

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Bradley, Chair
Senator Margolis, Vice Chair

MEETING DATE: Wednesday, November 4, 2015
TIME: 11:00 a.m.—1:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Bradley, Chair; Senator Margolis, Vice Chair; Senators Abruzzo, Bean, Braynon, Diaz de la Portilla, Flores, Latvala, Negron, Richter, Sachs, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 176 Brandes (Identical H 261)	Cosmetic Product Registration; Removing the requirement that a person who manufactures, packages, repackages, labels, or relabels a cosmetic in this state must register such cosmetic biennially with the Department of Business and Professional Regulation, etc. RI 11/04/2015 Favorable AGG AP	Favorable Yeas 11 Nays 0
2	SB 402 Richter (Similar H 415)	Point-of-sale Terminals; Authorizing the Department of the Lottery to create a program that authorizes certain persons to purchase a ticket or game at a point-of-sale terminal; authorizing the department, a retailer operating from one or more locations, or a vendor approved by the department to use a point-of-sale terminal to sell a lottery ticket or game; prohibiting a point-of-sale terminal from being used to redeem a winning ticket, etc. RI 11/04/2015 Favorable AGG FP	Favorable Yeas 9 Nays 2

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 176

INTRODUCER: Senator Brandes

SUBJECT: Cosmetic Product Registration

DATE: November 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Favorable
2.			AGG	
3.			AP	

I. Summary:

SB 176 eliminates the product registration filing requirements for each separate and distinct cosmetic product, including registrations of identical products that may differ as to color. The Department of Business and Professional Regulation (DBPR or department), Division of Drugs, Devices, and Cosmetics (division), regulates cosmetics that are manufactured and repackaged in Florida. Cosmetic manufacturers physically located in Florida are required to hold an active cosmetic manufacturer permit issued by the division. Each product produced or repackaged by such manufacturers is required to be registered with the division. New cosmetic products and identical products are currently registered every two years.

The department estimates that elimination of the associated fees will impact the Professional Regulation Trust Fund by reducing revenue by approximately \$222,563 in Fiscal Year 2016-2017, reducing payments to General Revenue by approximately \$18,000 in Fiscal Year 2016-2017, and creating a deficit in the Drugs, Devices, and Cosmetics regulatory program in Fiscal Year 2016-2017.

II. Present Situation:

State and Federal Regulation

Section 499.003(12), F.S., defines “cosmetic” as an article other than soap, which is either:

- Intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering appearance; or
- Intended for use as a component of the article.

The regulation of cosmetics is addressed in ch. 499, F.S., which regulates drugs, devices, and cosmetics by the department.¹ The Florida Drug and Cosmetic Act (the act),² is intended to safeguard public health and promote public welfare by protecting against injuries and merchandising deceit involving drugs, devices, and cosmetics or the use of such products.

Administration of the act must conform to the Federal Food, Drug, and Cosmetic Act (the federal act)³ and the applicable portions of the Federal Trade Commission Act⁴ which prohibit the false advertising of drugs, devices, and cosmetics. According to an industry representative, 8 billion personal care products are sold in the United States annually, constituting over \$60 billion in annual sales.⁵

Florida law requires any person who manufactures, packages, repackages, labels, or relabels a cosmetic in Florida to register “each separate and distinct” cosmetic every 2 years.⁶ The administrative rules of the department impose a \$30 fee for product registrations,⁷ and a fee of \$15 for each identical product registration.⁸ Because registration is a prerequisite to sales of a cosmetic, Florida’s registration system is a pre-market reporting system that is handled by the division.⁹

This is contrasted with the system of the United States Food and Drug Administration (FDA), which is a post-market reporting system for use by manufacturers, packers, and distributors of cosmetic products that are in commercial distribution in the United States.¹⁰ Under the FDA’s system, any representation in labeling or advertising that creates an impression of official approval because of registration or possession of a registration number is considered misleading. Misleading labeling makes a cosmetic misbranded, and marketing a misbranded cosmetic violates federal law.¹¹ Enforcement of the federal act is initiated by a complaint by a consumer, which may be accomplished by mail, fax, through their health provider, pharmacist, or via an online report.¹² The division, in a “Helpful Links and Resources” section on its website,¹³ provides a link to the FDA website.

¹ The Drug, Device, and Cosmetic program was transferred to the Department of Business and Professional Regulation from the Department of Health effective November 1, 2012. See ch. 2012-184, L.O.F., s. 122, at <http://laws.flrules.org/2012/184> (last visited Nov. 2, 2015) and ch. 2012-143, L.O.F., s. 3, at <http://laws.flrules.org/2012/143> (last visited Nov. 2, 2015).

² See ss. 499.001-499.081, F.S.

³ Section 499.003(20), F.S., defines the federal act referencing 21 U.S.C. ss. 301 *et seq.* and 52 Stat. 1040 *et seq.*

⁴ See 15 U.S.C. §§ 41-58, as amended.

⁵ Conversation with John Ray on behalf of the Florida Cosmetics Manufacturers Coalition (November 12, 2014).

⁶ See s. 499.015, F.S., and Application for Product Registration - Cosmetics (Main & Identical), Form No.: DBPR-DDC-228 at http://www.myfloridalicense.com/dbpr/ddc/documents/Product_Registration_Cosmetic_App-228.pdf (last accessed Nov. 2, 2015).

⁷ See s. 499.041, F.S.

⁸ See Rule 61N-1.018(4)(f), F.A.C. It should be noted subsection (4) of the rule refers to “Miscellaneous OTHER fees” and does not indicate the \$30 product registration fee is to be collected every 2 years (a biennial fee); references to biennial fees appear only in subsections (1), (2)(a) and (3) of the rule.

⁹ See <http://www.myfloridalicense.com/dbpr/ddc/index.html> (last visited Nov. 2, 2015).

¹⁰ See the FDA’s description of its Voluntary Cosmetics Registration Program and its benefits at <http://www.fda.gov/Cosmetics/RegistrationProgram/default.htm> (last visited Nov. 2, 2015). The program does not apply to cosmetic products for professional use only, such as products used in beauty salons, spas, or skin care clinics, nor to products that are not for sale, such as hotel samples, free gifts, or cosmetic products made at home and given to family and friends.

¹¹ *Id.*

¹² See <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm354560.htm> (last visited Nov. 2, 2015).

¹³ See http://www.myfloridalicense.com/dbpr/ddc/ddc_helpful_links.html (last visited Nov. 2, 2015).

