

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 155	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Select Committee on Gaming; Trujillo; Patronis and others	108 Y's	7 N's
COMPANION BILLS:	CS/SB 1030	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 155 passed the House on March 22, 2013, and subsequently passed the Senate on April 4, 2013. The bill clarifies existing laws concerning slot machines, charitable drawings, game promotions, and amusement machines.

The bill provides legislative findings related to the operation of gambling statutes. Specifically, the findings provide that:

- Section 849.01, F.S., specifically prohibits the keeping of a place for gambling.
- Section 849.0935, F.S., allows certain charities to raise funds for charitable purposes through raffles for prizes by eliminating the element of monetary consideration, and was not intended to provide a vehicle for establishing places of gambling.
- Section 849.094, F.S., regulates certain game promotions or sweepstakes as a marketing tool incidental to substantial bona fide sales of consumer products or services, if the element of monetary consideration is removed, and was not intended to provide a vehicle for establishing places of ongoing gambling.
- Section 849.161, F.S., regulates the operation of skill-based arcade games at specified locations and was not intended as a vehicle for casino-style gambling.
- There is a compelling state interest in clarifying the operation of ss. 849.0935, 849.094, and 849.161, F.S., to ensure that they are not subject to abuse or interpreted as creating an exception to general prohibitions against gambling.

The bill clarifies definitions relating to charitable drawings, game promotions, and operators of game promotions. The bill also provides that violation of regulations related to game promotions is an unfair and deceptive trade practice.

As to slot machines, the bill updates the definition of slot machine to specifically include systems or networks of devices and to remove technologically obsolete criteria. The bill also provides a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prize are prohibited slot machines.

As to amusement games, the bill specifies that amusement games do not include casino-style games in which the outcome is determined by factors unpredictable by the player or games in which the player may not control the outcome through skill and makes other clarifying changes.

The bill is not anticipated to have a significant fiscal impact on state funds.

The bill was approved by the Governor on April 10, 2013, ch. 2013-2, L.O.F., and became effective on that date.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0155z.SCOG

DATE: April 19, 2013

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Lotteries

Lotteries are prohibited by the Florida constitution.¹ The constitutional prohibition is codified in statute at s. 849.09, F.S. The term 'lottery' is not defined by the Florida constitution or statute. Generally, a lottery is a scheme which contains three elements: consideration, chance and prize. As to consideration, Florida has adopted a minority view of consideration. While most states view consideration narrowly as a tangible asset, such as money, Florida views consideration broadly, as the conferring of any benefit.² Thus, even if players do not pay to participate in a game where they have a chance to win a prize, it may be an illegal lottery.

To allow activities that would otherwise be illegal lotteries, the Legislature has carved out several narrow exceptions to the statutory lottery prohibition. Statutory exceptions are provided for charitable bingo, charitable drawings, and game promotions.³

Game Promotions

Game promotions, often called sweepstakes, are advertising tools by which businesses promote their goods or services. Generally, consumers are offered an opportunity to win a prize when they purchase the good or service. Often, entries are available with no purchase necessary. As they contain the three elements of a lottery: consideration, chance and prize, they are generally prohibited by Florida law unless they meet a statutory exception.⁴

Section 849.09, F.S., provides an exception from the lottery prohibition for participation in nationally advertised contests, drawings or puzzles for prizes, unless they can be construed as a lottery under the section.

Section 849.092, F.S., provides an exception from the lottery prohibition for game promotions conducted by businesses licensed as motor fuel retailers. It places the following limitations on the games:

- (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.

In 1977, a reviser's bill removed a statutory cross reference from s. 849.092, F.S., to businesses licensed as retail stores, because the specific statute referenced had been repealed by a 1972 rewrite

¹ Article X, s. 7, Fla. Const. *But, see*, Article X, s. 15, Fla. Const., authorizing lotteries operated by the state.

² *Little River Theatre Corp. v. State ex rel. Hodge*, 135 Fla. 854 (1939) ("But while the patrons may not pay, and the respondents may not receive any direct consideration, there is an indirect consideration paid and received. The fact that prizes of more or less value are to be distributed will attract persons to the theaters who would not otherwise attend. In this manner those obtaining prizes pay consideration for them, and the theaters reap a direct financial benefit.").

