INTENT.—It is the intent of the Legislature to provide additional entertainment choices for the residents of and visitors to the state, promote tourism in the state, and provide additional state revenues through the authorization of the playing of certain games in the state at

facilities known as cardrooms which are to be located at licensed pari-mutuel facilities. To ensure the public confidence in the integrity of authorized cardroom operations, this act is designed to strictly regulate the facilities, persons, and procedures related to cardroom operations. Furthermore, the Legislature finds that authorized games as herein defined are considered to be pari-mutuel style games and not casino gaming because the participants play against each other instead of against the house.

(2)

DEFINITIONS.—As used in this section:

(a)

“Authorized game” means a game or series of games of poker or dominoes which are played in a nonbanking manner.

(b)

“Banking game” means a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers or in which the cardroom establishes a bank against which participants play.

(c)

“Cardroom” means a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations.

(d)

“Cardroom management company” means any individual not an employee of the cardroom operator, any proprietorship, partnership, corporation, or other entity that enters into an agreement with a cardroom operator to manage, operate, or otherwise control the daily operation of a cardroom.

(e)

“Cardroom distributor” means any business that distributes cardroom paraphernalia such as card tables, betting chips, chip holders, dominoes, dominoes tables, drop boxes, banking supplies, playing cards, card shufflers, and other associated equipment to authorized cardrooms.

(f)

“Cardroom operator” means a licensed pari-mutuel permitholder which holds a valid permit and license issued by the division pursuant to chapter 550 and which also holds a valid cardroom

license issued by the division pursuant to this section which authorizes such person to operate a cardroom and to conduct authorized games in such cardroom.

(g)

“Division” means the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.

(h)

“Dominoes” means a game of dominoes typically played with a set of 28 flat rectangular blocks, called “bones,” which are marked on one side and divided into two equal parts, with zero to six dots, called “pips,” in each part. The term also includes larger sets of blocks that contain a correspondingly higher number of pips. The term also means the set of blocks used to play the game.

(i)

“Gross receipts” means the total amount of money received by a cardroom from any person for participation in authorized games.

(j)

“House” means the cardroom operator and all employees of the cardroom operator.

(k)

“Net proceeds” means the total amount of gross receipts received by a cardroom operator from cardroom operations less direct operating expenses related to cardroom operations, including labor costs, admission taxes only if a separate admission fee is charged for entry to the cardroom facility, gross receipts taxes imposed on cardroom operators by this section, the annual cardroom license fees imposed by this section on each table operated at a cardroom, and reasonable promotional costs excluding officer and director compensation, interest on capital debt, legal fees, real estate taxes, bad debts, contributions or donations, or overhead and depreciation expenses not directly related to the operation of the cardrooms.

(l)

“Rake” means a set fee or percentage of the pot assessed by a cardroom operator for providing the services of a dealer, table, or location for playing the authorized game.

(m)

“Tournament” means a series of games that have more than one betting round involving one or more tables and where the winners or others receive a prize or cash award.

(3)

CARDROOM AUTHORIZED.—Notwithstanding any other provision of law, it is not a crime for a person to participate in an authorized game at a licensed cardroom or to operate a cardroom described in this section if such game and cardroom operation are conducted strictly in accordance with the provisions of this section.

(4)

AUTHORITY OF DIVISION.—The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation shall administer this section and regulate the operation of cardrooms under this section and the rules adopted pursuant thereto, and is hereby authorized to:

(a)

Adopt rules, including, but not limited to: the issuance of cardroom and employee licenses for cardroom operations; the operation of a cardroom; recordkeeping and reporting requirements; and the collection of all fees and taxes imposed by this section.

(b)

Conduct investigations and monitor the operation of cardrooms and the playing of authorized games therein.

(c)

Review the books, accounts, and records of any current or former cardroom operator.

(d)

Suspend or revoke any license or permit, after hearing, for any violation of the provisions of this section or the administrative rules adopted pursuant thereto.

(e)

Take testimony, issue summons and subpoenas for any witness, and issue subpoenas duces tecum in connection with any matter within its jurisdiction.

(f)

Monitor and ensure the proper collection of taxes and fees imposed by this section. Permitholder internal controls are mandated to ensure no compromise of state funds. To that end, a roaming division auditor will monitor and verify the cash flow and accounting of cardroom revenue for any given operating day.

(5)

LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(a)

Only those persons holding a valid cardroom license issued by the division may operate a cardroom. A cardroom license may only be issued to a licensed pari-mutuel permitholder and an authorized cardroom may only be operated at the same facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel wagering activities. An initial cardroom license shall be issued to a pari-mutuel permitholder only after its facilities are in place and after it conducts its first day of live racing or games.

(b)

After the initial cardroom license is granted, the application for the annual license renewal shall be made in conjunction with the applicant's annual application for its pari-mutuel license. If a permitholder has operated a cardroom during any of the 3 previous fiscal years and fails to include a renewal request for the operation of the cardroom in its annual application for license renewal, the permitholder may amend its annual application to include operation of the cardroom. In order for a cardroom license to be renewed the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior thereto if the permitholder ran at least a full schedule of live racing or games in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior thereto. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.

(c)

Persons seeking a license or a renewal thereof to operate a cardroom shall make application on forms prescribed by the division. Applications for cardroom licenses shall contain all of the information the division, by rule, may determine is required to ensure eligibility.

(d)

The annual cardroom license fee for each facility shall be \$1,000 for each table to be operated at the cardroom. The license fee shall be deposited by the division with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund.

(6)

BUSINESS AND EMPLOYEE OCCUPATIONAL LICENSE REQUIRED; APPLICATION; FEES.—

(a)

A person employed or otherwise working in a cardroom as a cardroom manager, floor supervisor, pit boss, dealer, or any other activity related to cardroom operations while the facility is conducting card playing or games of dominoes must hold a valid cardroom employee occupational license issued by the division. Food service, maintenance, and security employees with a current pari-mutuel occupational license and a current background check will not be required to have a cardroom employee occupational license.

(b)

Any cardroom management company or cardroom distributor associated with cardroom operations must hold a valid cardroom business occupational license issued by the division.

(c)

No licensed cardroom operator may employ or allow to work in a cardroom any person unless such person holds a valid occupational license. No licensed cardroom operator may contract, or otherwise do business with, a business required to hold a valid cardroom business occupational license, unless the business holds such a valid license.

(d)

The division shall establish, by rule, a schedule for the renewal of cardroom occupational licenses. Cardroom occupational licenses are not transferable.

(e)

Persons seeking cardroom occupational licenses, or renewal thereof, shall make application on forms prescribed by the division. Applications for cardroom occupational licenses shall contain all of the information the division, by rule, may determine is required to ensure eligibility.

(f)

The division shall adopt rules regarding cardroom occupational licenses. The provisions specified in s. 550.105(4), (5), (6), (7), (8), and (10) relating to licensure shall be applicable to cardroom occupational licenses.

(g)

The division may deny, declare ineligible, or revoke any cardroom occupational license if the applicant or holder thereof has been found guilty or had adjudication withheld in this state or any other state, or under the laws of the United States of a felony or misdemeanor involving forgery, larceny, extortion, conspiracy to defraud, or filing false reports to a government agency, racing or gaming commission or authority.

(h)

Fingerprints for all cardroom occupational license applications shall be taken in a manner approved by the division and then shall be submitted to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a criminal records check upon initial application and at least every 5 years thereafter. The division may by rule require an annual record check of all renewal applications for a cardroom occupational license. The cost of processing fingerprints and conducting a record check shall be borne by the applicant.

(i)

The cardroom employee occupational license fee shall not exceed \$50 for any 12-month period. The cardroom business occupational license fee shall not exceed \$250 for any 12-month period.

(7)

CONDITIONS FOR OPERATING A CARDROOM.—

(a)

A cardroom may be operated only at the location specified on the cardroom license issued by the division, and such location may only be the location at which the pari-mutuel permitholder is authorized to conduct pari-mutuel wagering activities pursuant to such permitholder's valid pari-mutuel permit or as otherwise authorized by law. Cardroom operations may not be allowed beyond the hours provided in paragraph (b) regardless of the number of cardroom licenses issued for permitholders operating at the pari-mutuel facility.

(b)

Any cardroom operator may operate a cardroom at the pari-mutuel facility daily throughout the year, if the permitholder meets the requirements under paragraph (5)(b). The cardroom may be open a cumulative amount of 18 hours per day on Monday through Friday and 24 hours per day on Saturday and Sunday and on the holidays specified in s. 110.117(1).

(c)

A cardroom operator must at all times employ and provide a nonplaying dealer for each table on which authorized card games which traditionally use a dealer are conducted at the cardroom. Such dealers may not have a participatory interest in any game other than the dealing of cards and may not have an interest in the outcome of the game. The providing of such dealers by a licensee does not constitute the conducting of a banking game by the cardroom operator.

(d)

A cardroom operator may award giveaways, jackpots, and prizes to a player who holds certain combinations of cards specified by the cardroom operator.

(e)

Each cardroom operator shall conspicuously post upon the premises of the cardroom a notice which contains a copy of the cardroom license; a list of authorized games offered by the cardroom; the wagering limits imposed by the house, if any; any additional house rules regarding operation of the cardroom or the playing of any game; and all costs to players to participate, including any rake by the house. In addition, each cardroom operator shall post at each table a notice of the minimum and maximum bets authorized at such table and the fee for participation in the game conducted.

(f)

The cardroom facility is subject to inspection by the division or any law enforcement agency during the licensee's regular business hours. The inspection must specifically include the permit holder internal control procedures approved by the division.

(g)

A cardroom operator may refuse entry to or refuse to allow any person who is objectionable, undesirable, or disruptive to play, but such refusal may not be on the basis of race, creed, color, religion, gender, national origin, marital status, physical handicap, or age, except as provided in this section.

(8)

METHOD OF WAGERS; LIMITATION.—

(a)

No wagering may be conducted using money or other negotiable currency. Games may only be played utilizing a wagering system whereby all players' money is first converted by the house to tokens or chips which shall be used for wagering only at that specific cardroom.

(b)

The cardroom operator may limit the amount wagered in any game or series of games.