Identical Products

The department's rules also provide that a formula marketed under different brand names, sizes, quantities, or distributors is not a separate and distinct product that must be registered.¹⁴ The adding of color, flavor, or scents to a formula does not create a separate and distinct product for registration purposes, even for fragrance preparations where the scent is the primary product.¹⁵ The department requires by rule that the different variations on a main product be listed and registered.¹⁶ Section 499.015, F.S., regarding registration of cosmetics, and s. 499.041(6), F.S., regarding registration fees, which are limited to registration of "separate and distinct" products, do not address registration of identical products. The division has stated that in lieu of its rule mandating registration of identical products for a reduced fee (currently 50% of the new product registration fee of \$30), it "could require each "separate and distinct" product to be registered at \$30 per product."¹⁷ Further, since each cosmetic has a label that is different, if only for the color, each cosmetic with any difference in the label is therefore a "separate and distinct" product.¹⁸

Renewal Registrations

For renewal of a product registration, an applicant must submit product labels, an Application for Product Registration Renewal, and the required fee.¹⁹ According to the division, cosmetic product renewals are not reviewed by the department for compliance with the FDA's regulations because the cosmetic products were "initially reviewed, compared with the FDA regulations, and approved for registration."²⁰

Certificates of Free Sale

The department issues certificates of free sale (COFS)²¹ to certify that a cosmetic that is registered with the department may be legally sold in Florida. A COFS is required by many foreign countries before a product may be sent into the country. A COFS need not be obtained from the department, but may be obtained from the FDA,²² and other organizations, including the Miami Beach Chamber of Commerce.²³

¹⁴ See Rule 61N-1.016(1)(b), F.A.C.

¹⁵ *Id.*

¹⁶ *Id.* Identical Product Registration is addressed in Form DBPR-DDC-228, Application for Product Registration - Cosmetics (Main & Identical) at http://www.myfloridalicense.com/dbpr/ddc/documents/Product_Registration_Cosmetic_App-228.pdf (last accessed Nov. 2, 2015).

¹⁷ See Letter from Reginald D. Dixon, Director, Division of Drugs, Devices and Cosmetics to Florida Cosmetic Manufacturers Coalition c/o John Ray (November 26, 2014) (on file with the Senate Committee on Regulated Industries) at paragraph 5.

¹⁸ *Id.*

¹⁹ See Rule 61N-1.016(3), F.A.C., and Form DBPR-DDC-235, at <https://www.flrules.org/Gateway/reference.asp?No=Ref-05666> (last accessed Nov. 2, 2015).

²⁰ *Id.* at paragraph 4.

²¹ Section 499.041(7), F.S., uses the term "free-sale certificate," and imposes a fee of \$25, with \$2 for each copy obtained at the same time that the certificate is issued by the department.

²² See http://www.fda.gov/Cosmetics/InternationalActivities/Exporters/ucm129593.htm#Are_there_other (last visited Nov. 2, 2015).

²³ According to the FDA, some foreign governments accept certificates issued by a state or local health department, board of trade, or trade association. Due to limited resources, the FDA recommends that firms pursue such alternative sources for export certificates whenever possible, provided they are acceptable to the country requiring a certificate. See http://www.fda.gov/Cosmetics/InternationalActivities/Exporters/ucm129593.htm#Are_there_other (last visited Nov. 2, 2015). These online sites offer certificates of free sale services: <http://icmad.org/programs/certificates-of-free-sale>

III. Effect of Proposed Changes:

The bill eliminates the existing requirement that a cosmetic be registered with the Department of Business and Professional Regulation by any person who manufactures, packages, repackages, labels, or relabels a cosmetic in Florida prior to its sale.²⁴ The bill eliminates all registration and renewal fees for new cosmetics and for identical products.²⁵ The bill eliminates the authorization to the department to issue a “certificate of free sale” certifying that a cosmetic is registered with the department and may be legally sold in Florida.²⁶

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill eliminates fees for cosmetic product registrations and renewals, as well as fees for the issuance of certificates of free sale for cosmetic products.

B. Private Sector Impact:

The bill should have a positive fiscal impact for cosmetic manufacturers due to the elimination of the fees associated with product registration and renewal. The elimination of premarket registration requirements in Florida may require manufacturers, who have relied upon issuance by the Department of Business and Professional Regulation of certificates of free sale, to obtain that service from third parties.

C. Government Sector Impact:

The total amount of cosmetic products revenue to the department, \$222,563.70, is the sum of \$165,232.50 (annual renewal fees), \$45,225 (initial product registration fees), and

(last visited Nov. 2, 2015), <http://www.personalcarecouncil.org/member-industry-resources/certificates-free-sale> (last visited Nov. 2, 2015), and <http://www.miamibeachchamber.com/Certificate-of-Free-Sale.php> (last visited Nov. 2, 2015).

²⁴ See s. 499.015, F.S.

²⁵ See s. 499.041(6), F.S.

²⁶ See s. 499.003(6), F.S.

\$12,106.20 (fees for issuance of certificates of free sale (COFS)).²⁷ This will increase the anticipated deficit in the separate account associated with the Drugs, Devices, and Cosmetics program division in the Professional Regulation Trust Fund (formerly the Drug, Device, and Cosmetic Trust Fund).²⁸ The department also notes that due to the revenue reduction, there will be a reduced service charge²⁹ amount payable to the General Revenue Fund of approximately \$18,000 in Fiscal Year 2016-2017.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 499.015, 499.003, 499.041, and 499.051.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁷ See 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 176, September 29, 2015 (on file with Senate Committee on Regulated Industries) at pages 3-5.

²⁸ See ch. 2012-143, L.O.F., s. 8, at <http://laws.flrules.org/2012/143> (last visited Nov. 2, 2015).

²⁹ The service charge to the Department is 8%, representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund, that is appropriated from all revenue not otherwise exempted. See [s. 215.20, F.S.](#) regarding the service charge, and [s. 215.37, F.S.](#), regarding the Professional Regulation Trust Fund. Section [215.37\(2\), F.S.](#), provides that the regulation of professions defined in [s. 455.01, F.S.](#) be solely financed from fees and charges deposited in the Professional Regulation Trust Fund, but that each profession operate within its anticipated fees (last visited Nov. 2, 2015).

By Senator Brandes

22-00268-16

2016176__

1 A bill to be entitled
2 An act relating to cosmetic product registration;
3 amending s. 499.015, F.S.; removing the requirement
4 that a person who manufactures, packages, repackages,
5 labels, or relabels a cosmetic in this state must
6 register such cosmetic biennially with the Department
7 of Business and Professional Regulation; amending ss.
8 499.003, 499.041, and 499.051, F.S.; conforming
9 provisions to changes made by this act; providing an
10 effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 499.015, Florida Statutes, is amended to
15 read:

16 499.015 Registration of drugs and, devices, ~~and cosmetics~~;
17 issuance of certificates of free sale.-

18 (1) (a) Except for those persons exempted from the
19 definition of manufacturer in s. 499.003, any person who
20 manufactures, packages, repackages, labels, or relabels a drug
21 or, device, ~~or cosmetic~~ in this state must register such drug
22 or, device, ~~or cosmetic~~ biennially with the department; pay a
23 fee in accordance with the fee schedule provided by s. 499.041;
24 and comply with this section. The registrant must list each
25 separate and distinct drug or, device, ~~or cosmetic~~ at the time
26 of registration.