³ Section 849.09, F.S., (nationally advertised game promotions); s. 849.092, F.S., (game promotions by certain businesses); s. 849.0931, F.S., (charitable bingo); and s. 849.0935, F.S., (charitable drawings by chance).

⁴ *Little River Theatre Corp., supra* at n. 2.

of chapter 205, now relating to local business taxes.⁵ The definition for the statute referenced is now located in s. 212.02, F.S.

Section 849.094, F.S., provides some registration requirements and prohibits some acts for game promotions. It contains no exemption from the statutory prohibition on lotteries in s. 849.09, F.S., or any other statutory gambling prohibition.

The statute specifically prohibits requiring entry fees or proof of purchase to play, having predetermined winners, arbitrarily disqualifying entries, failing to award prizes, and advertising falsely.

If the total value of prizes offered in the game promotion exceeds \$5,000, the operator must:

- File with DACS a copy of the game rules and prizes seven days before the promotion begins.
- Establish a trust account equal to the total retail value of the prizes.
- File a list of winners of prizes exceeding \$25 within 60 days.

Violations of the statute are punishable as second-degree misdemeanors. Persons violating the statute may also be liable for civil fines. The statute does not apply to activities regulated by the Department of Business and Professional Regulation (DBPR) or bingo. Television or radio broadcasting companies licensed by the Federal Communications Commission are exempt from the statute's reporting requirements. The statute defines 'operator' to exclude charitable nonprofit organizations.

"[T]he DACS is charged with processing and filing documents for game promotions. ... [T]he fact that their filing documents have been reviewed and found complete ... does not mean that the promotion or game is legal and in compliance with the provisions of chapter 849, F.S."⁶ The DACS expressly informs each operator that registers a game promotion that it takes no position on the validity, efficacy, advisability, or propriety of the game.⁷

The DACS received its first game promotion filing for an electronic sweepstakes in 2006.⁸ The following chart depicts the total number of game promotion filings the DACS processed in each of the last five fiscal years, how many of those were for electronic sweepstakes, and the revenues and costs associated with the department's regulation of game promotions.

Fiscal Year	Filings		Revenues	Expenditures	Net
	Total	<i>Electronic</i>			
2006-2007	2,708	595	\$270,601	(\$393,170)	(\$122,569)
2007-2008	6,084	2,019	\$605,252	(\$467,588)	\$137,664
2008-2009	4,832	1,200	\$483,300	(\$561,552)	(\$78,252)
2009-2010	4,107	282	\$409,965	(\$513,793)	(\$103,828)
2010-2011	3,664	14	\$363,350	(\$261,118)	\$102,232

Charitable Drawings

Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries and randomly select an entry to win a prize. Under s. 849.0935, F.S., qualified organizations may conduct drawings by chance, provided the organization has complied with all applicable provisions of ch. 496, F.S. Requiring a donation or any other consideration is prohibited.

⁵ 1977 HB 1572, s. 244; ch. 77-104, F.S., struck cross reference to s. 205.482, F.S., which was repealed by 1972 HB 4465; ch. 72-306, L.O.F.

⁶ Op. Att'y Gen. Fla. 07-48 (2007).

⁷ Miriam Wilkinson & Eric Miller, Florida Game Promotions Statute: A Novel Application of an Exception to Florida's Prohibition on Gambling, 11 Gaming Law Rev 98, 98-99 (2007).

⁸ *Id.* at 100.

'Drawing by chance' or 'drawing' is defined as 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 statute excludes from the definition "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."⁹

'Organization' is defined as "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."¹⁰

Violations of the statute are punishable as second-degree misdemeanors and deceptive and unfair trade practices.

Slot machines

Slot machines have been generally prohibited in Florida since 1937.¹¹

Section 849.16, F.S. provides:

(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.*

The Florida Supreme Court has found that "the element of unpredictability is not supplied because a player may not be sure what score he can accomplish by his own skill, but that it must be *inherent in the machine.*"¹²

Slot machines are authorized at certain facilities in Broward and Miami-Dade counties by constitutional amendment or statute.¹³ Chapter 551, F.S., regulates such slot machines, and provides the following definition:

"Slot machine" means any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance,

⁹ Section 849.0935(1)(a), F.S.