(c)

A tournament shall consist of a series of games. The entry fee for a tournament may be set by the cardroom operator. Tournaments may be played only with tournament chips that are provided to all participants in exchange for an entry fee and any subsequent re-buys. All players must receive an equal number of tournament chips for their entry fee. Tournament chips have no cash value and represent tournament points only. There is no limitation on the number of tournament chips that may be used for a bet except as otherwise determined by the cardroom operator. Tournament chips may never be redeemed for cash or for any other thing of value. The distribution of prizes

and cash awards must be determined by the cardroom operator before entry fees are accepted. For purposes of tournament play only, the term “gross receipts” means the total amount received by the cardroom operator for all entry fees, player re-buys, and fees for participating in the tournament less the total amount paid to the winners or others as prizes.

(9)

BOND REQUIRED.—The holder of a cardroom license shall be financially and otherwise responsible for the operation of the cardroom and for the conduct of any manager, dealer, or other employee involved in the operation of the cardroom. Prior to the issuance of a cardroom license, each applicant for such license shall provide evidence of a surety bond in the amount of \$50,000, payable to the state, furnished by a corporate surety authorized to do business in the state or evidence that the licensee’s pari-mutuel bond required by s. 550.125 has been expanded to include the applicant’s cardroom operation. The bond shall guarantee that the cardroom operator will redeem, for cash, all tokens or chips used in games. Such bond shall be kept in full force and effect by the operator during the term of the license.

(10)

FEE FOR PARTICIPATION.—The cardroom operator may charge a fee for the right to participate in games conducted at the cardroom. Such fee may be either a flat fee or hourly rate for the use of a seat at a table or a rake subject to the posted maximum amount but may not be based on the amount won by players. The rake-off, if any, must be made in an obvious manner and placed in a designated rake area which is clearly visible to all players. Notice of the amount of the participation fee charged shall be posted in a conspicuous place in the cardroom and at each table at all times.

(11)

RECORDS AND REPORTS.—

(a)

Each licensee operating a cardroom shall keep and maintain permanent daily records of its cardroom operation and shall maintain such records for a period of not less than 3 years. These records shall include all financial transactions and contain sufficient detail to determine compliance with the requirements of this section. All records shall be available for audit and inspection by the division or other law enforcement agencies during the licensee’s regular business hours. The information required in such records shall be determined by division rule.

(b)

Each licensee operating a cardroom shall file with the division a report containing the required records of such cardroom operation. Such report shall be filed monthly by licensees. The required reports shall be submitted on forms prescribed by the division and shall be due at the same time as the monthly pari-mutuel reports are due to the division, and such reports shall

contain any additional information deemed necessary by the division, and the reports shall be deemed public records once filed.

(12)

PROHIBITED ACTIVITIES.—

(a)

No person licensed to operate a cardroom may conduct any banking game or any game not specifically authorized by this section.

(b)

No person under 18 years of age may be permitted to hold a cardroom or employee license, or engage in any game conducted therein.

(c)

No electronic or mechanical devices, except mechanical card shufflers, may be used to conduct any authorized game in a cardroom.

(d)

No cards, game components, or game implements may be used in playing an authorized game unless such has been furnished or provided to the players by the cardroom operator.

(13)

TAXES AND OTHER PAYMENTS.—

(a)

Each cardroom operator shall pay a tax to the state of 10 percent of the cardroom operation's monthly gross receipts.

(b)

An admission tax equal to 15 percent of the admission charge for entrance to the licensee's cardroom facility, or 10 cents, whichever is greater, is imposed on each person entering the cardroom. This admission tax shall apply only if a separate admission fee is charged for entry to the cardroom facility. If a single admission fee is charged which authorizes entry to both or either the pari-mutuel facility and the cardroom facility, the admission tax shall be payable only once and shall be payable pursuant to chapter 550. The cardroom licensee shall be responsible for collecting the admission tax. An admission tax is imposed on any free passes or complimentary cards issued to guests by licensees in an amount equal to the tax imposed on the

regular and usual admission charge for entrance to the licensee's cardroom facility. A cardroom licensee may issue tax-free passes to its officers, officials, and employees or other persons actually engaged in working at the cardroom, including accredited press representatives such as reporters and editors, and may also issue tax-free passes to other cardroom licensees for the use of their officers and officials. The licensee shall file with the division a list of all persons to whom tax-free passes are issued.

(c)

Payment of the admission tax and gross receipts tax imposed by this section shall be paid to the division. The division shall deposit these sums with the Chief Financial Officer, one-half being credited to the Pari-mutuel Wagering Trust Fund and one-half being credited to the General Revenue Fund. The cardroom licensee shall remit to the division payment for the admission tax, the gross receipts tax, and the licensee fees. Such payments shall be remitted to the division on the fifth day of each calendar month for taxes and fees imposed for the preceding month's cardroom activities. Licensees shall file a report under oath by the fifth day of each calendar month for all taxes remitted during the preceding calendar month. Such report shall, under oath, indicate the total of all admissions, the cardroom activities for the preceding calendar month, and such other information as may be prescribed by the division.

(d)1.

Each greyhound and jai alai permitholder that operates a cardroom facility shall use at least 4 percent of such permitholder's cardroom monthly gross receipts to supplement greyhound purses or jai alai prize money, respectively, during the permitholder's next ensuing pari-mutuel meet.

2.

Each thoroughbred and harness horse racing permitholder that operates a cardroom facility shall use at least 50 percent of such permitholder's cardroom monthly net proceeds as follows: 47 percent to supplement purses and 3 percent to supplement breeders' awards during the permitholder's next ensuing racing meet.

3.

No cardroom license or renewal thereof shall be issued to an applicant holding a permit under chapter 550 to conduct pari-mutuel wagering meets of quarter horse racing unless the applicant has on file with the division a binding written agreement between the applicant and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the applicant's eligible facility, governing the payment of purses on live quarter horse races conducted at the licensee's pari-mutuel facility. The agreement governing purses may direct the payment of such purses from revenues generated by any wagering or gaming the applicant is authorized to conduct under Florida law. All purses shall be subject to the terms of chapter 550.

(e)

The failure of any licensee to make payments as prescribed in paragraph (c) is a violation of this section, and the licensee may be subjected by the division to a civil penalty of up to \$1,000 for each day the tax payment is not remitted. All penalties imposed and collected shall be deposited in the General Revenue Fund. If a licensee fails to pay penalties imposed by order of the division under this subsection, the division may suspend or revoke the license of the cardroom operator or deny issuance of any further license to the cardroom operator.

(f)

The cardroom shall be deemed an accessory use to a licensed pari-mutuel operation and, except as provided in chapter 550, a municipality, county, or political subdivision may not assess or collect any additional license tax, sales tax, or excise tax on such cardroom operation.

(g)

All of the moneys deposited in the Pari-mutuel Wagering Trust Fund, except as set forth in paragraph (h), shall be utilized and distributed in the manner specified in s. 550.135(1) and (2). However, cardroom tax revenues shall be kept separate from pari-mutuel tax revenues and shall not be used for making the disbursement to counties provided in former s. 550.135(1).

(h)

One-quarter of the moneys deposited into the Pari-mutuel Wagering Trust Fund pursuant to paragraph (g) shall, by October 1 of each year, be distributed to the local government that approved the cardroom under subsection (16); however, if two or more pari-mutuel racetracks are located within the same incorporated municipality, the cardroom funds shall be distributed to the municipality. If a pari-mutuel facility is situated in such a manner that it is located in more than one county, the site of the cardroom facility shall determine the location for purposes of disbursement of tax revenues under this paragraph. The division shall, by September 1 of each year, determine: the amount of taxes deposited into the Pari-mutuel Wagering Trust Fund pursuant to this section from each cardroom licensee; the location by county of each cardroom; whether the cardroom is located in the unincorporated area of the county or within an incorporated municipality; and, the total amount to be distributed to each eligible county and municipality.

(14)

SUSPENSION, REVOCATION, OR DENIAL OF LICENSE; FINE.—

(a)

The division may deny a license or the renewal thereof, or may suspend or revoke any license, when the applicant has: violated or failed to comply with the provisions of this section or any rules adopted pursuant thereto; knowingly caused, aided, abetted, or conspired with another to cause any person to violate this section or any rules adopted pursuant thereto; or obtained a

license or permit by fraud, misrepresentation, or concealment; or if the holder of such license or permit is no longer eligible under this section.

(b)

If a pari-mutuel permitholder's pari-mutuel permit or license is suspended or revoked by the division pursuant to chapter 550, the division may, but is not required to, suspend or revoke such permitholder's cardroom license. If a cardroom operator's license is suspended or revoked pursuant to this section, the division may, but is not required to, suspend or revoke such licensee's pari-mutuel permit or license.

(c)

Notwithstanding any other provision of this section, the division may impose an administrative fine not to exceed \$1,000 for each violation against any person who has violated or failed to comply with the provisions of this section or any rules adopted pursuant thereto.

(15)

CRIMINAL PENALTY; INJUNCTION.—

(a)1.

Any person who operates a cardroom without a valid license issued as provided in this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2.

Any licensee or permitholder who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any licensee or permitholder who commits a second or subsequent violation of the same paragraph or subsection within a period of 3 years from the date of a prior conviction for a violation of such paragraph or subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)

The division, any state attorney, the statewide prosecutor, or the Attorney General may apply for a temporary or permanent injunction restraining further violation of this section, and such injunction shall issue without bond.

(16)

LOCAL GOVERNMENT APPROVAL.—The Division of Pari-mutuel Wagering shall not issue any initial license under this section except upon proof in such form as the division may

prescribe that the local government where the applicant for such license desires to conduct cardroom gaming has voted to approve such activity by a majority vote of the governing body of the municipality or the governing body of the county if the facility is not located in a municipality.

(17)

CHANGE OF LOCATION; REFERENDUM.—

(a)

Notwithstanding any provisions of this section, no cardroom gaming license issued under this section shall be transferred, or reissued when such reissuance is in the nature of a transfer, so as to permit or authorize a licensee to change the location of the cardroom except upon proof in such form as the division may prescribe that a referendum election has been held:

1.

If the proposed new location is within the same county as the already licensed location, in the county where the licensee desires to conduct cardroom gaming and that a majority of the electors voting on the question in such election voted in favor of the transfer of such license. However, the division shall transfer, without requirement of a referendum election, the cardroom license of any permit holder that relocated its permit pursuant to s. 550.0555.

2.

If the proposed new location is not within the same county as the already licensed location, in the county where the licensee desires to conduct cardroom gaming and that a majority of the electors voting on that question in each such election voted in favor of the transfer of such license.

(b)

The expense of each referendum held under the provisions of this subsection shall be borne by the licensee requesting the transfer.

History.