27 (b) The department may not register any product that does
28 not comply with the Federal Food, Drug, and Cosmetic Act, as
29 amended, or Title 21 C.F.R. Registration of a product by the

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30 department does not mean that the product does in fact comply
31 with all provisions of the Federal Food, Drug, and Cosmetic Act,
32 as amended.

33 (2) The department may require the submission of a catalog
34 and specimens of labels at the time of application for
35 registration of drugs or devices, ~~and cosmetics~~ packaged and
36 prepared in compliance with the federal act, which submission
37 constitutes a satisfactory compliance for registration of the
38 products. With respect to all other drugs and devices, ~~and~~
39 ~~cosmetics~~, the department may require the submission of a
40 catalog and specimens of labels at the time of application for
41 registration, but the registration will not become effective
42 until the department has examined and approved the label of the
43 drug or device, ~~or cosmetic product~~. This approval or denial
44 must include written notification to the manufacturer.

45 (3) Except for those persons exempted from the definition
46 of manufacturer in s. 499.003, a person may not sell any product
47 that he or she has failed to register in conformity with this
48 section. Such failure to register subjects such drug or device,
49 ~~or cosmetic product~~ to seizure and condemnation as provided in
50 s. 499.062, and subjects such person to the penalties and
51 remedies provided in this part.

52 (4) Unless a registration is renewed, it expires 2 years
53 after the last day of the month in which it was issued. The
54 department may issue a stop-sale notice or order against a
55 person that is subject to the requirements of this section and
56 that fails to comply with this section within 31 days after the
57 date the registration expires. The notice or order shall
58 prohibit such person from selling or causing to be sold any

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59 drugs or ~~devices, or cosmetics~~ covered by this part until he or
60 she complies with the requirements of this section.

61 (5) A product regulated under this section which is not
62 included in the biennial registration may not be sold until it
63 is registered and complies with this section.

64 (6) The department may issue a certificate of free sale for
65 any product that is required to be registered under this part.

66 (7) A product registration is valid only for the company
67 named on the registration and located at the address on the
68 registration. A person whose product is registered by the
69 department under this section must notify the department before
70 any change in the name or address of the establishment to which
71 the product is registered. If a person whose product is
72 registered ceases conducting business, the person must notify
73 the department before closing the business.

74 (8) Notwithstanding any requirements set forth in this
75 part, a manufacturer of medical devices that is registered with
76 the federal Food and Drug Administration is exempt from this
77 section and s. 499.041(6) if:

78 (a) The manufacturer's medical devices are approved for
79 marketing by, or listed with the federal Food and Drug
80 Administration in accordance with federal law for commercial
81 distribution; or

82 (b) The manufacturer subcontracts with a manufacturer of
83 medical devices to manufacture components of such devices.

84 (9) However, the manufacturer must submit evidence of such
85 registration, listing, or approval with its initial application
86 for a permit to do business in this state, as required in s.
87 499.01 and any changes to such information previously submitted

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88 at the time of renewal of the permit. Evidence of approval,
 89 listing, and registration by the federal Food and Drug
 90 Administration must include:

91 (a) For Class II devices, a copy of the premarket
 92 notification letter (510K);

93 (b) For Class III devices, a federal Food and ~~Federal~~ Drug
 94 Administration premarket approval number;

95 (c) For a manufacturer who subcontracts with a manufacturer
 96 of medical devices to manufacture components of such devices, a
 97 federal Food and ~~Federal~~ Drug Administration registration
 98 number; or

99 (d) For a manufacturer of medical devices whose devices are
 100 exempt from premarket approval by the federal Food and ~~Federal~~
 101 Drug Administration, a federal Food and ~~Federal~~ Drug
 102 Administration registration number.

103 Section 2. Subsection (6) of section 499.003, Florida
 104 Statutes, is amended to read:

105 499.003 Definitions of terms used in this part.—As used in
 106 this part, the term:

107 (6) "Certificate of free sale" means a document prepared by
 108 the department which certifies a drug or, ~~device, or cosmetic,~~
 109 that is registered with the department, ~~as one that can be~~
 110 legally sold in the state.

111 Section 3. Subsection (6) of section 499.041, Florida
 112 Statutes, is amended to read:

113 499.041 Schedule of fees for drug, device, and cosmetic
 114 applications and permits, product registrations, and free-sale
 115 certificates.—

116 (6) A person that is required to register drugs or

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117 devices, ~~or cosmetic products~~ under s. 499.015 shall pay an
118 annual product registration fee of not less than \$5 or more than
119 \$15 for each separate and distinct product in package form. The
120 registration fee is in addition to the fee charged for a free-
121 sale certificate.

122 Section 4. Subsection (2) of section 499.051, Florida
123 Statutes, is amended to read:

124 499.051 Inspections and investigations.—

125 (2) In addition to the authority set forth in subsection
126 (1), the department and any duly designated officer or employee
127 of the department may enter and inspect any other establishment
128 for the purpose of determining compliance with this chapter and
129 rules adopted under this chapter regarding any drug, device, or
130 cosmetic ~~product~~.

131 Section 5. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: September 11, 2015

I respectfully request that **Senate Bill #176**, relating to **Cosmetic Product Registration**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-4-2015
Meeting Date

176
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL
City State

33705
Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Nov. 4, 2015

Meeting Date

SB 176

Bill Number (if applicable)

Topic Cosmetic Product Registration

Amendment Barcode (if applicable)

Name John Ray

Job Title _____

Address P.O. Box 7683

Phone 850.445.5044

Street

Tallahassee

FL

32314

Email jray@johnrayconsulting.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Seychelles Organics, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Regulated Industries
ITEM: SB 176
FINAL ACTION: Favorable
MEETING DATE: Wednesday, November 4, 2015
TIME: 11:00 a.m.—1:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	11/04/2015 1 Motion to vote "YEA" after Roll Call		11/04/2015 2 Motion to vote "YEA" after Roll Call			
			Flores		Margolis		Yea	Nay
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Abruzzo						
X		Bean						
X		Braynon						
X		Diaz de la Portilla						
VA		Flores						
X		Latvala						
X		Negron						
X		Richter						
		Sachs						
X		Stargel						
VA		Margolis, VICE CHAIR						
X		Bradley, CHAIR						
11	0		FAV	-	FAV	-		
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 402

INTRODUCER: Senator Richter

SUBJECT: Point-of-sale Terminals

DATE: November 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Favorable
2.	_____	_____	AGG	_____
3.	_____	_____	FP	_____

I. Summary:

SB 402 allows limited use of “point-of-sale terminals” for the sale of lottery tickets or games. A point-of-sale terminal” is a charge card reader, like those consumers use at a retail counter, self-service fuel pump, or self-service checkout lane. The bill authorizes the Department of the Lottery (department), approved vendors, and approved retailers to use point-of-sale terminals to facilitate sales of lottery tickets or games, provided that the purchaser is verified to be at least 18 years old, and the terminal does not dispense lottery winnings. A point-of-sale terminal does not reveal winning numbers and may not be used to redeem a winning ticket. Point-of-sale terminals and devices linked to them may not use video reels or mechanical reels or depictions of slot machine or casino game themes.