¹⁰ Section 849.0935(1)(b), F.S.

¹¹ Section 849.15, F.S., originally enacted by s. 1, ch. 18143, L.O.F. (1937).

¹² *Deeb v. Stoutamire*, 53 So.2d 873, 875 (Fla.1951). See also *State v. Broward Vending*, 696 So.2d 851, 852 (Fla. 4th DCA 1997)(relying on the rationale of *Deeb* to determine certain games were slot machines).

¹³ See Article X, Section 23, Florida Constitution; ch. 2010-29, L.O.F. and chapter 551, F.S.

terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both. A slot machine is not a "coin-operated amusement machine" as defined in s. 212.02(24) or an amusement game or machine as described in s. 849.161, and slot machines are not subject to the tax imposed by s. 212.05(1)(h).

Possession of a machine meeting the ch. 551 definition without the required license is prohibited and punishable by an administrative fine, imposed by DBPR, of up to \$10,000 per machine.¹⁴

Amusement Games

Under s. 849.16, F.S., arcade games may be slot machines if they include any element of chance, regardless of whether they also involve skill.¹⁵ Likewise, such machines would be considered slot machines, requiring licensure, under ch. 551, F.S.¹⁶

Section 849.161, F.S., provides a limited exemption for certain games operated by an application of skill at specified locations.

Redemption games operate by an application of skill and may award players points or coupons that are exchangeable for merchandise. The statute specifically excludes video poker, games that may be construed as gambling devices under Florida law and games defined as gambling devices under the federal Johnson Act.¹⁷ The statute includes an incorrect citation for the Johnson Act.

Redemption games are only permitted in two places:

1. Arcade amusement centers
 - a. Must have at least 50 games.
 - b. Must be operated for the entertainment of the general public and tourists as a bona fide amusement facility.
2. Truck stops
 - a. Must be a dealer registered pursuant to ch. 212, F.S., excluding a marina, which declared its primary fuel business to be the sale of diesel fuel. The statute includes a cross reference to a definition in ch. 336, F.S., which has been repealed.
 - b. Must operate at least 6 diesel fuel pumps.
 - c. Games must be operated for the entertainment of the general public and tourists as bona fide amusement games.

¹⁴ Section 551.109, F.S.

¹⁵ Compare *Weathers v. Williams*, 133 Fla. 367 (1938)(mechanical horse race games and pinball games are slot machines); *Hernandez v. Graves*, 148 Fla. 247 (1941)(trivia game is slot machine); *Deeb v. Stoutamire*, 53 So.2d 873 (Fla. 1951)(bowling game not slot machine).

¹⁶ See discussion of Slot Machines, *supra* at p. 4.

¹⁷ The Johnson Act, 15 U.S.C. 1171, et seq., defines a gambling device broadly to include (1) slot machines that as the result of the application of an element of chance may entitle a person to receive any money or property; (2) any other machine designed primarily for gambling machines that as the result of the application of an element of chance may entitle a person to receive any money or property; or (3) any parts of such a machine. The Act excludes (1) machines used in connection with parimutuel betting; (2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or (3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or State fairs..

As to arcade amusement centers, prizes are limited:

1. Merchandise only, excluding cash or alcoholic beverages.
2. The cost value of the merchandise or prize awarded in exchange for the coupons may not exceed 75 cents on any game played.

As to truck stops, prizes are limited:

1. Merchandise limited to noncash prizes, toys, novelties, and Florida Lottery products, excluding alcoholic beverages.
2. The cost value of the merchandise or prize awarded in exchange for the coupons may not exceed 75 cents on any game played.

The statute refers to 'the insertion of a coin' in relation to games at arcades and 'insertion of a coin or other currency' in relation to games at truck stops.¹⁸

Arcade machines are taxed as "coin-operated amusement machines," a class of machines that include juke boxes and kiddie rides.