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s. 20, ch. 96-364; s. 26, ch. 2001-64; s. 1913, ch. 2003-261; s. 4, ch. 2003-295; s. 4, ch. 2005-288; s. 1, ch. 2007-130; s. 1, ch. 2007-163; s. 24, ch. 2009-170; ss. 4, 5, ch. 2010-29.

849.09

Lottery prohibited; exceptions.

—

(1)

It is unlawful for any person in this state to:

(a)

Set up, promote, or conduct any lottery for money or for anything of value;

(b)

Dispose of any money or other property of any kind whatsoever by means of any lottery;

(c)

Conduct any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertise any such lottery scheme or device in any newspaper or by circulars, posters, pamphlets, radio, telegraph, telephone, or otherwise;

(d)

Aid or assist in the setting up, promoting, or conducting of any lottery or lottery drawing, whether by writing, printing, or in any other manner whatsoever, or be interested in or connected in any way with any lottery or lottery drawing;

(e)

Attempt to operate, conduct, or advertise any lottery scheme or device;

(f)

Have in her or his possession any lottery wheel, implement, or device whatsoever for conducting any lottery or scheme for the disposal by lot or chance of anything of value;

(g)

Sell, offer for sale, or transmit, in person or by mail or in any other manner whatsoever, any lottery ticket, coupon, or share, or any share in or fractional part of any lottery ticket, coupon, or share, whether such ticket, coupon, or share represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played;

(h)

Have in her or his possession any lottery ticket, or any evidence of any share or right in any lottery ticket, or in any lottery scheme or device, whether such ticket or evidence of share or right represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played;

(i)

Aid or assist in the sale, disposal, or procurement of any lottery ticket, coupon, or share, or any right to any drawing in a lottery;

(j)

Have in her or his possession any lottery advertisement, circular, poster, or pamphlet, or any list or schedule of any lottery prizes, gifts, or drawings; or

(k)

Have in her or his possession any so-called "run down sheets," tally sheets, or other papers, records, instruments, or paraphernalia designed for use, either directly or indirectly, in, or in connection with, the violation of the laws of this state prohibiting lotteries and gambling.

Provided, that nothing in this section shall prohibit participation in any nationally advertised contest, drawing, game or puzzle of skill or chance for a prize or prizes unless it can be construed as a lottery under this section; and, provided further, that this exemption for national contests shall not apply to any such contest based upon the outcome or results of any horserace, harness race, dograce, or jai alai game.

(2)

Any person who is convicted of violating any of the provisions of paragraph (a), paragraph (b), paragraph (c), or paragraph (d) of subsection (1) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)

Any person who is convicted of violating any of the provisions of paragraph (e), paragraph (f), paragraph (g), paragraph (i), or paragraph (k) of subsection (1) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who, having been convicted of violating any provision thereof, thereafter violates any provision thereof is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The provisions of this section do not apply to bingo as provided for in s. 849.0931.

(4)

Any person who is convicted of violating any of the provisions of paragraph (h) or paragraph (j) of subsection (1) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who, having been convicted of violating any provision thereof, thereafter violates any provision thereof is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.

s. 1, ch. 4373, 1895; GS 3582; RGS 5509; CGL 7667; s. 1, ch. 26765, 1951; s. 1, ch. 67-72; s. 1, ch. 67-435; ss. 1, 2, ch. 69-91; s. 1064, ch. 71-136; s. 168, ch. 83-216; s. 4, ch. 91-206; ss. 4, 6, ch. 92-280; s. 1, ch. 93-160; s. 1359, ch. 97-102; s. 155, ch. 2007-5.

849.091

Chain letters, pyramid clubs, etc., declared a lottery; prohibited; penalties.

(1)

The organization of any chain letter club, pyramid club, or other group organized or brought together under any plan or device whereby fees or dues or anything of material value to be paid or given by members thereof are to be paid or given to any other member thereof, which plan or device includes any provision for the increase in such membership through a chain process of new members securing other new members and thereby advancing themselves in the group to a position where such members in turn receive fees, dues, or things of material value from other members, is hereby declared to be a lottery, and whoever shall participate in any such lottery by becoming a member of, or affiliating with, any such group or organization or who shall solicit any person for membership or affiliation in any such group or organization commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)

A “pyramid sales scheme,” which is any sales or marketing plan or operation whereby a person pays a consideration of any kind, or makes an investment of any kind, in excess of \$100 and acquires the opportunity to receive a benefit or thing of value which is not primarily contingent on the volume or quantity of goods, services, or other property sold in bona fide sales to consumers, and which is related to the inducement of additional persons, by himself or herself or others, regardless of number, to participate in the same sales or marketing plan or operation, is hereby declared to be a lottery, and whoever shall participate in any such lottery by becoming a member of or affiliating with, any such group or organization or who shall solicit any person for membership or affiliation in any such group or organization commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, the term “consideration” and the term “investment” do not include the purchase of goods or services furnished at cost for use in making sales, but not for resale, or time and effort spent in the pursuit of sales or recruiting activities.

History.

s. 1, ch. 25096, 1949; s. 1065, ch. 71-136; s. 1, ch. 91-15; s. 215, ch. 91-224; s. 1360, ch. 97-102.

849.0915

Referral selling.

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(1)

Referral selling, whereby the seller gives or offers a rebate or discount to the buyer as an inducement for a sale in consideration of the buyer's providing the seller with the names of prospective purchasers, is declared to be a lottery if earning the rebate or discount is contingent upon the occurrence of an event subsequent to the time the buyer agrees to buy.

(2)

Any person conducting a lottery by referral selling is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3)

In addition to the penalty provided herein, the Attorney General and her or his assistants, the state attorneys and their assistants, and the Division of Consumer Services of the Department of Agriculture and Consumer Services are authorized to apply to the circuit court within their respective jurisdictions, and such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating the provisions of this section, whether or not there exists an adequate remedy at law, and such injunction shall issue without bond.

History.

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s. 1, ch. 72-110; s. 34, ch. 73-334; s. 1361, ch. 97-102.

849.092

Motor fuel retail business; certain activities permitted.

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The provisions of s. 849.09 shall not be construed to prohibit or prevent persons who are licensed to conduct business under s. 206.404, from giving away prizes to persons selected by lot, if such prizes are made on the following conditions:

(1)

Such gifts are conducted as advertising and promotional undertakings, in good faith, solely for the purpose of advertising the goods, wares, merchandise and business of such licensee; and

(2)

The principal business of such licensee is the business permitted to be licensed under s. 206.404; and

(3)

No person to be eligible to receive such gift shall ever be required to:

(a)

Pay any tangible consideration to such licensee in the form of money or other property or thing of value, or

(b)

Purchase any goods, wares, merchandise or anything of value from such licensee.

(4)

The person selected to receive any such gift or prize offered by any such licensee in connection with any such advertising or promotion is notified of his or her selection at his or her last known address. Newspapers, magazines, television and radio stations may, without violating any law, publish and broadcast advertising matter describing such advertising and promotional undertakings of such licensees which may contain instructions pursuant to which persons desiring to become eligible for such gifts or prizes may make their name and address known to such licensee.

(5)

All brochures, advertisements, promotional material, and entry blanks promoting such undertakings shall contain a clause stating that residents of Florida are entitled to participate in such undertakings and are eligible to win gifts or prizes.

History.

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s. 1, ch. 63-553; s. 1, ch. 65-261; s. 1, ch. 71-287; s. 244, ch. 77-104; s. 1362, ch. 97-102.

849.0931

Bingo authorized; conditions for conduct; permitted uses of proceeds; limitations.

—

(1)

As used in this section:

(a)

“Bingo game” means and refers to the activity, commonly known as “bingo,” in which participants pay a sum of money for the use of one or more bingo cards. When the game commences, numbers are drawn by chance, one by one, and announced. The players cover or mark those numbers on the bingo cards which they have purchased until a player receives a given order of numbers in sequence that has been preannounced for that particular game. This player calls out “bingo” and is declared the winner of a predetermined prize. More than one game may be played upon a bingo card, and numbers called for one game may be used for a succeeding game or games.

(b)

“Bingo card” means and refers to the flat piece of paper or thin pasteboard employed by players engaged in the game of bingo. The bingo card shall have not fewer than 24 playing numbers printed on it. These playing numbers shall range from 1 through 75, inclusive. More than one set of bingo numbers may be printed on any single piece of paper.

(c)

“Charitable, nonprofit, or veterans’ organization” means an organization which has qualified for exemption from federal income tax as an exempt organization under the provisions of s. 501(c) of the Internal Revenue Code of 1954 or s. 528 of the Internal Revenue Code of 1986, as amended; which is engaged in charitable, civic, community, benevolent, religious, or scholastic works or other similar activities; and which has been in existence and active for a period of 3 years or more.

(d)

“Deal” means a separate set or package of not more than 4,000 instant bingo tickets in which the predetermined minimum prize payout is at least 65 percent of the total receipts from the sale of the entire deal.

(e)

“Flare” means the board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it the following information:

1.

The game name.

2.

The manufacturer’s name or distinctive logo.

3.

The form number.

4.

The ticket count.

5.

The prize structure, including the number of symbols or number combinations for winning instant bingo tickets by denomination, with their respective winning symbols or number combinations.

6.

The cost per play.

7.

The game serial number.

(f)

“Instant bingo” means a form of bingo that is played at the same location as bingo, using tickets by which a player wins a prize by opening and removing a cover from the ticket to reveal a set of numbers, letters, objects, or patterns, some of which have been designated in advance as prize winners.

(g)

“Objects” means a set of 75 balls or other precision shapes that are imprinted with letters and numbers in such a way that numbers 1 through 15 are marked with the letter “B,” numbers 16 through 30 are marked with the letter “I,” numbers 31 through 45 are marked with the letter “N,” numbers 46 through 60 are marked with the letter “G,” and numbers 61 through 75 are marked with the letter “O.”

(h)

“Rack” means the container in which the objects are placed after being drawn and announced.

(i)

“Receptacle” means the container from which the objects are drawn or ejected.

(j)

“Session” means a designated set of games played in a day or part of a day.

(2)(a)

None of the provisions of this chapter shall be construed to prohibit or prevent charitable, nonprofit, or veterans’ organizations engaged in charitable, civic, community, benevolent, religious, or scholastic works or other similar endeavors, which organizations have been in existence and active for a period of 3 years or more, from conducting bingo games or instant bingo, provided the entire proceeds derived from the conduct of such games, less actual business expenses for articles designed for and essential to the operation, conduct, and playing of bingo or instant bingo, are donated by such organizations to the endeavors mentioned above. In no case may the net proceeds from the conduct of such games be used for any other purpose whatsoever. The proceeds derived from the conduct of bingo games or instant bingo shall not be considered solicitation of public donations.