II. Present Situation:

The Florida Lottery

Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of the Florida Constitution¹ are prohibited in Florida by s. 7, Art. X of the State Constitution. However, s. 15 of Article X of the State Constitution (1968) allows lotteries to be operated by the state. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

¹ The Constitution of the State of Florida was revised in 1968 and ratified by the electorate on November 5, 1968. See Preamble to the Constitution of the State of Florida.

The department operates the state lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens,”² for the benefit of public education.³ The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.⁴ Retailers receive commissions of 5 percent of the ticket price, 1 percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.⁵ Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.⁶

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.⁷ Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. There is a general prohibition against contracting with a retailer with a felony criminal history,⁸ and the authority to act as a retailer for lottery sales may not be transferred.⁹ Retailer contracts may be suspended or terminated for: (1) violating lottery laws and regulations; (2) committing any act that undermines public confidence in the lottery; (3) improper accounting for lottery tickets, revenues, or prizes; or (4) insufficient ticket sales. Every retailer contract must provide for a payment of liquidated damages for any contract breach by the retailer.¹⁰

Retailers may not extend credit or lend money to a person to purchase a lottery ticket, however, the prohibition does not include the use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods), provided that the lottery ticket purchase is in addition to the purchase of other goods and services with a cost of not less than \$20.¹¹

Section 24.115, F.S., authorizes the department to establish by rule a system to verify and pay winning lottery tickets:¹²

- Any lottery retailer, as well as any lottery department office, may redeem a winning ticket valued at less than \$600.¹³ Payments less than \$50 are generally paid by a retailer in cash,

² See s. 24.104, F.S.

³ See s. 24.121(2), F.S.

⁴ See s. 24.105(17), F.S.

⁵ See *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2014), (hereinafter referred to as *OPPAGA Report 14-06*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> at page 2 (last accessed Nov. 2, 2015).

⁶ See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2015), (hereinafter referred to as *OPPAGA Report 15-03*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed Nov. 2, 2015), at page 1 (footnote 3).

⁷ See Section 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

⁸ Section 24.112(3)(c), F.S.

⁹ Section 24.112(4), F.S.

¹⁰ Section 24.112(10), F.S.

¹¹ Section 24.118(1), F.S.

¹² See Rule 53ER13-31, F.A.C.

¹³ The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.

- Only a lottery department office may redeem a winning ticket valued at \$600 or more.¹⁴ Winning tickets are paid at the claimant's option in a combination of cash, check or lottery tickets (with a limitation of \$200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.¹⁵ Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the drawing or the end of the lottery game in which the prize was won.

If a valid claim is not timely made, 80% of the unclaimed prize amount is deposited in the Educational Enhancement Trust Fund,¹⁶ and the remainder may be used for future prizes or special prize promotions.¹⁷

Section 24.105(9)(a), F.S., authorizes the department to adopt rules governing the types of lottery games to be conducted, including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”¹⁸

The department introduced full service vending machines (FSVMs) in retail stores across the state in November 2013, and estimated that it earned more than \$29 million from the use of player-activated FSVMs in Fiscal Year 2012-2013.¹⁹ In its most recent Financial Audit,²⁰ the department stated when 500 FSVMs were installed at its top scratch-off ticket sales locations, allowing both terminal and scratch-off tickets to be sold, total FSVMs sales were over \$248 million.

¹⁴ Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

¹⁵ See s. 24.115(1)(f), F.S.

¹⁶ Section 24.115(2)(a), F.S., provides that such funds may be used, subject to legislative appropriation, to match private contributions received under specified post-secondary matching grant programs.

¹⁷ See s. 24.115(2)(b), F.S.

¹⁸ Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, L.O.F., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

¹⁹ *OPPAGA Report 14-06*, *supra* note 5, at 2.

²⁰ See *Financial Audit of the Department of the Lottery, for the Fiscal Years Ended June 30, 2014, and 2013*, Report No. 2015-092, State of Florida Auditor General (January 2015), at page 4 (2015 Financial Audit) at http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf (last accessed Nov. 2, 2015).

The Seminole Gaming Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a compact governing gambling (Gaming Compact) at the Tribe's seven tribal facilities in Florida.²¹ The Gaming Compact authorizes the Tribe to conduct Class III gaming.²² It was ratified by the Legislature, with an effective date of July 6, 2010.²³ The Gaming Compact has a 20-year term.

The Gaming Compact provides that in exchange for the its exclusive right to offer slot machine gaming outside of Miami-Dade and Broward counties and banked card games at five of its seven²⁴ casinos, the Tribe will make revenue sharing payments to the state. The state's share increases incrementally from 12% for the first \$2 billion in annual net win, to 25% for annual net win greater than \$4.5 billion. In Fiscal Year 2013-2014, the Tribe paid \$237 million.²⁵

The Gaming Compact specifically acknowledges operation by the Florida Lottery of the types of lottery games authorized under chapter 24, F.S., on February 1, 2010, and it specifically excludes from such authorized games any "player-activated or operated machine or device other than a Lottery Vending Machine."²⁶ The Gaming Compact also includes language about not using a

²¹ The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida* (Gaming Compact) was approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. See http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last accessed Nov. 2, 2015). Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*

²² The Indian Gaming Regulatory Act of 1988 divides gaming into three classes: **Class I** means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations. **Class II** includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law. **Class III** includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

²³ See ch. 2010-29, L.O.F.

²⁴ See the executed Gaming Compact at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last accessed Nov. 2, 2015). The Gaming Compact provides that banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the Gaming Compact, at page 4. In addition, in paragraph B of Part XVI, at page 49, the period of authorization to conduct table games is five years. A mediation process is being pursued by the Tribe and Governor Scott on this and other issues. See <http://miami.cbslocal.com/2015/08/25/state-seminoles-headed-into-mediation-over-blackjack/> (last accessed Nov. 2, 2015).

²⁵ See the Executive Summary and Conference results from the Revenue Estimating Conference (July 14, 2015 and August 11, 2015) at <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf> and <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf> (last accessed Nov. 2, 2015).