Section 212.02(24), F.S., defines 'coin-operated amusement machines' as:

[A]ny machine operated by coin, slug, token, coupon, or similar device for the purposes of entertainment or amusement. The term includes, but is not limited to, coin-operated pinball machines, music machines, juke boxes, mechanical games, video games, arcade games, billiard tables, moving picture viewers, shooting galleries, and all other similar amusement devices.¹⁹

Coin-operated amusement machines are taxed at a rate of 4 percent of the charges for the use of the machines.²⁰ The operator must also purchase an annual tax certificate from the Department of Revenue at a rate of \$30 per machine.

Because the category contains everything from juke boxes to kiddie rides, in addition to arcade games, there is no way to determine the annual state revenues derived from arcade games. In calendar year 2012, an estimated \$8 million was collected in taxes from all coin-operated amusement machines and \$1.3 million was collected in fees for tax certificates.

Racketeer Influenced and Corrupt Organization (RICO) Act

Florida's RICO Act²¹ defines the term "racketeering activity," in part, to mean to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit any crimes that are chargeable by indictment or information that are specifically listed in s. 895.02(1)(a), F.S. There are over 50 crimes currently listed in s. 895.02(1)(a), F.S., ranging from evasion of payment of cigarette taxes to homicide. The list includes ss. 849.09, 849.14, 849.15, 849.23 or 849.25, relating to gambling. Violations of the RICO Act may be investigated and prosecuted by the Office of Statewide prosecution.²²

Electronic Sweepstakes

Over the past several years, Florida and other states have witnessed a proliferation of electronic sweepstakes. The electronic sweepstakes are offered at establishments, generally called "Internet Cafés," offering communications services, such as internet access or telephone calling cards. Often

¹⁸ Compare *Delorme v. State*, 895 So.2d 1252, (Fla. 5th DCA 2005) (trial court found coin meant coin only); *Rowe v. County of Duval*, 975 So.2d 526, 529 (Fla. 1st DCA 2008)(arcade games may accept bills); and *State v. Cyphers*, 873 So.2d 471 (Fla. 2d DCA 2004)(arcade games must accept coins).

¹⁹ Section 212.02(24), F.S.

²⁰ Section 212.05(1)(h), F.S.

²¹ Sections 895.01 – 895.06, F.S.

²² Section 16.56, F.S.

these establishments are promoted using casino themes, and sweepstakes are played using casino-style games. The operations are not regulated by the state and the games are not taxed.²³

Technology

The following outlines game play from a player's perspective:

1. A player purchases Internet access at a point of sale (POS) or a recharge station and receives an account, represented by a card or a number.
2. The player uses the account card or number at a player terminal and sets his or her wagers and begins game play.
3. The terminal displays a game, such as spinning reels, and the resulting outcome.
4. The player returns to the POS to cash out his winnings.

Available patents shows that the electronic sweepstakes system is comprised of a central computer system for managing user accounts and a user computer system, which includes devices that together allow a user to purchase internet access, use the purchased internet access, and reveal assigned sweepstakes entries.²⁴

Central System:

- Stores sweepstakes entries, games and user accounts.
- Manages decisions, including assigning winning outcomes.
- Sends game information to User System.

User System:

- Allows users and operators to interact with Central System
- Sends user information to Central System
- Displays game information from Central System to users

Sweepstakes entries, games and user accounts are stored on the central system. Sweepstakes entries may be revealed in a different order than they are assigned to the account. This feature can be used to set play characteristics, such as win frequency or prize distribution.

Electronic Sweepstakes as Slot Machines

Promoters of electronic sweepstakes argue the games are not slot machines because there is no element of chance inherent in the machine that the player uses. They argue that the games just offer entertaining ways to reveal the sweepstakes' outcome. Two out-of-state courts have rejected this argument, finding that the whole system amounts to a slot machine. Alabama's Supreme Court, the first state supreme court to examine the devices, explained,

Today, "most slot machines in casinos are not manually operated." More and more, such machines are controlled by computer. Indeed, modern slot machines may be "stand-alone or network computers." Thus, a device is no less a slot machine because it operates within a network, that is, because it shares computer-processing equipment with a number of similar devices.