(b)

It is the express intent of the Legislature that no charitable, nonprofit, or veterans’ organization serve as a sponsor of a bingo game or instant bingo conducted by another, but such organization may only be directly involved in the conduct of such a game as provided in this act.

(3)

If an organization is not engaged in efforts of the type set out above, its right to conduct bingo games hereunder is conditioned upon the return of all the proceeds from such games to the players in the form of prizes. If at the conclusion of play on any day during which a bingo game is allowed to be played under this section there remain proceeds which have not been paid out as prizes, the organization conducting the game shall at the next scheduled day of play conduct bingo games without any charge to the players and shall continue to do so until the proceeds carried over from the previous days played have been exhausted. This provision in no way extends the limitation on the number of prize or jackpot games allowed in one day as provided for in subsection (5).

(4)

The right of a condominium association, a cooperative association, a homeowners’ association as defined in s. 720.301, a mobile home owners’ association, a group of residents of a mobile home park as defined in chapter 723, or a group of residents of a mobile home park or recreational vehicle park as defined in chapter 513 to conduct bingo is conditioned upon the return of the net proceeds from such games to players in the form of prizes after having deducted the actual business expenses for such games for articles designed for and essential to the operation, conduct, and playing of bingo. Any net proceeds remaining after paying prizes may be donated by the association to a charitable, nonprofit, or veterans’ organization which is exempt from federal income tax under the provisions of s. 501(c) of the Internal Revenue Code to be used in such recipient organization’s charitable, civic, community, benevolent, religious, or scholastic

works or similar activities or, in the alternative, such remaining proceeds shall be used as specified in subsection (3).

(5)

Except for instant bingo prizes, which are limited to the amounts displayed on the ticket or on the game flare, a jackpot shall not exceed the value of \$250 in actual money or its equivalent, and there shall be no more than three jackpots in any one session of bingo.

(6)

Except for instant bingo, which is not limited by this subsection, the number of days per week during which organizations authorized under this section may conduct bingo shall not exceed two.

(7)

Except for instant bingo prizes, which are limited to the amounts displayed on the ticket or on the game flare, there shall be no more than three jackpots on any one day of play. All other game prizes shall not exceed \$50.

(8)

Each person involved in the conduct of any bingo game or instant bingo must be a resident of the community where the organization is located and a bona fide member of the organization sponsoring such game and may not be compensated in any way for operation of such game. When bingo games or instant bingo is conducted by a charitable, nonprofit, or veterans' organization, the organization conducting the games must designate up to three members of that organization to be in charge of the games, one of whom shall be present during the entire session at which the games are conducted. The organization conducting the games is responsible for posting a notice, which notice states the name of the organization and the designated member or members, in a conspicuous place on the premises at which the session is held or instant bingo is played. A caller in a bingo game may not be a participant in that bingo game.

(9)

Every charitable, nonprofit, or veterans' organization involved in the conduct of a bingo game or instant bingo must be located in the county, or within a 15-mile radius of, where the bingo game or instant bingo is located.

(10)(a)

No one under 18 years of age shall be allowed to play any bingo game or instant bingo or be involved in the conduct of a bingo game or instant bingo in any way.

(b)

Any organization conducting bingo open to the public may refuse entry to any person who is objectionable or undesirable to the sponsoring organization, but such refusal of entry shall not be on the basis of race, creed, color, religion, sex, national origin, marital status, or physical handicap.

(11)

Bingo games or instant bingo may be held only on the following premises:

(a)

Property owned by the charitable, nonprofit, or veterans' organization.

(b)

Property owned by the charitable, nonprofit, or veterans' organization that will benefit by the proceeds.

(c)

Property leased for a period of not less than 1 year by a charitable, nonprofit, or veterans' organization, providing the lease or rental agreement does not provide for the payment of a percentage of the proceeds generated at such premises to the lessor or any other party and providing the rental rate for such premises does not exceed the rental rates charged for similar premises in the same locale.

(d)

Property owned by a municipality or a county when the governing authority has, by appropriate ordinance or resolution, specifically authorized the use of such property for the conduct of such games.

(e)

With respect to bingo games conducted by a condominium association, a cooperative association, a homeowners' association as defined in s. 720.301, a mobile home owners' association, a group of residents of a mobile home park as defined in chapter 723, or a group of residents of a mobile home park or recreational vehicle park as defined in chapter 513, property owned by the association, property owned by the residents of the mobile home park or recreational vehicle park, or property which is a common area located within the condominium, mobile home park, or recreational vehicle park.

(12)

Each bingo game shall be conducted in accordance with the following rules:

(a)

The objects, whether drawn or ejected, shall be essentially equal as to size, shape, weight, and balance and as to all other characteristics that may control their selection from the receptacle. The caller shall cancel any game if, during the course of a game, the mechanism used in the drawing or ejection of objects becomes jammed in such a manner as to interfere with the accurate determination of the next number to be announced or if the caller determines that more than one object is labeled with the same number or that there is a number to be drawn without a corresponding object. Any player in a game canceled pursuant to this paragraph shall be permitted to play the next game free of charge.

(b)

Prior to commencement of any bingo session, the member in charge shall cause a verification to be made of all objects to be placed in the receptacle and shall inspect the objects in the presence of a disinterested person to ensure that all objects are present and that there are no duplications or omissions of numbers on the objects. Any player shall be entitled to call for a verification of numbers before, during, and after a session.

(c)

The card or sheet on which the game is played shall be part of a deck, group, or series, no two of which may be alike in any given game.

(d)

All numbers shall be visibly displayed after being drawn and before being placed in the rack.

(e)

A bona fide bingo shall consist of a predesignated arrangement of numbers on a card or sheet that correspond with the numbers on the objects drawn from the receptacle and announced. Errors in numbers announced or misplaced in the rack may not be recognized as a bingo.

(f)

When a caller has started to vocally announce a number, the caller shall complete the call. If any player has obtained a bingo on a previous number, such player will share the prize with the player who gained bingo on the last number called.

(g)

Numbers on the winning cards or sheets shall be announced and verified in the presence of another player. Any player shall be entitled at the time the winner is determined to call for a verification of numbers drawn. The verification shall be in the presence of the member

designated to be in charge of the occasion or, if such person is also the caller, in the presence of an officer of the licensee.

(h)

Upon determining a winner, the caller shall ask, "Are there any other winners?" If no one replies, the caller shall declare the game closed. No other player is entitled to share the prize unless she or he has declared a bingo prior to this announcement.

(i)

Seats may not be held or reserved by an organization or person involved in the conduct of any bingo game for players not present, nor may any cards be set aside, held, or reserved from one session to another for any player.

(13)(a)

Instant bingo tickets must be sold at the price printed on the ticket or on the game flare by the manufacturer, not to exceed \$1. Discounts may not be given for the purchase of multiple tickets, nor may tickets be given away free of charge.

(b)

Each deal of instant bingo tickets must be accompanied by a flare, and the flare must be posted before the sale of any tickets in that deal.

(c)

Each instant bingo ticket in a deal must bear the same serial number, and there may not be more than one serial number in each deal. Serial numbers printed on a deal of instant bingo tickets may not be repeated by the manufacturer on the same form for a period of 3 years.

(d)

The serial number for each deal must be clearly and legibly placed on the outside of each deal's package, box, or other container.

(e)

Instant bingo tickets manufactured, sold, or distributed in this state must comply with the applicable standards on pull-tabs of the North American Gaming Regulators Association, as amended.

(f)

Except as provided under paragraph (e), an instant bingo ticket manufactured, sold, or distributed in this state must:

1.

Be manufactured so that it is not possible to identify whether it is a winning or losing instant bingo ticket until it has been opened by the player as intended.

2.

Be manufactured using at least a two-ply paper stock construction so that the instant bingo ticket is opaque.

3.

Have the form number, the deal's serial number, and the name or logo of the manufacturer conspicuously printed on the face or cover of the instant bingo ticket.

4.

Have a form of winner protection that allows the organization to verify, after the instant bingo ticket has been played, that the winning instant bingo ticket presented for payment is an authentic winning instant bingo ticket for the deal in play. The manufacturer shall provide a written description of the winner protection with each deal of instant bingo tickets.

(g)

Each manufacturer and distributor that sells or distributes instant bingo tickets in this state to charitable, nonprofit, or veterans' organizations shall prepare an invoice that contains the following information:

1.

Date of sale.

2.

Form number and serial number of each deal sold.

3.

Number of instant bingo tickets in each deal sold.

4.

Name of distributor or organization to whom each deal is sold.

5.

Price of each deal sold.

All information contained on an invoice must be maintained by the distributor or manufacturer for 3 years.

(h)

The invoice, or a true and accurate copy thereof, must be on the premises where any deal of instant bingo tickets is stored or in play.

(14)

Any organization or other person who willfully and knowingly violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For a second or subsequent offense, the organization or other person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.

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ss. 1, 6, ch. 92-280; s. 1, ch. 93-160; s. 1, ch. 94-326; s. 1363, ch. 97-102; s. 13, ch. 99-382; ss. 59, 70, ch. 2000-258; ss. 27, 28, ch. 2001-64; s. 2, ch. 2007-228.

849.0935

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

—

(1)

As used in this section, the term:

(a)

“Drawing by chance” or “drawing” means an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance to win a prize. The term “drawing” does not include those enterprises, commonly known as “matching,” “instant winner,” or “preselected sweepstakes,” which involve the distribution of winning numbers, previously designated as such, to the public.

(b)

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

(2)

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

(3)

All brochures, advertisements, notices, tickets, or entry blanks used in connection with a drawing by chance shall conspicuously disclose:

(a)

The rules governing the conduct and operation of the drawing.

(b)

The full name of the organization and its principal place of business.

(c)

The source of the funds used to award cash prizes or to purchase prizes.

(d)

The date, hour, and place where the winner will be chosen and the prizes will be awarded, unless the brochures, advertisements, notices, tickets, or entry blanks are not offered to the public more than 3 days prior to the drawing.

(e)

That no purchase or contribution is necessary.

(4)

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

(a)

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

(b)

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

(c)

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

(d)

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

(e)

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

(f)

To fail to award all prizes offered;

(g)

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

(h)

To cancel a drawing; or

(i)

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

(5)

The organization conducting the drawing may limit the number of tickets distributed to each drawing entrant.

(6)

A violation of this section is a deceptive and unfair trade practice.