²⁶ In particular, the Gaming Compact acknowledges: "operation by the Florida Department of Lottery of those types of lottery games authorized under chapter 24, Florida Statutes, on February 1, 2010, but not including (i) any player-activated or operated machine or device other than a lottery vending machine or (ii) any banked or banking card or table game." The Gaming Compact further excludes: (iii) more than ten lottery vending machines at any facility or location or (iv) any lottery vending machine that dispenses electronic instant tickets at any licensed pari-mutuel location. See subparagraph 8 of paragraph B of Part XII of Gaming Compact at page 42. The Gaming Compact describes three types of lottery vending machines, none of which may allow a player to redeem a ticket: (1) a machine to dispense pre-printed paper instant lottery tickets (e.g., scratch-off tickets); (2) a machine to dispense pre-determined electronic instant lottery tickets and reveal the outcome; or (3) a machine to dispense paper lottery tickets with numbers selected by the player or randomly by the machine, with the winning number selected in a drawing by the department. See paragraph R of Part III of Gaming Compact at page 10.

lottery vending machine to redeem winning tickets, which is consistent with similar language in s. 24.112(15)(c), F.S.²⁷

The Gaming Compact provides that any expanded gaming (beyond what is specifically acknowledged) relieves the Tribe of its obligations to make substantial revenue sharing payments.²⁸

OPPAGA Recommendations to Enhance Lottery Earnings

Section 24.123, F.S., requires the Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an annual financial audit of the Department of the Lottery and provide recommendations to enhance the state lottery's earning capability and operational efficiency.²⁹ In the last two years, OPPAGA has issued Report No. 14-06, concerning options available to the department to enhance revenues,³⁰ and Report No. 15-03, concerning increases in lottery revenues, further enhancement options, and options to increase efficiency.³¹

No monies from the General Revenue Fund are appropriated to the department, which is supported solely by game ticket sales. For Fiscal Year 2013-2014, the Legislature appropriated \$163.5 million for operations from lottery revenue, with 420 positions authorized.³² In Fiscal Year 2014-2015, the department allocated approximately 75 percent, or \$122.5 million, of its \$163.5 million appropriation to produce and advertise online and scratch-off games.³³

In addition to funding the operational appropriation, lottery revenue is used to pay prizes and retailer commissions.³⁴ In Fiscal Year 2013-2014, prizes totaled \$3.43 billion and retailer commissions totaled \$297.3 million.³⁵

Lottery Ticket Sales in Other States (Play at Pump)

Noting that expanding product distribution could increase revenues, OPPAGA reported that in October 2012, the Minnesota Lottery implemented new technology and processes for sales at gas stations and ATMs.³⁶ However, those sales were discontinued in mid-2015 when the Minnesota legislature enacted legislation³⁷ prohibiting the sale of lottery tickets through devices

²⁷ Section 24.112(15)(c), F.S., provides that a vending machine that dispenses a lottery ticket "may dispense change to a purchaser but may not be used to redeem any type of winning lottery ticket."

²⁸ See last sentence in paragraph B of Part XII of Gaming Compact at page 43.

²⁹ See <http://www.oppaga.state.fl.us/ReportsByAgency.aspx?agency=Lottery,%20Department%20of%20the> (last visited Nov. 2, 2015) for a list of OPPAGA reports related to the Department of the Lottery.

³⁰ See *OPPAGA Report 14-06*, at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> (last accessed Nov. 2, 2015).

³¹ See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, (January 2015), (hereinafter referred to as *OPPAGA Report 15-03*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed Nov. 2, 2015).

³² *Id.* at page 10.

³³ *Id.* at page 2.

³⁴ See s. 24.121(2) and (3), F.S.

³⁵ *Id.* at page 1.

³⁶ See *OPPAGA Report 14-0*, *supra* note 30, at 11.

³⁷ See https://www.mnlottery.com/buy_tickets/buy_online/ (last visited Nov. 2, 2015). The legislation also mandated that the sale of eScratch tickets on the lottery's website be discontinued. The program as originally implemented allowed players to

incorporated in or adjacent to gas pumps and ATMs.³⁸ Legislators viewed those programs as an unauthorized and dramatic expansion of authorized gambling by regulators.³⁹

The Missouri Lottery implemented similar technology in late 2013 with retailers already selling lottery tickets. The lottery website displays rules and restrictions for this type of purchase.⁴⁰ Purchases are limited to quick-pick (random) plays for a single game drawing. Lottery tickets are payable by debit card, but credit cards may not be used. Each cardholder can purchase up to \$100 in lottery tickets per week, per debit card, but each transaction incurs a transaction fee. Prizes of \$600 or less are automatically credited to the debit card account of the purchaser, but larger prizes must be claimed at lottery headquarters by the cardholder who must in possession of the debit card and photo identification.

The OPPAGA report considered whether the convenience of purchasing lottery tickets “at the pump” or at similar point-of-sale terminals might cause in-store sales to decline. OPPAGA found, for the short period that the option was available in Minnesota, there was no negative effect on in-store sales.⁴¹ The report noted that “offering this option at ATMs may help expand the retailer network to non-traditional locations.”⁴²

In its most recent report on Florida Lottery revenues and operations,⁴³ OPPAGA notes:

As of December 2014, Play at the Pump is offered [in Minnesota] at 53 gas locations, with 452 pump screens and 131 ATM locations. Minnesota’s total sales through these distribution points were \$20,000 in Fiscal Year 2013-14. . . . The Missouri Lottery began offering Play at the Pump and ATM sales in fall 2013 in select locations, followed by the California Lottery in fall 2014. California’s Play at the Pump sales are limited to participating gas stations in Sacramento and Los Angeles counties.

In August, 2015, the California State Lottery Commission expanded a year-long pilot program for lottery purchases at fuel pumps from a single location to 87 locations in the Los Angeles and Sacramento areas.⁴⁴ The games available for purchase by credit or debit card are Mega Millions,

use a debit card and select the option to purchase at least three lottery tickets as part of a transaction to purchase gas or use an ATM. The player’s age was verified by a scan of a driver’s license, and the lottery purchase showed on the receipt. Tickets could be printed, or a player could opt to receive lottery numbers in a text or email message. Players could track ticket purchases on the lottery’s website. For prizes less than \$600, the lottery credited the bank account associated with the debit card; no visit to a retailer was required for redemption of a winning ticket.

³⁸ See Minnesota Session Law CHAPTER 45--S.F.No. 229, s. 5, at <https://www.revisor.mn.gov/laws/?id=45&year=2015&type=0> and MN. STAT. 349A.13 (2015) at https://www.revisor.mn.gov/statutes/?id=349A.13&year=2015&keyword_type=all&keyword=lottery (last visited Nov. 2, 2015).

³⁹ See <http://www.startribune.com/minnesota-lottery-officials-try-to-salvage-online-sales/258570331/> and <http://www.house.leg.state.mn.us/sessiondaily/SDView.aspx?StoryID=5821> (last visited Nov. 2, 2015).

⁴⁰ See http://www.molottery.com/numbers/alternative_distribution.shtm (last visited Nov. 2, 2015).

⁴¹ See *OPPAGA Report 14-06*, *supra* note 30, at 14.

⁴² *Id.*

⁴³ See *OPPAGA Report 15-03*, *supra* note 31.

⁴⁴ See <http://www.sacbee.com/news/local/article30088296.html> and <http://sanfrancisco.cbslocal.com/2015/08/03/play-at-the-pump-california-lottery-tickets-quick-picks-gas-pumps/> (last visited Nov. 2, 2015).

