

22.17 UNLAWFUL OPERATION OF A DRAWING BY CHANCE

§ 849.0935(4) and § 849.0935(7), Fla. Stat.

To prove the crime of Unlawful Operation of a Drawing by Chance, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) was [an organization] [a bona fide member or officer of an organization].**
- 2. (Defendant) [promoted] [conducted] [operated] a drawing by chance.**

Give one or more as applicable. § 849.0935(4)(a)–(4)(i), Fla. Stat.

- 3. (Defendant)**
 - a. [designed] [engaged in] [promoted] [conducted] the drawing in which the selection of the winners was [in any way rigged] [predetermined by means of matching, instant win, preselected sweepstakes, or otherwise].**
 - b. required an entry fee, donation, substantial consideration, payment, proof of purchase, or contribution as a condition of entering the drawing or being selected to win a prize.**
 - c. conditioned the drawing on a minimum [number of tickets having been disbursed to contributors] [or] [amount of contributions having been received].**
 - d. [[arbitrarily removed] [disqualified] [disallowed] [or] [rejected] any entry in the drawing] [or] [discriminated in any manner in the drawing between entrants who gave contributions to the organization and those who did not give such contributions].**
 - e. failed to promptly notify, at the address set forth on the entry blank, any person whose entry was selected to win, of the fact that the person won the drawing.**
 - f. failed to award all prizes offered in the drawing.**
 - g. printed, published, or circulated literature or advertising material used in connection with the drawing which was false, deceptive, or misleading.**
 - h. cancelled the drawing.**
 - i. conditioned the acquisition or giveaway of any prize in the drawing upon the receipt of voluntary donations or contributions.**

§ 849.0935(7), Fla. Stat.

- j. [sold] [offered for sale] in this state a ticket or entry blank for a raffle or other drawing by chance that did not conspicuously disclose in a [brochure] [advertisement] [notice] [ticket] [or] [entry blank], the date, hour, and place where the winner would be chosen and the prizes would be awarded, unless the [brochure] [advertisement] [notice] [ticket] [or] [entry blank] [was] [were] not offered to the public more than 3 days prior to the drawing.

Give if jurors are instructed on element #3b. § 849.0935(4)(b), Fla. Stat.

It is lawful for an organization to suggest a minimum donation or to include a statement of a suggested minimum donation on any printed material utilized in connection with the fundraising event or drawing.

Definitions. Give as applicable.

§ 849.0935(1)(b), Fla. Stat.

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

§ 849.0935(1)(a), Fla. Stat.

“Drawing by Chance,” “drawing,” or “raffle” means an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance to win a prize.

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

§ 849.094(1)(a), Fla. Stat.

“Game promotion” means, but is not limited to, a contest, game of chance, sweepstakes, or gift enterprise, conducted by an operator in connection with and incidental to the sale of consumer products or services, and in which the elements of chance and prize are present. [However, “game promotion” does not apply to bingo games.]

§ 849.094(1)(b), Fla. Stat.

“Operator” means a retailer who operates a game promotion or any person, firm, corporation, organization, or association or agent or employee thereof who promotes, operates, or conducts a nationally advertised game promotion.

Lesser Included Offenses

UNLAWFUL OPERATION OF A DRAWING BY CHANCE — 849.0935(4) and 849.0935(7)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt or Solicitation or Conspiracy	777.04	5.1 or 5.2 or 5.3

Comments

The crime described in the second sentence in § 849.0935(7), Fla. Stat., does not require the defendant to be either an organization or a bona fide member or officer of an organization. If the State filed charges under that provision of the statute against a person who was unrelated to an organization, this instruction should be amended so that jurors are instructed only on element #3j.

The statute does not prohibit an organization conducting the drawing from limiting the number of tickets distributed to each drawing entrant. See § 849.0935(5), Fla. Stat.

Pursuant to § 849.0935(2), Fla. Stat., the lottery laws in § 849.09, Fla. Stat., do not prohibit an organization from conducting drawings by chance if the organization complied with all applicable provisions of chapter 496 and § 849.0935, Fla. Stat.

This instruction was adopted in 2016.