(7)

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

(8)

This section does not apply to the state lottery operated pursuant to chapter 24.

History.

—

s. 1, ch. 84-181; ss. 1, 2, ch. 88-115; s. 216, ch. 91-224; s. 1, ch. 96-253; s. 1825, ch. 97-102; s. 1, ch. 97-108.

849.094

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

—

(1)

As used in this section, the term:

(a)

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

(b)

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

(2)

It is unlawful for any operator:

(a)

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

1.

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

2.

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

(b)

Arbitrarily to remove, disqualify, disallow, or reject any entry;

(c)

To fail to award prizes offered;

(d)

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

(e)

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

(3)

The operator of a game promotion in which the total announced value of the prizes offered is greater than \$5,000 shall file with the Department of Agriculture and Consumer Services a copy of the rules and regulations of the game promotion and a list of all prizes and prize categories offered at least 7 days before the commencement of the game promotion. Such rules and

regulations may not thereafter be changed, modified, or altered. The operator of a game promotion shall conspicuously post the rules and regulations of such game promotion in each and every retail outlet or place where such game promotion may be played or participated in by the public and shall also publish the rules and regulations in all advertising copy used in connection therewith. However, such advertising copy need only include the material terms of the rules and regulations if the advertising copy includes a website address, a toll-free telephone number, or a mailing address where the full rules and regulations may be viewed, heard, or obtained for the full duration of the game promotion. Such disclosures must be legible. 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 used to pay the costs incurred in administering and enforcing the provisions of this section.

(4)(a)

Every operator of such a game promotion in which the total announced value of the prizes offered is greater than \$5,000 shall establish a trust account, in a national or state-chartered financial institution, with a balance sufficient to pay or purchase the total value of all prizes offered. On a form supplied by the Department of Agriculture and Consumer Services, 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 Agriculture and Consumer Services at least 7 days in advance of the commencement of the game promotion. In lieu of establishing such trust account, the operator may obtain a surety bond in an amount equivalent to the total value of all prizes offered; and such bond shall be filed with the Department of Agriculture and Consumer Services at least 7 days in advance of the commencement of the game promotion.

1.

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

2.

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

(b)

The Department of Agriculture and Consumer Services 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 or her by the state or an agency of the state for violation of this section within that 5-

year period. Such waiver may be revoked upon the commission of a violation of this section by such operator, as determined by the Department of Agriculture and Consumer Services.

(5)

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

(6)

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

(7)

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

(8)(a)

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

(b)

Whenever the Department of Agriculture and Consumer Services or the Department of Legal Affairs has reason to believe that a game promotion is being operated in violation of this section, it may bring an action in the circuit court of any judicial circuit in which the game promotion is

being operated in the name and on behalf of the people of the state against any operator thereof to enjoin the continued operation of such game promotion anywhere within the state.

(9)(a)

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

(b)

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

(10)

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

History.

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ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, ch. 71-304; s. 1, ch. 73-292; s. 1, ch. 81-38; s. 1, ch. 83-118; s. 1, ch. 85-197; s. 1, ch. 90-36; s. 5, ch. 91-206; ss. 5, 6, ch. 92-280; s. 1, ch. 93-160; s. 251, ch. 94-218; s. 1364, ch. 97-102; s. 2, ch. 97-108; ss. 60, 70, ch. 2000-258; s. 1, ch. 2005-99.

849.10

Printing lottery tickets, etc., prohibited.

—

(1)

Except as otherwise provided by law, it is unlawful for any person, in any house, office, shop or building in this state to write, typewrite, print, or publish any lottery ticket or advertisement, circular, bill, poster, pamphlet, list or schedule, announcement or notice, of lottery prizes or drawings or any other matter or thing in any way connected with any lottery drawing, scheme or

device, or to set up any type or plate for any such purpose, to be used or distributed in this state, or to be sent out of this state.

(2)

Except as otherwise provided by law, it is unlawful for the owner or lessee of any such house, shop or building knowingly to permit the printing, typewriting, writing or publishing therein of any lottery ticket or advertisement, circular, bill, poster, pamphlet, list, schedule, announcement or notice of lottery prizes or drawings, or any other matter or thing in any way connected with any lottery drawing, scheme or device, or knowingly to permit therein the setting up of any type or plate for any such purpose to be used or distributed in this state, or to be sent out of the state.

(3)

Nothing in this chapter shall make unlawful the printing or production of any advertisement or any lottery ticket for a lottery conducted in any other state or nation where such lottery is not prohibited by the laws of such state or nation, or the sale of such materials by the manufacturer thereof to any person or entity conducting or participating in the conduct of such a lottery in any other state or nation. This section does not authorize any advertisement within Florida relating to lotteries of any other state or nation, or the sale or resale within Florida of such lottery tickets, chances, or shares to individuals, or any other acts otherwise in violation of any laws of the state.

(4)

Any violation of this section shall be a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.

—

s. 2, ch. 4373, 1895; GS 3583; RGS 5510; CGL 7668; s. 1066, ch. 71-136; s. 1, ch. 96-320.

849.11

Plays at games of chance by lot.

—

Whoever sets up, promotes or plays at any game of chance by lot or with dice, cards, numbers, hazards or any other gambling device whatever for, or for the disposal of money or other thing of value or under the pretext of a sale, gift or delivery thereof, or for any right, share or interest therein, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.

—

s. 3, ch. 4373, 1895; GS 3584; RGS 5511; CGL 7669; s. 1067, ch. 71-136.

849.12

Money and prizes to be forfeited.

—

All sums of money and every other valuable thing drawn and won as a prize, or as a share of a prize, or as a share, percentage or profit of the principal promoter or operator, in any lottery, and all money, currency or property of any kind to be disposed of, or offered to be disposed of, by chance or device in any scheme or under any pretext by any person, and all sums of money or other thing of value received by any person by reason of her or his being the owner or holder of any ticket or share of a ticket in a lottery, or pretended lottery, or of a share or right in any such schemes of chance or device and all sums of money and other thing of value used in the setting up, conducting or operation of a lottery, and all money or other thing of value at stake, or used or displayed in or in connection with any illegal gambling or any illegal gambling device contrary to the laws of this state, shall be forfeited, and may be recovered by civil proceedings, filed, or by action for money had and received, to be brought by the Department of Legal Affairs or any state attorney, or other prosecuting officer, in the circuit courts in the name and on behalf of the state; the same to be applied when collected as all other penal forfeitures are disposed of.

History.

—

s. 4, ch. 4373, 1895; GS 3585; RGS 5512; CGL 7670; s. 1, ch. 28088, 1953; ss. 11, 35, ch. 69-106; s. 1365, ch. 97-102.

849.13

Punishment on second conviction.

—

Whoever, after being convicted of an offense forbidden by law in connection with lotteries, commits the like offense, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.

—

s. 4, sub-ch. 10, ch. 1637, 1868; RS 2655; GS 3586; RGS 5513; CGL 7671; s. 1068, ch. 71-136.

849.14

Unlawful to bet on result of trial or contest of skill, etc.

Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of human or beast, or whoever receives in any manner whatsoever any money or other thing of value staked, bet or wagered, or offered for the purpose of being staked, bet or wagered, by or for any other person upon any such result, or whoever knowingly becomes the custodian or depositary of any money or other thing of value so staked, bet, or wagered upon any such result, or whoever aids, or assists, or abets in any manner in any of such acts all of which are hereby forbidden, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.

s. 1, ch. 5959, 1909; s. 1, ch. 6188, 1911; RGS 5514; CGL 7672; s. 1069, ch. 71-136; s. 1366, ch. 97-102.

849.141

Bowling tournaments exempted from chapter.

(1)

Nothing contained in this chapter shall be applicable to participation in or the conduct of a bowling tournament conducted at a bowling center which requires the payment of entry fees, from which fees the winner receives a purse or prize.

(2)

As used in this section, the term:

(a)

“Bowling tournament” means a contest in which participants engage in the sport of bowling, wherein a heavy ball is bowled along a bowling lane in an attempt to knock over bowling pins, 10 in number, set upright at the far end of the lane, according to specified regulations and rules of the American Bowling Congress, the Womens International Bowling Congress, or the Bowling Proprietors Association of America.

(b)

“Bowling center” means a place of business having at least 12 bowling lanes on the premises which are operated for the entertainment of the general public for the purpose of engaging in the sport of bowling.

History.

—

s. 1, ch. 85-24.

849.15

Manufacture, sale, possession, etc., of coin-operated devices prohibited.

—

(1)

It is unlawful:

(a)

To manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person or under the person's management or control, any slot machine or device or any part thereof; or

(b)

To make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.

(2)

Pursuant to section 2 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce," approved January 2, 1951, being ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. ss. 1171-1177, the State of Florida, acting by and through the duly elected and qualified members of its Legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such chapter of Congress, declare and proclaim that any county of the State of Florida within which slot machine gaming is authorized pursuant to chapter 551 is exempt from the provisions of section 2 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce," designated as 15 U.S.C. ss. 1171-1177, approved January 2, 1951. All shipments of gaming devices, including slot machines, into any county of this state within which slot machine gaming is authorized pursuant to chapter 551 and the registering, recording, and labeling of which have been duly performed by the manufacturer or distributor thereof in accordance with sections 3 and 4 of that chapter of the

Congress of the United States entitled “An act to prohibit transportation of gaming devices in interstate and foreign commerce,” approved January 2, 1951, being ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. ss. 1171-1177, shall be deemed legal shipments thereof into this state provided the destination of such shipments is an eligible facility as defined in s. 551.102 or the facility of a slot machine manufacturer or slot machine distributor as provided in s. 551.109(2)(a).

History.

—

s. 1, ch. 18143, 1937; CGL 1940 Supp. 4151(405-a); s. 1367, ch. 97-102; s. 2, ch. 2005-362; s. 156, ch. 2007-5; s. 11, ch. 2007-252.

849.16

Machines or devices which come within provisions of law defined.

—

(1)

Any machine or device is a slot machine or device within the provisions of this chapter if it is one that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may:

(a)

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

(b)

Secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

(2)

Nothing contained in this chapter shall be construed, interpreted, or applied to the possession of a reverse vending machine. As used in this section, a reverse vending machine is a machine into which empty beverage containers are deposited for recycling and which provides a payment of money, merchandise, vouchers, or other incentives. At a frequency less than upon the deposit of each beverage container, a reverse vending machine may pay out a random incentive bonus

greater than that guaranteed payment in the form of money, merchandise, vouchers, or other incentives. The deposit of any empty beverage container into a reverse vending machine does not constitute consideration nor shall a reverse vending machine be deemed to be a slot machine within this section.