In this case, the element of chance is satisfied at the point of sale-before the readers are activated-by the same central database and other computer equipment that serve to operate the readers. It is immaterial that the readers do not, themselves, assign values

²³ The federal Internet Tax Freedom Act has imposed a moratorium on the taxation of internet access since 1998, and will be effective until 2014, if not renewed by Congress. Pub. L. 105-277, 112 Stat. 2681-719; *last renewed by* Pub. L. 110-108, 121 Stat. 1024-1026. Some operators may be subject to federal and state payroll and corporate income taxes.

²⁴ *See, e.g.*, US 20070135209A1

to the entries. In short, the element of chance is as much a feature of the MegaSweeps network system as of a stand-alone slot machine.²⁵

Likewise, a Mississippi appellate court examining the scheme came to the same conclusion, explaining:

The element of chance is considered from the player's point of view; “[w]hat the machine ‘knows’ does not affect the player's gamble.” ... While playing the games at the computer terminals did not impact the outcome of the sweepstakes points, an element of chance still existed because a consumer who purchased a telephone card did not know whether the card contained a winning or losing sweepstakes points. This issue is without merit.²⁶

The Florida Attorney General has opined that a precursor to the electronic sweepstakes model, a machine that dispensed 2-minute telephone calling cards with an attached game promotion, was an illegal slot machine.²⁷ The machine used a “finite cartridge, which contains 15,000 preshuffled cards, each with its unique personal identification number and winning or losing sweepstakes ticket. When these 15,000 cards are sold the sweepstakes has ended.”

The Attorney General opined that:

The principal function of the device ... is gambling, that is, the user inserts money and the machine operates to provide the user with a sweepstakes ticket that, *by reason of chance*, may entitle the recipient to a money prize. The incidental receipt of merchandise, in this case a telephone card, will not provide justification or authorization for the ownership, sale, or possession of a machine or device described in section 849.16, F.S.²⁸

8 Liner Machines

8 Liner Machines are referred to by many names, including ‘maquinitas’ and ‘cherry masters.’ They look like casino-style games, primarily slot machines, but have a button, often marked ‘skill,’ that when pressed, it is argued, stop the reels.

The machines appear in adult arcades, senior arcades, truck stops, gas stations and fraternal and veteran halls. Operators claim the games are amusement games that operate by application of skill under s. 849.161, F.S.

Technology

The operation of establishments varies widely, but some common characteristics include:

1. A player either buys credit on a card or uses cash at the machine.
2. The player places bets per line.
3. The player pushes a button to begin game play.
4. The game depicts slot reels spinning.
5. The player pushes a button to stop the reels.
6. Matching symbols on the lines which the player placed bets award points.
7. The player may continue play or cash out with a cashier.
8. Prizes are generally paid out with gift cards to local businesses or Visa gift cards.

²⁵ *Barber v. Jefferson County Racing Ass'n*, 960 So.2d 599, 609-10 (Ala., 2006).

²⁶ *Moore v. Mississippi Gaming Com'n*, 64 So.3d 537, 541 (Miss. App., 2011).

²⁷ Op. Att’y Gen. Fla. 98-07 (1998); *see also* Op. Att’y Gen. Fla. 08-35 (2008), opining that a machine dispensing instant bingo tickets is an illegal slot machine.

²⁸ *Id.*

The game software is contained on a board the size of a piece of paper and may be placed in an arcade-style cabinet or in a cabinet with a computer monitor. The games may also be hosted remotely on a server. The games usually depict slots, but other games of chance are available as well.

8 Liner Games as Slot Machines

In order for 8 liner games to be legal, they must meet the requirements of s. 849.161, F.S., discussed above.²⁹ Often, the determining factor is often whether the games operate by an application of skill, as the statute requires. The Florida Department of Law Enforcement has found that the machines could be set at a variable payout rate, between 55 to 95 percent.