Powerball, and SuperLotto Plus, with a \$20 maximum per purchase and a weekly \$50 limit.⁴⁵ Players are limited to selecting 5, 10 or 20 Quick Picks on Mega Millions or SuperLotto Plus, or 3, 5, or 10 Quick Picks on Powerball. A driver's license or state ID card is scanned to confirm the player is at least 18 years old, and there is a \$1.00 transaction fee to the Lottery's vendor. All lottery numbers are randomly selected by the machine, but there is no lottery "ticket" issued. The receipt from the fuel pump shows the player's lottery numbers, and players may opt to receive a text message with a link to their lottery numbers. Prize winnings of \$599 or less are automatically credited back to the card used for the purchase; prizes above \$600 must be redeemed at a lottery office.

In January, 2015, the North Carolina Education Lottery implemented its similar "play at the pump" program (with 117 locations as of July, 2015), except that the weekly limit is \$70 per debit card, and the available games are Cash 5, Mega Millions, and Powerball.⁴⁶ North Carolina also has a self-exclusion program which allows a player to exclude cards from being used for any lottery play at fuel pumps.⁴⁷

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 24.103, F.S., to add the term "point-of sale terminal." A point-of-sale terminal is another type of lottery vending machine to be used to purchase lottery tickets at retail locations under certain conditions. Payments for lottery tickets at a point-of-sale terminal may be paid by credit card, debit card, or other similar charge cards. The electronic device must be supported by networks that enable verification, payment, transfer of funds, and logging of transactions.

Section 2 of the bill amends s. 24.105, F.S., and authorizes the department to create a program and adopt rules for the purchase of lottery tickets at point-of-sale terminals by persons who are at least 18 years old. A point-of-sale terminal could have multiple uses (e.g., purchase of lottery tickets incidental to the purchase of other retail goods or services), while current lottery vending machines dispense lottery tickets only.

Section 3 of the bill amends s. 24.112, F.S., to provide that point-of-sale terminals may be used by the department, approved vendors, and approved retailers to facilitate the sale of lottery tickets or games. The bill tracks the following requirements stated in the Gaming Compact for lottery vending machines, providing that a point-of-sale terminal:

- Must dispense a paper lottery ticket with numbers selected by the player or randomly by the machine;
- Does not reveal the winning numbers (which are selected at a later time and a different location, through a drawing held by the Florida Lottery);
- May not make use of mechanical reels or video depictions of slot machine or casino game themes or titles; and
- May not be used to redeem winning tickets.

⁴⁵ See <http://www.calottery.com/lucky-retailers/more-ways-to-buy/play-at-the-pump> (last visited Nov. 2, 2015).

⁴⁶ See <http://www.nc-educationlottery.org/news/2015/7/5/227196-Cash-5-jackpot-win-in-Brunswick-County> (last visited Nov. 2, 2015).

⁴⁷ See <https://ncelontheho.com/Terms> (last visited Nov. 2, 2015).

The bill also provides that the device must recognize a valid driver license or other process to verify that the purchaser is at least 18 years of age. It must be in compliance with all department requirements for lottery sales, and the platform must be certified by the department.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will allow retailers and vendors approved by the Department of the Lottery to use point-of-sale terminals for sales of lottery products. The convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals may increase retailer commissions (five percent of lottery ticket sales) by an indeterminate amount. The bill may also reduce in-store sales by an indeterminate amount.⁴⁸

C. Government Sector Impact:

The bill authorizes the Department of the Lottery to establish, at its option, procedures for using point-of-sale terminals to sell lottery tickets. The ability to purchase lottery tickets at the pump or at similar point-of-sale terminals may increase lottery ticket sales and commissions to retailers by an indeterminate amount, as noted by the department.⁴⁹ An impact conference would be needed to estimate the lottery ticket sales revenue that could be generated from point-of-sale terminals.

⁴⁸ See *OPPAGA Report*, No. 14-06, *supra* note 30, at 14.

⁴⁹ See *2016 Department of Lottery Legislative Bill Analysis for SB 402*, October 14, 2015 (on file with Senate Committee on Regulated Industries) at pages 3-4.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 24.103, 24.105, and 24.112.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Richter

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1 A bill to be entitled
2 An act relating to point-of-sale terminals; amending
3 s. 24.103, F.S.; defining the term "point-of-sale
4 terminal"; amending s. 24.105, F.S.; authorizing the
5 Department of the Lottery to create a program that
6 authorizes certain persons to purchase a ticket or
7 game at a point-of-sale terminal; authorizing the
8 department to adopt rules; amending s. 24.112, F.S.;
9 authorizing the department, a retailer operating from
10 one or more locations, or a vendor approved by the
11 department to use a point-of-sale terminal to sell a
12 lottery ticket or game; requiring a point-of-sale
13 terminal to perform certain functions; specifying that
14 the point-of-sale terminal may not reveal winning
15 numbers; prohibiting a point-of-sale terminal from
16 including or making use of video reels or mechanical
17 reels or other video depictions of slot machine or
18 casino game themes or titles for game play;
19 prohibiting a point-of-sale terminal from being used
20 to redeem a winning ticket; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 24.103, Florida Statutes, is reordered
26 and amended to read:

27 24.103 Definitions.—As used in this act, the term:

28 (1) "Department" means the Department of the Lottery.

29 (6)~~(2)~~ "Secretary" means the secretary of the department.

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30 (3) "Person" means any individual, firm, association, joint
31 adventure, partnership, estate, trust, syndicate, fiduciary,
32 corporation, or other group or combination and includes an ~~shall~~
33 ~~include any~~ agency or political subdivision of the state.

34 (4) "Point-of-sale terminal" means an electronic device
35 used to process credit card, debit card, or other similar charge
36 card payments at retail locations which is supported by networks
37 that enable verification, payment, transfer of funds, and
38 logging of transactions.

39 (2)-(4) "Major procurement" means a procurement for a
40 contract for the printing of tickets for use in any lottery
41 game, consultation services for the startup of the lottery, any
42 goods or services involving the official recording for lottery
43 game play purposes of a player's selections in any lottery game
44 involving player selections, any goods or services involving the
45 receiving of a player's selection directly from a player in any
46 lottery game involving player selections, any goods or services
47 involving the drawing, determination, or generation of winners
48 in any lottery game, the security report services provided for
49 in this act, or any goods and services relating to marketing and
50 promotion which exceed a value of \$25,000.

51 (5) "Retailer" means a person who sells lottery tickets on
52 behalf of the department pursuant to a contract.

53 (7)-(6) "Vendor" means a person who provides or proposes to
54 provide goods or services to the department, but does not
55 include an employee of the department, a retailer, or a state
56 agency.

57 Section 2. Present subsections (19) and (20) of section
58 24.105, Florida Statutes, are redesignated as subsections (20)

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59 and (21), respectively, and a new subsection (19) is added to
60 that section, to read:

61 24.105 Powers and duties of department.—The department
62 shall:

63 (19) Have the authority to create a program that allows a
64 person who is at least 18 years of age to purchase a lottery
65 ticket or game at a point-of-sale terminal. The department may
66 adopt rules to administer the program.