History.

—

s. 2, ch. 18143, 1937; CGL 1940 Supp. 4151(405-b); s. 1, ch. 67-203; s. 1, ch. 77-275; s. 2, ch. 84-247; s. 3, ch. 89-176; s. 1368, ch. 97-102.

849.161

Amusement games or machines; when chapter inapplicable.

—

(1)(a)1.

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

¹2.

Nothing contained in this chapter shall be taken or construed as applicable to any retail dealer who operates as a truck stop, as defined in ²chapter 336 and which operates a minimum of 6 functional diesel fuel pumps, having amusement games or machines which operate by means of the insertion of a coin or other currency and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise limited to noncash prizes, toys, novelties, and Florida Lottery products, excluding alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played. This subparagraph applies only to games and machines which are operated for the entertainment of the general public and tourists as bona fide amusement games or machines. This subsection shall not apply, however, to any game or device defined as a gambling device in ³24 U.S.C. s. 1171, which requires identification of each device by permanently affixing seriatim numbering and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under s. 1178. This subsection shall not be construed to authorize video poker games or any other game or machine that may be construed as a gambling device under Florida law.

¹(b)

Nothing in this subsection shall be taken or construed as applicable to a coin-operated game or device designed and manufactured only for bona fide amusement purposes which game or device may by application of skill entitle the player to replay the game or device at no additional cost, if the game or device: can accumulate and react to no more than 15 free replays; can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay; can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as a gambling device in ³24 U.S.C. s. 1171, which requires identification of each device by permanently affixing seriatim numbering and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under s. 1178. This subsection shall not be construed to authorize video poker games, or any other game or machine that may be construed as a gambling device under Florida law.

(2)

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

History.

—

s. 3, ch. 84-247; s. 159, ch. 96-320; ss. 69, 79, ch. 96-323.

1

Note.

—

As amended by s. 159, ch. 96-320, and s. 79, ch. 96-323. For a description of multiple provisions in the same session affecting a statutory provision, see preface to the Florida Statutes, “Statutory Construction.” Subparagraph (1)(a)2. and paragraph (1)(b) were also amended by s. 69, ch. 96-323, and that version reads:

2. Nothing contained in this chapter shall be taken or construed as applicable to any retail dealer who operates as a truck stop, as defined in ²chapter 336, having amusement games or machines which operate by means of the insertion of a coin or other currency and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise limited to noncash prizes, toys, novelties, and Florida Lottery products, excluding alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played. This subparagraph applies only to games and machines which are operated for the entertainment of the general public and tourists as bona fide amusement games or machines. This subsection shall not apply, however, to any game or device classified by the United States as requiring a federal gaming stamp under applicable provisions of the Internal Revenue Code.

(b) Nothing in this subsection shall be taken or construed as applicable to a coin-operated game or device designed and manufactured only for bona fide amusement purposes which game or device may by application of skill entitle the player to replay the game or device at no additional cost, if the game or device: can accumulate and react to no more than 15 free replays; can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay; can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as requiring a federal gambling tax stamp under applicable provisions of the Internal Revenue Code.

2

Note.

—

Material referencing truck stops in ch. 336 was in s. 336.021(1)(c)3.; it was deleted by s. 15, ch. 97-54.

3

Note.

—

Title 24 of the United States Code relates to hospitals and asylums; chapter 24 of Title 15 of the United States Code relates to transportation of gambling devices.

849.17

Confiscation of machines by arresting officer.

—

Upon the arrest of any person charged with the violation of any of the provisions of ss. 849.15-849.23 the arresting officer shall take into his or her custody any such machine, apparatus or device, and its contents, and the arresting agency, at the place of seizure, shall make a complete and correct list and inventory of all such things so taken into his or her custody, and deliver to the person from whom such article or articles may have been seized, a true copy of the list of all such articles. The arresting agency shall retain all evidence seized and shall have the same forthcoming at any investigation, prosecution or other proceedings, incident to charges of violation of any of the provisions of ss. 849.15-849.23.

History.

—

s. 4, ch. 18143, 1937; CGL 1940 Supp. 4151(405-c); s. 1, ch. 89-176; s. 1369, ch. 97-102.

849.18

Disposition of machines upon conviction.

Upon conviction of the person arrested for the violation of any of the provisions of ss. 849.15-849.23, the judge of the court trying the case, after such notice to the person convicted, and any other person whom the judge may be of the opinion is entitled to such notice, and as the judge may deem reasonable, shall issue to the sheriff of the county a written order adjudging and declaring any such machine, apparatus or device forfeited, and directing such sheriff to destroy the same, with the exception of the money. The order of the court shall state the time and place and the manner in which such property shall be destroyed, and the sheriff shall destroy the same in the presence of the clerk of the circuit court of such county.

History.

s. 5, ch. 18143, 1937; CGL 1940 Supp. 4151(405-d).

849.19

Property rights in confiscated machine.

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

History.

s. 6, ch. 18143, 1937; CGL 1940 Supp. 4151(405-e); s. 1370, ch. 97-102.

849.20

Machines and devices declared nuisance; place of operation subject to lien for fine.

Any room, house, building, boat, vehicle, structure or place wherein any machine or device, or any part thereof, the possession, operation or use of which is prohibited by ss. 849.15-849.23, shall be maintained or operated, and each of such machines or devices, is declared to be a common nuisance. If a person has knowledge, or reason to believe, that his or her room, house, building, boat, vehicle, structure or place is occupied or used in violation of the provisions of ss. 849.15-849.23 and by acquiescence or consent suffers the same to be used, such room, house, building, boat, vehicle, structure or place shall be subject to a lien for and may be sold to pay all

finer or costs assessed against the person guilty of such nuisance, for such violation, and the several state attorneys shall enforce such lien in the courts of this state having jurisdiction.

History.

—

s. 7, ch. 18143, 1937; CGL 1940 Supp. 4151(405-f); s. 7, ch. 22858, 1945; s. 1371, ch. 97-102.

849.21

Injunction to restrain violation.

—

An action to enjoin any nuisance as herein defined may be brought by any person in the courts of equity in this state. If it is made to appear by affidavit or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the action. Upon application of the complainant in such a proceeding, the court or judge may also enter an order restraining the defendant and all other persons from removing, or in any way interfering with the machines or devices or other things used in connection with the violation of ss. 849.15-849.23 constituting such a nuisance. No bond shall be required in instituting such proceedings.

History.

—

s. 8, ch. 18143, 1937; CGL 1940 Supp. 4151 (405-g).

849.22

Fees of clerk of circuit court and sheriff.

—

The clerks of the courts and the sheriffs performing duties under the provisions of ss. 849.15-849.23 shall receive the same fees as prescribed by general law for the performance of similar duties, and such fees shall be paid out of the fine and forfeiture fund of the county as costs are paid upon conviction of an insolvent person.

History.

—

s. 9, ch. 18143, 1937; CGL 1940 Supp. 4151(405-h).

849.23

Penalty for violations of ss. 849.15-849.22.

—

Whoever shall violate any of the provisions of ss. 849.15-849.22 shall, upon conviction thereof, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person convicted of violating any provision of ss. 849.15-849.22, a second time shall, upon conviction thereof, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person violating any provision of ss. 849.15-849.22 after having been twice convicted already shall be deemed a “common offender,” and shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.

—

s. 3, ch. 18143, 1937; CGL 1940 Supp. 8135(21); s. 1070, ch. 71-136.

849.231

Gambling devices; manufacture, sale, purchase or possession unlawful.

—

(1)

Except in instances when the following described implements or apparatus are being held or transported by authorized persons for the purpose of destruction, as hereinafter provided, and except in instances when the following described instruments or apparatus are being held, sold, transported, or manufactured by persons who have registered with the United States Government pursuant to the provisions of Title 15 of the United States Code, ss. 1171 et seq., as amended, so long as the described implements or apparatus are not displayed to the general public, sold for use in Florida, or held or manufactured in contravention of the requirements of 15 U.S.C. ss. 1171 et seq., it shall be unlawful for any person to manufacture, sell, transport, offer for sale, purchase, own, or have in his or her possession any roulette wheel or table, faro layout, crap table or layout, chemin de fer table or layout, chuck-a-luck wheel, bird cage such as used for gambling, bolita balls, chips with house markings, or any other device, implement, apparatus, or paraphernalia ordinarily or commonly used or designed to be used in the operation of gambling houses or establishments, excepting ordinary dice and playing cards.

(2)

In addition to any other penalties provided for the violation of this section, any occupational license held by a person found guilty of violating this section shall be suspended for a period not to exceed 5 years.

(3)

This section and s. 849.05 do not apply to a vessel of foreign registry or a vessel operated under the authority of a country except the United States, while docked in this state or transiting in the territorial waters of this state.

History.

—

s. 1, ch. 29665, 1955; s. 9, ch. 74-385; s. 1, ch. 77-174; s. 2, ch. 87-255; s. 1372, ch. 97-102.

849.232

Property right in gambling devices; confiscation.

—

There shall be no right of property in any of the implements or devices enumerated or included in s. 849.231 and upon the seizure of any such implement, device, apparatus or paraphernalia by an authorized enforcement officer the same shall be delivered to and held by the clerk of the court having jurisdiction of such offenses and shall not be released by such clerk until he or she shall be advised by the prosecuting officer of such court that the said implement is no longer required as evidence and thereupon the said clerk shall deliver the said implement to the sheriff of the county who shall immediately cause the destruction of such implement in the presence of the said clerk or his or her authorized deputy.

History.

—

s. 2, ch. 29665, 1955; s. 1373, ch. 97-102.

849.233

Penalty for violation of s. 849.231.

—

Any person, including any enforcement officer, clerk or prosecuting official who shall violate the provisions of s. 849.231 shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.

—

s. 3, ch. 29665, 1955; s. 1071, ch. 71-136.

849.235

Possession of certain gambling devices; defense.

—

(1)

It is a defense to any action or prosecution under ss. 849.15-849.233 for the possession of any gambling device specified therein that the device is an antique slot machine and that it is not being used for gambling. For the purpose of this section, an antique slot machine is one which was manufactured at least 20 years prior to such action or prosecution.

(2)

Notwithstanding any provision of this chapter to the contrary, upon a successful defense to a prosecution for the possession of a gambling device pursuant to the provisions of this section, the antique slot machine shall be returned to the person from whom it was seized.

History.

—

s. 1, ch. 78-22; s. 1, ch. 88-71.