The FDLE has found potential areas for abuse, including:

- Machines are often supplied on a revenue sharing basis. Some manufacturers/distributors include an electronic reduction factor installed in the machines and they can manipulate the software to skim a larger percentage from the operator without the operator's knowledge.
- Machines may be reset to cause patrons to lose remaining credits.
- Credits may be maintained by the operator until a threshold of winnings has been met (\$50 in one case).
- Arcade closures may result in patrons losing unredeemed credits. There have been reports of owners relocating and not redeeming credits.³⁰

Some software experts report that the games' outcomes are determined without an application of skill:

- The payout percentage is set and the game software determines the outcome to meet that percentage.
- The order of symbols on the digital reels can be changed so players cannot predict the next symbol. An expected symbol is said to 'morph' into a different symbol.
- The reels may be set to coast, so that the digital reels continue to spin after the stop button has been pressed. The coasting is not predictable.³¹

Electronic Gambling Machines: Local Treatment and Enforcement

In March 2013, a three-year, multi-state, multi-agency investigation into the operations, called "Reveal the Deal," resulted in the arrests of at least 57 people and the closing of at least 49 Internet cafés. Charges include a range from possession of illegal slot machines, operating a lottery and keeping a gambling house to racketeering and money laundering.³²

Some local authorities have successfully prosecuted operators of electronic sweepstakes and 8 Liner Games.³³ Others complain that prosecutions are difficult and costly as they require technical experts and may sometimes require proving that operators knew the games were illegal.³⁴ No Florida appellate court has examined the legality of the games. Local governments have varied in their treatment of the

²⁹ See, e.g., *Delorme v. State*, 895 So.2d 1252 (Fla. 5th DCA, 2005).

³⁰ See Senate Committee on Regulated Industries, Review of Electronic Gaming Exceptions for Adult Arcades and Game Promotions 5-7 (Interim Report 2009-123).

³¹ *Id.* See also D. Robert Sertell, Expert Report for City of Miami (March 12, 2012), available at <http://www.scribd.com/doc/93587359/Maquinita-Expert-Report-by-Bob-Sertell>.

³² See e.g., Mary Ellen Klas & Leonora Lapeter Anton, Internet cafe probe snags dozens, could doom industry in Florida, *The Miami Herald* (March 13, 2013), available at <http://www.miamiherald.com/2013/03/13/3284531/internet-cafe-probe-snags-dozens.html#storylink=cpy>.

³³ See Senate Committee on Regulated Industries, Interim Reports 2009-123 and 2012-137. See also Senate Regulated Industries Committee Staff Analysis and Economic Impact Statement CS/SB 1940 & 2636 (2004), available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=2004s1940.ri.doc&DocumentType=Analysis&BillNumber=1940&Session=2004>.

³⁴ *Id.*

games, including enforcement based on state law,³⁵ prohibition by local ordinance,³⁶ moratoriums, zoning restrictions, and regulation by local ordinance.³⁷

During the 2011 interim, staff of the Senate Regulated Industries Committee conducted a survey of local authorities:

The majority of the Sheriffs who responded to the survey indicated that they thought the statutes were either vague, insufficient, or failed to provide sufficient direction as to whether the activities conducted through the use of electronic game promotions were legal. The majority of State Attorneys who responded to the survey believe that the Internet Cafes are illegal gambling houses and the activities should be prohibited.³⁸

Proposed Changes

The bill clarifies existing laws concerning slot machines, charitable drawings, game promotions, and amusement machines. The bill provides the following findings:

1. The Legislature declares that s. 849.01, F.S., specifically prohibits the keeping or maintaining of a place for the purpose of gambling or gaming.
2. The Legislature finds that s. 849.0935, F.S., was enacted to allow specified charitable or nonprofit organizations the opportunity to raise funds to carry out their charitable or nonprofit purpose by conducting a raffle for prizes by eliminating the element of monetary consideration and allowing the receipt of voluntary donations or contributions and was not intended to provide a vehicle for the establishment of places of gambling or gaming.
3. The Legislature finds that s. 849.094, F.S., was enacted to regulate certain game promotions or sweepstakes conducted by for-profit commercial entities on a limited and occasional basis as an advertising and marketing tool and incidental to substantial bona fide sales of consumer products or services, if the element of consideration is removed as no purchase necessary and they comply with the requirements and rules specified by law, and was not intended to provide a vehicle for the establishment of places of ongoing gambling or gaming.
4. The Legislature finds that s. 849.161, F.S., was enacted to regulate the operation of skill-based arcade games offered at specified arcade amusement centers and truck stops if they comply with the requirements of law and was not provided as a vehicle for the conduct of casino-style gambling.
5. Therefore, the Legislature finds that there is a compelling state interest in clarifying the operation and use of ss. 849.0935, 849.094, and 849.161, F.S., to ensure that a charitable drawing by chance, game promotion in connection with the sale of a consumer product or service, and arcade amusement games are not subject to abuse or interpreted in any manner as creating an exception to Florida's general prohibitions against gambling.