67 Section 3. Section 24.112, Florida Statutes, is amended to
68 read:

69 24.112 Retailers of lottery tickets; ~~authorization of~~
70 ~~vending machines; point-of-sale terminals to dispense lottery~~
71 ~~tickets.~~—

72 (1) The department shall promulgate rules specifying the
73 terms and conditions for contracting with retailers who will
74 best serve the public interest and promote the sale of lottery
75 tickets.

76 (2) In the selection of retailers, the department shall
77 consider factors such as financial responsibility, integrity,
78 reputation, accessibility of the place of business or activity
79 to the public, security of the premises, the sufficiency of
80 existing retailers to serve the public convenience, and the
81 projected volume of the sales for the lottery game involved. In
82 the consideration of these factors, the department may require
83 the information it deems necessary of any person applying for
84 authority to act as a retailer. However, the department may not
85 establish a limitation upon the number of retailers and shall
86 make every effort to allow small business participation as
87 retailers. It is the intent of the Legislature that retailer

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88 selections be based on business considerations and the public
89 convenience and that retailers be selected without regard to
90 political affiliation.

91 (3) The department may ~~shall~~ not contract with any person
92 as a retailer who:

93 (a) Is less than 18 years of age.

94 (b) Is engaged exclusively in the business of selling
95 lottery tickets; however, this paragraph may ~~shall~~ not preclude
96 the department from selling lottery tickets.

97 (c) Has been convicted of, or entered a plea of guilty or
98 nolo contendere to, a felony committed in the preceding 10
99 years, regardless of adjudication, unless the department
100 determines that:

101 1. The person has been pardoned or the person's civil
102 rights have been restored;

103 2. Subsequent to such conviction or entry of plea the
104 person has engaged in the kind of law-abiding commerce and good
105 citizenship that would reflect well upon the integrity of the
106 lottery; or

107 3. If the person is a firm, association, partnership,
108 trust, corporation, or other entity, the person has terminated
109 its relationship with the individual whose actions directly
110 contributed to the person's conviction or entry of plea.

111 (4) The department shall issue a certificate of authority
112 to each person with whom it contracts as a retailer for purposes
113 of display pursuant to subsection (6). The issuance of the
114 certificate may ~~shall~~ not confer upon the retailer any right
115 apart from that specifically granted in the contract. The
116 authority to act as a retailer may ~~shall~~ not be assignable or

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117 transferable.

118 (5) A ~~Any~~ contract executed by the department pursuant to
119 this section shall specify the reasons for any suspension or
120 termination of the contract by the department, including, but
121 not limited to:

122 (a) Commission of a violation of this act or rule adopted
123 pursuant thereto.

124 (b) Failure to accurately account for lottery tickets,
125 revenues, or prizes as required by the department.

126 (c) Commission of any fraud, deceit, or misrepresentation.

127 (d) Insufficient sale of tickets.

128 (e) Conduct prejudicial to public confidence in the
129 lottery.

130 (f) Any material change in any matter considered by the
131 department in executing the contract with the retailer.

132 (6) Each ~~Every~~ retailer shall post and keep conspicuously
133 displayed in a location on the premises accessible to the public
134 its certificate of authority and, with respect to each game, a
135 statement supplied by the department of the estimated odds of
136 winning a ~~some~~ prize for the game.

137 (7) A ~~No~~ contract with a retailer may not ~~shall~~ authorize
138 the sale of lottery tickets at more than one location, and a
139 retailer may sell lottery tickets only at the location stated on
140 the certificate of authority.

141 (8) With respect to any retailer whose rental payments for
142 premises are contractually computed, in whole or in part, on the
143 basis of a percentage of retail sales, and where such
144 computation of retail sales is not explicitly defined to include
145 sales of tickets in a state-operated lottery, the compensation

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146 received by the retailer from the department shall be deemed to
147 be the amount of the retail sale for the purposes of such
148 contractual compensation.

149 (9) (a) The department may require each ~~every~~ retailer to
150 post an appropriate bond as determined by the department, using
151 an insurance company acceptable to the department, in an amount
152 not to exceed twice the average lottery ticket sales of the
153 retailer for the period within which the retailer is required to
154 remit lottery funds to the department. For the first 90 days of
155 sales of a new retailer, the amount of the bond may not exceed
156 twice the average estimated lottery ticket sales for the period
157 within which the retailer is required to remit lottery funds to
158 the department. This paragraph does ~~shall~~ not apply to lottery
159 tickets that ~~which~~ are prepaid by the retailer.

160 (b) In lieu of such bond, the department may purchase
161 blanket bonds covering all or selected retailers or may allow a
162 retailer to deposit and maintain with the Chief Financial
163 Officer securities that are interest bearing or accruing and
164 that, with the exception of those specified in subparagraphs 1.
165 and 2., are rated in one of the four highest classifications by
166 an established nationally recognized investment rating service.
167 Securities eligible under this paragraph shall be limited to:

168 1. Certificates of deposit issued by solvent banks or
169 savings associations organized and existing under the laws of
170 this state or under the laws of the United States and having
171 their principal place of business in this state.

172 2. United States bonds, notes, and bills for which the full
173 faith and credit of the government of the United States is
174 pledged for the payment of principal and interest.

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175 3. General obligation bonds and notes of any political
176 subdivision of the state.

177 4. Corporate bonds of any corporation that is not an
178 affiliate or subsidiary of the depositor.

179

180 Such securities shall be held in trust and shall have at all
181 times a market value at least equal to an amount required by the
182 department.

183 (10) Each ~~Every~~ contract entered into by the department
184 pursuant to this section shall contain a provision for payment
185 of liquidated damages to the department for any breach of
186 contract by the retailer.

187 (11) The department shall establish procedures by which
188 each retailer shall account for all tickets sold by the retailer
189 and account for all funds received by the retailer from such
190 sales. The contract with each retailer shall include provisions
191 relating to the sale of tickets, payment of moneys to the
192 department, reports, service charges, and interest and
193 penalties, if necessary, as the department shall deem
194 appropriate.

195 (12) ~~No~~ Payment by a retailer to the department for tickets
196 may not shall be in cash. All such payments shall be in the form
197 of a check, bank draft, electronic fund transfer, or other
198 financial instrument authorized by the secretary.