849.25

“Bookmaking” defined; penalties; exceptions.

—

(1)(a)

The term “bookmaking” means the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever.

(b)

The following factors shall be considered in making a determination that a person has engaged in the offense of bookmaking:

1.

Taking advantage of betting odds created to produce a profit for the bookmaker or charging a percentage on accepted wagers.

2.

Placing all or part of accepted wagers with other bookmakers to reduce the chance of financial loss.

3.

Taking or receiving more than five wagers in any single day.

4.

Taking or receiving wagers totaling more than \$500 in any single day, or more than \$1,500 in any single week.

5.

Engaging in a common scheme with two or more persons to take or receive wagers.

6.

Taking or receiving wagers on both sides on a contest at the identical point spread.

7.

Any other factor relevant to establishing that the operating procedures of such person are commercial in nature.

(c)

The existence of any two factors listed in paragraph (b) may constitute prima facie evidence of a commercial bookmaking operation.

(2)

Any person who engages in bookmaking shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(3)

Any person who has been convicted of bookmaking and thereafter violates the provisions of this section shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(4)

Notwithstanding the provisions of s. 777.04, any person who is guilty of conspiracy to commit bookmaking shall be subject to the penalties imposed by subsections (2) and (3).

(5)

This section shall not apply to pari-mutuel wagering in Florida as authorized under chapter 550.

(6)

This section shall not apply to any prosecutions filed and pending at the time of the passage hereof, but all such cases shall be disposed of under existing laws at the time of the institution of such prosecutions.

History.

—

ss. 1-3, ch. 26847, 1951; s. 1073, ch. 71-136; s. 47, ch. 75-298; s. 1, ch. 78-36; s. 48, ch. 87-243; s. 64, ch. 92-348; s. 1374, ch. 97-102.

849.26

Gambling contracts declared void; exception.

—

All promises, agreements, notes, bills, bonds or other contracts, mortgages or other securities, when the whole or part of the consideration is for money or other valuable thing won or lost, laid, staked, betted or wagered in any gambling transaction whatsoever, regardless of its name or nature, whether heretofore prohibited or not, or for the repayment of money lent or advanced at the time of a gambling transaction for the purpose of being laid, betted, staked or wagered, are void and of no effect; provided, that this act shall not apply to wagering on pari-mutuels or any gambling transaction expressly authorized by law.

History.

—

s. 1, ch. 26543, 1951.

849.29

Persons against whom suits may be brought to recover on gambling contracts.

—

The following persons shall be jointly and severally liable for the items which are authorized by this act to be sued for and recovered, and any suit brought under the authorization of this act may

be brought against all or any of such persons, to wit: The winner of the money or property lost in the gambling transaction; every person who, having direct or indirect charge, control or management, either exclusively or with others, of the place where the gambling transaction occurs, procures, suffers or permits such place to be used for gambling purposes; whoever promotes, sets up or conducts the gambling transaction in which the loss occurs or has an interest in it as backer, vendor, owner or otherwise; and, as to anything of value other than money, the transferees and assignees, with notice, of the persons hereinabove specified in this section; and the personal representatives of the persons specified in this section.

History.

—

s. 4, ch. 26543, 1951.

849.30

Plaintiff entitled to writs of attachment, garnishment and replevin.

—

In any suit under ss. 849.26-849.34, the plaintiff shall be entitled to writs of attachment and garnishment for the sums of money, exclusive of attorney's fees, sued for the use and benefit of persons other than the state, in the same manner and to the same extent as in an action on contract; and, in any suit under this chapter for the recovery of a thing of value other than money, the plaintiff shall be entitled to a writ of replevin for the recovery of such thing of value, in the manner and to the extent provided by the replevin statutes of the state.

History.

—

s. 5, ch. 26543, 1951; s. 24, ch. 57-1.

849.31

Loser's testimony not to be used against her or him.

—

In the event that suit is brought under the authorization of ss. 849.26-849.34 by someone other than the loser of the money or thing of value involved in the suit, such loser shall not be excused from being required to attend and testify or produce any book, paper or other document or evidence in such suit, upon the ground or for the reason that the testimony or evidence required of the loser may tend to convict her or him of a crime or to subject her or him to a penalty or forfeiture, but the loser shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which she or he may so be required to testify or produce evidence, and no testimony so given or produced shall be received against the

loser upon any criminal investigation or prosecution. If the loser of money or thing of value involved in a suit brought under authorization of ss. 849.26-849.34, whether by her or him or by someone else, voluntarily attends or produces evidence in such suit, the loser shall not be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which she or he may so testify or produce evidence, and no testimony so given or produced shall be received against her or him upon any criminal investigation or prosecution. Also, neither the fact of the bringing of suit under this act by a loser nor any statement or admission in her or his pleadings which is material and relevant to the subject matter of the suit shall be received against the loser upon any criminal investigation or proceeding.

History.

—

s. 6, ch. 26543, 1951; s. 1375, ch. 97-102.

849.32

Notice to state attorney; prosecution of suit.

—

The summons in any such suit, and copies of all pleadings and notices of all hearings in the suit, and notice of the trial and of application for the entry of final judgment, shall be served on the state attorney, whose duty it shall be to protect the interests of the state and, if the plaintiff fails to diligently prosecute the suit, to bring such failure to the attention of the court. If the plaintiff fails to effectively prosecute any such suit without collusion or deceit and without unnecessary delay, the court shall direct the state attorney to proceed with the action. No such suit shall be dismissed except upon a sworn statement filed by the plaintiff or the state attorney which satisfies the court that the suit should be dismissed.

History.

—

s. 7, ch. 26543, 1951.

849.33

Judgment and collection of money; execution.

—

Any judgment recovered in such a suit shall adjudge separately the amounts recovered for the use of the state, and the plaintiff shall not have execution therefor, and such amounts shall not be paid to the plaintiff, but shall be payable to the state attorney, who shall promptly transmit the sums collected by him or her to the Chief Financial Officer. The state attorney shall diligently

seek the collection of such amounts and may cause a separate execution to issue for the collection thereof.

History.

—

s. 8, ch. 26543, 1951; s. 1376, ch. 97-102; s. 1914, ch. 2003-261.

849.34

Loser's judgment; recovery of property; writ of assistance.

—

If the plaintiff in any such suit seek to recover property lost, and if the plaintiff shall prevail as to any such property, he or she shall take judgment for the property itself and for the value thereof, the judgment as to such property to be satisfied by the recovery of the property or of the value thereof. The plaintiff may, at his or her option, sue out a separate writ of possession for the property and a separate execution for any other moneys and costs adjudged in his or her favor, or the plaintiff may sue out an execution for the value of the property and any other moneys and costs adjudged in his or her favor. If the plaintiff elect to sue out a writ of possession for the property, and if the officer shall return that he or she is unable to find the property, or any of it, the plaintiff may thereupon sue out execution for the value of the property not found. In any proceeding to ascertain the value of the property, the value of each article shall be found so that judgment for such value may be entered.

History.

—

s. 9, ch. 26543, 1951; s. 1377, ch. 97-102.

849.35

Definitions.

—

In construing ss. 849.36-849.46 and each and every word, phrase, or part thereof, where the context permits:

(1)

The singular includes the plural and vice versa.

(2)

Gender-specific language includes the other gender and neuter.

(3)

The term “vessel” includes every description of watercraft, vessel or contrivance used, or capable of being used, as a means of transportation in or on water, or in or on the water and in the air.

(4)

The term “vehicle” includes every description of vehicle, carriage, animal or contrivance used, or capable of being used, as a means of transportation on land, in the air, or on land and in the air.

(5)

The term “gambling paraphernalia” includes every description of apparatus, implement, machine, device or contrivance used in, or in connection with, any violation of the lottery, gaming and gambling statutes, and laws of this state, except facilities and equipment furnished by a public utility in the regular course of business, and which remain the property of such utility while so furnished.

(6)

The term “lottery ticket” shall include every ticket, token, emblem, card, paper or other evidence of a chance, interest, prize or share in, or in connection with any lottery, game of chance or hazard or other things in violation of the lottery and gambling statutes and laws of this state (including bolita, cuba, bond, New York bond, butter and eggs, night house and other like and similar operations, but not excluding others). The said term shall also include so-called rundown sheets, tally sheets, and all other papers, records, instruments, and things designed for use, either directly or indirectly, in, or in connection with, the violation of the statutes and laws of this state prohibiting lotteries and gambling in this state.

History.

—

s. 1, ch. 29712, 1955; s. 1378, ch. 97-102.

849.36

Seizure and forfeiture of property used in the violation of lottery and gambling statutes.

—

(1)

Every vessel or vehicle used for, or in connection with, the removal, transportation, storage, deposit, or concealment of any lottery tickets, or used in connection with any lottery or game in

violation of the statutes and laws of this state, shall be subject to seizure and forfeiture, as provided by the Florida Contraband Forfeiture Act.

(2)

All gambling paraphernalia and lottery tickets as herein defined used in connection with a lottery, gambling, unlawful game of chance or hazard, in violation of the statutes and laws of this state, found by an officer in searching a vessel or vehicle used in the violation of the gambling laws shall be safely kept so long as it is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought or certified to any other court having jurisdiction, either state or federal.

(3)

The presence of any lottery ticket in any vessel or vehicle owned or being operated by any person charged with a violation of the gambling laws of the state, shall be prima facie evidence that such vessel or vehicle was or is being used in connection with a violation of the lottery and gambling statutes and laws of this state and as a means of removing, transporting, depositing, or concealing lottery tickets and shall be sufficient evidence for the seizure of such vessel or vehicle.

(4)

The presence of lottery tickets in any room or place, including vessels and vehicles, shall be prima facie evidence that such room, place, vessel, or vehicle, and all apparatus, implements, machines, contrivances, or devices therein, (herein referred to as “gambling paraphernalia”) capable of being used in connection with a violation of the lottery and gambling statutes and laws of this state and shall be sufficient evidence for the seizure of such gambling paraphernalia.

(5)

It shall be the duty of every peace officer in this state finding any vessel, vehicle, or paraphernalia being used in violation of the statutes and laws of this state as aforesaid to seize and take possession of such property for disposition as hereinafter provided. It shall also be the duty of every peace officer finding any such property being so used, in connection with any lawful search made by her or him, to seize and take possession of the same for disposition as hereinafter provided.

History.

—

s. 2, ch. 29712, 1955; s. 1, ch. 57-236; s. 8, ch. 74-385; s. 8, ch. 80-68; s. 1379, ch. 97-102.