³⁵ See Interim Report 2012-137, *supra* at n. 33.

³⁶ See, e.g., Seminole County, Ordinance 2011-1.

³⁷ See, e.g., City of Hialeah, Chapter 18, Art. III (8 Liner); City of Miami, Ordinance 10-00739 (8 Liner); Duval County, 2010-326 (Electronic Sweepstakes; limits 8 Liners to pari-mutuel wagering facilities (*but see* DBPR Declaratory Statement 2012-041 finding that the ordinance authorized games and activities beyond what is authorized by state law).

³⁸ Senate Committee on Regulated Industries, Review Internet Cafes Used for Electronic Game Promotions (Interim Report 2012-137).

Charitable Drawings

The bill amends the current statute regarding charitable drawings by clarifying the definition of drawing by chance to include 'raffles' and to specifically exclude game promotions, as defined by current law.

Game Promotions

The bill amends the current statute regarding game promotions by clarifying the definition of game promotion to include 'sweepstakes' and to specify that the promotion is incidental to the sale of consumer products or services. The bill also provides that compliance with the rules of DACS does not authorize and is not a defense to a charge of possession of a slot machine or any other law.

Violation of the game promotion statute, or soliciting violation of the section, is deemed an unfair trade practice.

Slot Machines

The bill updates the definition of slot machine or device by removing the requirement that such device be operated by the insertion of an object; and specifically including 'system or networks' of devices. The bill clarifies that a device is a prohibited slot machine regardless of whether: it is directly or indirectly operated, its outcome relies on skill or chance, or it is available for free play. It also specifies that ch. 551, F.S., slot machines are included in the definition.

The bill creates a rebuttable presumption that a device is a prohibited slot machine if it simulates games of chance and is part of a scheme requiring consideration and awarding any thing of value.

Amusement machines

The bill reorganizes s. 849.161, F.S., to clarify the applicability of the exemption for amusement games or machines. It consolidates the applicable definitions into a separate subsection defining 'amusement games or machines,' 'merchandise,' 'game played,' and 'truck stop.' The bill also consolidates language exempting arcades and truck stops to avoid disparate interpretation.

In addition to consolidating requirements as to each term, the new definitions specify that:

- "Amusement games" do not include casino-style games in which the outcome is determined by factors unpredictable by the player or games in which the player may not control the outcome of the game through skill.
- "Merchandise" does not include gift cards or other cash equivalents.
- "Game played" means "the event occurring from the initial activation of the machine until the results of play are determined without payment of additional consideration." Free replays do not constitute additional consideration for purposes of the definition.

The bill corrects cross references to the federal Johnson Act and removes an outdated cross reference to a definition of truck stop, codifying the repealed definition.

Racketeering

The bill amends the definition of 'racketeering activity' by replacing the specific statutory references with chapter 849, F.S., relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

The bill would become effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

A. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Some local governments have enacted regulations, including taxation, of electronic gambling machines. The bill clarifies such devices are illegal. Local governments that have authorized the use of prohibited devices subject to local taxation may not be able to collect such taxes.

2. Expenditures:

The bill clarifies existing prohibitions on gambling and creates a rebuttable presumption that certain devices are slot machines. This may reduce the complexity and cost of local enforcement actions.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill clarifies current law concerning the prohibition of electronic gambling devices. Some establishments have been offering electronic gambling machines in connection with purported sweepstakes. To the extent that offering the machines increased the profitability of their underlying products or services, they may see reduction in sales. Likewise, establishments offering arcade games may only offer machines that meet the requirements of s. 849.161, F.S.

C. FISCAL COMMENTS:

The bill is not anticipated to have a significant fiscal impact on state funds.