849.37

Disposition and appraisal of property seized under this chapter.

—
(1)

Every peace officer, other than the sheriff, seizing property pursuant to the provisions of ss. 849.36-849.46 shall forthwith make return of the seizure thereof and deliver the said property to the sheriff of the county wherein the same was seized. The said return to the sheriff shall describe the property seized and give in detail the facts and circumstances under which the same was seized and state in full the reason why the seizing officer knew, or was led to believe, that the said property was being used for or in connection with a violation of the statutes and laws of this state prohibiting lotteries and gambling in this state. The said return shall contain the names of all persons, firms and corporations known to the seizing officer to be interested in the seized property.

(2)

When property is seized by the sheriff pursuant to this chapter, or when property seized by another is delivered to the sheriff as aforesaid, the sheriff shall forthwith fix the approximate value thereof and make return thereof to the clerk of the circuit court as hereinafter provided.

(3)

The return of the sheriff aforesaid shall contain a schedule of the property seized describing the same in reasonable detail and give in detail the facts and circumstances under which it was seized and state in full the reason why the seizing officer knew or was led to believe that the property was being used for or in connection with a violation of the statutes and laws of this state prohibiting lotteries or gambling in this state; and a statement of the names of all persons, firms and corporations known to the sheriff to be interested in the seized property; and in cases where the said property was seized by another the sheriff shall attach to his or her said return, as an exhibit thereto, the return of the seizing officer to him or her.

(4)

The sheriff shall hold the said property seized pending its disposal by the court as hereinafter provided.

History.

—

s. 3, ch. 29712, 1955; s. 1380, ch. 97-102.

849.38

Proceedings for forfeiture; notice of seizure and order to show cause.

—
(1)

The return of the sheriff aforesaid to the clerk of the circuit court shall be taken and considered as the state's petition or libel in rem for the forfeiture of the property therein described, of which the circuit court of the county shall have jurisdiction without regard to value. The said return shall be sufficient as said petition or libel notwithstanding the fact that it may contain no formal prayer or demand for forfeiture, it being the intention of the Legislature that forfeiture may be decreed without a formal prayer or demand therefor. The said return shall be subject to amendment at any time before final hearing, provided that copies thereof shall be served upon all persons, firms or corporations who may have filed a claim prior to such amendment.

(2)

Upon the filing of said return the clerk of the circuit court shall issue a citation, directed to all persons, firms and corporations owning, having or claiming an interest in or a lien upon the seized property, giving notice of the seizure and directing that all persons, firms or corporations owning, having or claiming an interest therein or lien thereon, to file their claim to, on, or in said property within the time fixed in said citation, as to persons, firms and corporations not personally served, and within 20 days from personal service of said citation, when personal service is had. Personal service shall be made on all parties, in Florida, having liens noted upon a certificate of title as shown by the records in the office of the Department of Highway Safety and Motor Vehicles.

(3)

The said citation may be in, or substantially in, the following form:

IN THE CIRCUIT COURT OF THE JUDICIAL CIRCUIT, IN AND FOR COUNTY,
FLORIDA.

IN RE FORFEITURE OF THE FOLLOWING DESCRIBED PROPERTY:

(Here describe property)

THE STATE OF FLORIDA TO:

ALL PERSONS, FIRMS AND CORPORATIONS OWNING, HAVING OR CLAIMING AN
INTEREST IN OR LIEN ON THE ABOVE DESCRIBED PROPERTY.

YOU AND EACH OF YOU are hereby notified that the above described property has been seized, under and by virtue of chapter , Laws of Florida, and is now in the possession of the sheriff of this county, and you, and each of you, are hereby further notified that a petition, under said chapter, has been filed in the Circuit Court of the Judicial Circuit, in and for County, Florida, seeking the forfeiture of the said property, and you are hereby directed and required to file your claim, if any you have, and show cause, on or before , (year) , if not personally

served with process herein, and within 20 days from personal service if personally served with process herein, why the said property should not be forfeited pursuant to said chapter , Laws of Florida, 1955. Should you fail to file claim as herein directed judgment will be entered herein against you in due course. Persons not personally served with process may obtain a copy of the petition for forfeiture filed herein from the undersigned clerk of court.

WITNESS my hand and the seal of the above mentioned court, at Florida, this , (year) .

(COURT SEAL)

(Clerk of the above-mentioned Court.)

By (Deputy Clerk)

(4)

Such citation shall be returnable, as to persons served constructively, as therein directed, not less than 21 nor more than 30 days, from the posting or publication thereof, and as to personally served with process within 20 days from service thereof. A copy of the petition shall be served with the process when personally served. Personal service of process may be made in the same manner as a summons in chancery.

(5)

If the value of the property seized is shown by the sheriff's return to have an appraised value of \$1,000 or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the sheriff's return to have an approximate value of more than \$1,000, the citation shall be published at least once each week for 2 consecutive weeks in some newspaper of general publication published in the county, if there be such a newspaper published in the county and if not, then said notice of such publication shall be made by certificate of the clerk if publication is made by posting, and by affidavit as provided in chapter 50, if made by publication in a newspaper, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

History.

—

s. 4, ch. 29712, 1955; ss. 24, 35, ch. 69-106; s. 12, ch. 73-299; s. 27, ch. 90-279; s. 37, ch. 99-6.

849.39

Delivery of property to claimant.

—

Any person, firm, or corporation filing a claim in the cause, which claim shall state fully her or his right, title, claim, or interest, in and to the seized property, may, at any time after said claim is filed with the clerk of the court, obtain possession of the seized property by filing a petition therefor with the sheriff and posting with her or him, to be approved by her or him, a surety bond, payable to the Governor of the state in twice the amount of the value of the said property as fixed in the sheriff's return to the clerk of the circuit court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon her or his paying to the sheriff the value of the property together with costs of the proceeding, if judgment of forfeiture be entered by the court. Upon the posting of such bond with the sheriff and the release of the property to the applicant the cause shall proceed to final judgment in the same manner as it would have had no such bond been filed, except that any execution to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and the person's surety.

History.

—

s. 5, ch. 29712, 1955; s. 1381, ch. 97-102.

849.40

Proceeding when no claim filed.

—

When no claim is filed in the cause within the time required the clerk shall enter a default against all persons, firms and corporations owning, claiming or having an interest in and to the property seized and the cause may then proceed in the same manner as a common-law cause after default, and final judgment shall be entered therein ex parte, except as may be herein otherwise provided.

History.

—

s. 6, ch. 29712, 1955.

849.41

Proceeding when claim filed.

—

When one or more claims are filed in the cause the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property seized, after which the cause shall proceed as in other common-law cases; except any claimant shall prove to

the satisfaction of the court that he or she did not know or have any reason to believe, at the time his or her right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes or laws of this state prohibiting lotteries and gambling and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner of the property has been convicted of a violation of the statutes and laws of this state prohibiting lotteries or gambling such conviction shall be prima facie evidence that each claimant had reason to believe that the property might be used for or in connection with a violation of such statutes and laws, and it shall be incumbent upon such claimant to satisfy the court that he or she was without knowledge of such conviction. Trial of all such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the State Constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim filed.

History.

—

s. 7, ch. 29712, 1955; s. 1382, ch. 97-102.

849.42

State attorney to represent state.

—

Upon the filing of the sheriff's return with the clerk of the circuit court the said clerk shall furnish the state attorney with a copy thereof and the said state attorney shall represent the state in the forfeiture proceedings. The Department of Legal Affairs shall represent the state in all appeals from judgments of forfeiture to the appropriate district court of appeal or direct to the Supreme Court when authorized by s. 3, Art. V of the State Constitution. The state may appeal any judgment denying forfeiture in whole or in part or that may be otherwise adverse to the state.

History.

—

s. 8, ch. 29712, 1955; s. 34, ch. 63-559; ss. 11, 35, ch. 69-106; s. 13, ch. 73-299.

849.43

Judgment of forfeiture.

—

On final hearing the return of the sheriff to the clerk of the circuit court shall be taken as prima facie evidence that the property seized was or had been used in, or in connection with, the violation of the statutes and laws of this state prohibiting lotteries and gambling in this state and shall be sufficient predicate for a judgment of forfeiture in the absence of other proofs and

evidence. The burden shall be upon the claimants to show that the property was not so used or if so used that they had no knowledge of such violation and no reason to believe that the seized property was or would be used for the violation of such statutes and laws. Where such property is encumbered by a lien or retained title agreement under circumstances wherein the lienholder had no knowledge that the property was or would be used in violating such statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all other rights, titles and interests, subject, however, to the lien of such innocent lienholder, or may direct the payment of such lien from the proceeds of any sale of the said property. The proceedings and the judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction thereof, the sale thereof, the allocation thereof to some governmental function or use, or otherwise as the court may determine. Sales of such property shall be at public sale to the highest and best bidder therefor for cash after 2 weeks' public notice as the court may direct. Where the property has been delivered to a claimant upon the posting of a bond the court shall determine the value of the property or portion thereof subject to forfeiture and shall enter judgment against the principal and surety of the bond in such amount for which execution shall issue in the usual manner. Upon the application of any claimant the court may fix the value of the forfeitable interest or interests in the seized property and permit such claimant to redeem the said property upon the payment of a sum equal to said value, which sum shall be disposed of as would the proceeds of a sale of the said property under a judgment of forfeiture.

History.

—

s. 9, ch. 29712, 1955.

849.44

Disposition of proceeds of forfeiture.

—

All sums received from a sale or other disposition of the seized property shall be paid into the county fine and forfeiture fund and shall become a part thereof; provided, however, that in instances where the seizure is by a municipal police officer within the limits of any municipality having an ordinance requiring such vehicles, vessels or conveyances to be forfeited, the city attorney shall act in behalf of the city in lieu of the state attorney and shall proceed to forfeit the property as herein provided, and all sums received therefrom shall go into the general operating fund of the city.

History.

—

s. 10, ch. 29712, 1955; s. 24, ch. 57-1.

849.45

Fees for services.

—

Fees for services required hereunder shall be the same as provided for sheriffs and clerks for like and similar services in other cases and matters.

History.

—

s. 11, ch. 29712, 1955.

849.46

Exercise of police power.

—

It is deemed by the Legislature that this chapter is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting lotteries and gambling, and a lawful exercise of the police power of the state for the protection of the public welfare, health, safety and morals of the people of the state. All the provisions of this chapter shall be liberally construed for the accomplishment of these purposes.

History.

—

s. 12, ch. 29712, 1955.