199 (13) Each retailer shall provide accessibility for disabled
200 persons on habitable grade levels. This subsection does not
201 apply to a retail location that ~~which~~ has an entrance door
202 threshold more than 12 inches above ground level. As used in
203 ~~herein and for purposes of~~ this subsection only, the term

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204 "accessibility for disabled persons on habitable grade levels"
205 means that retailers shall provide ramps, platforms, aisles and
206 pathway widths, turnaround areas, and parking spaces to the
207 extent these are required for the retailer's premises by the
208 particular jurisdiction where the retailer is located.
209 Accessibility shall be required to only one point of sale of
210 lottery tickets for each lottery retailer location. The
211 requirements of this subsection shall be deemed to have been met
212 if, in lieu of the foregoing, disabled persons can purchase
213 tickets from the retail location by means of a drive-up window,
214 provided the hours of access at the drive-up window are not less
215 than those provided at any other entrance at that lottery
216 retailer location. Inspections for compliance with this
217 subsection shall be performed by those enforcement authorities
218 responsible for enforcement pursuant to s. 553.80 in accordance
219 with procedures established by those authorities. Those
220 enforcement authorities shall provide to the Department of the
221 Lottery a certification of noncompliance for any lottery
222 retailer not meeting such requirements.

223 (14) The secretary may, after filing with the Department of
224 State his or her manual signature certified by the secretary
225 under oath, execute or cause to be executed contracts between
226 the department and retailers by means of engraving, imprinting,
227 stamping, or other facsimile signature.

228 (15) A vending machine may be used to dispense online
229 lottery tickets, instant lottery tickets, or both online and
230 instant lottery tickets.

231 (a) The vending machine must:

232 1. Dispense a lottery ticket after a purchaser inserts a

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233 coin or currency in the machine.

234 2. Be capable of being electronically deactivated for a
235 period of 5 minutes or more.

236 3. Be designed to prevent its use for any purpose other
237 than dispensing a lottery ticket.

238 (b) In order to be authorized to use a vending machine to
239 dispense lottery tickets, a retailer must:

240 1. Locate the vending machine in the retailer's direct line
241 of sight to ensure that purchases are only made by persons at
242 least 18 years of age.

243 2. Ensure that at least one employee is on duty when the
244 vending machine is available for use. However, if the retailer
245 has previously violated s. 24.1055, at least two employees must
246 be on duty when the vending machine is available for use.

247 (c) A vending machine that dispenses a lottery ticket may
248 dispense change to a purchaser but may not be used to redeem any
249 type of winning lottery ticket.

250 (d) The vending machine, or any machine or device linked to
251 the vending machine, may not include or make use of video reels
252 or mechanical reels or other video depictions of slot machine or
253 casino game themes or titles for game play. This does not
254 preclude the use of casino game themes or titles on such tickets
255 or signage or advertising displays on the machines.

256 (16) The department, a retailer operating from one or more
257 locations, or a vendor approved by the department may use a
258 point-of-sale terminal to facilitate the sale of a lottery
259 ticket or game.

260 (a) A point-of-sale terminal must:

261 1. Dispense a paper lottery ticket with numbers selected by

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262 the purchaser or selected randomly by the machine after the
263 purchaser uses a credit card, debit card, or other similar
264 charge card issued by a bank, savings association, credit union,
265 or charge card company or issued by a retailer pursuant to part
266 II of chapter 520 for payment;

267 2. Recognize a valid driver license or use another age
268 verification process approved by the department to ensure that
269 only persons at least 18 years of age may purchase a lottery
270 ticket or game;

271 3. Process a lottery transaction through a platform that is
272 certified or otherwise approved by the department; and

273 4. Be in compliance with all applicable department
274 requirements related to the lottery ticket or game offered for
275 sale.

276 (b) A point-of-sale terminal does not reveal winning
277 numbers, which are selected at a subsequent time and different
278 location through a drawing by the Florida Lottery.

279 (c) A point-of-sale terminal, or any machine or device
280 linked to the point-of-sale terminal, may not include or make
281 use of video reels or mechanical reels or other video depictions
282 of slot machine or casino game themes or titles for game play.
283 This does not preclude the use of casino game themes or titles
284 on a lottery ticket or game or on the signage or advertising
285 displays on the terminal.

286 (d) A point-of-sale terminal may not be used to redeem a
287 winning ticket.

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



The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: October 28, 2015

I respectfully request that **Senate Bill #402**, relating to Point-of-Sale Terminals, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink, appearing to read "Garrett Richter".

Senator Garrett Richter
Florida Senate, District 23

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/4/15

Meeting Date

SB 402

Bill Number (if applicable)

Topic Point-of-Sale Terminals

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevi@aif.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/4/2015
Meeting Date

402
Bill Number (if applicable)

Topic POINT OF SALE

Amendment Barcode (if applicable)

Name SIATER BATHISS

Job Title _____

Address 215 S. MONROE ST
Street

Phone 850 251 7710

TALLAHASSEE FL 32301
City State Zip

Email swb@cavdenespartners.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing A I F

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/4/15

Meeting Date

402

Bill Number (if applicable)

Topic Point of sale

Amendment Barcode (if applicable)

Name Carlos Muñiz

Job Title _____

Address 215 S. Monroe St.

Phone 222-8900

Street

Tallahassee

FL

32301

Email cmuniz@mcguirewoods.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing AIF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

11.4.15

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

402
Bill Number (if applicable)

Meeting Date

Topic Point of Sale

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title Director of Government Affairs

Address 227 S. Adams St.

Phone

Tallahassee FL 32301

Email

Street

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-4-2015

Meeting Date

402

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St. Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/4/15

Meeting Date

SB 402

Bill Number (if applicable)

Topic POINT OF SALES TAX

N/A

Amendment Barcode (if applicable)

Name MIKE MANLEY

Job Title DIR. LEG. AFFAIRS FL LOTTERY

Address 250 MARRIOTT DR. Street

Phone 850 487-7729

TALLAHASSEE City

FL State

32301 Zip

Email MANLEYM@FLALOTTERY.COM

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing THE FLORIDA LOTTERY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Regulated Industries
ITEM: SB 402
FINAL ACTION: Favorable
MEETING DATE: Wednesday, November 4, 2015
TIME: 11:00 a.m.—1:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	11/04/2015 Amendment 399538 1 Margolis					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X			Abruzzo					
X		Bean						
X		Braynon						
X		Diaz de la Portilla						
	X	Flores						
X		Latvala						
X		Negron						
X		Richter						
		Sachs						
	X	Stargel						
X		Margolis, VICE CHAIR						
X		Bradley, CHAIR						
9	2							
Yea	Nay	TOTALS	-	UNF				
			Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable, UNF=Unfavorable, -R=Reconsidered, RCS=Replaced by Committee Substitute, RE=Replaced by Engrossed Amendment, RS=Replaced by Substitute Amendment, TP=Temporarily Postponed, VA=Vote After Roll Call, VC=Vote Change After Roll Call, WD=Withdrawn, OO=Out of Order, AV=Abstain from Voting



399538

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
11/04/2015	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Margolis) recommended the following:

Senate Amendment (with title amendment)

Delete lines 57 - 66

and insert:

Section 2. Present subsections (19) and (20) of section 24.105, Florida Statutes, are redesignated as subsections (21) and (22), respectively, and new subsections (19) and (20) are added to that section, to read:

24.105 Powers and duties of department.—The department shall:



399538

11 (19) Have the authority to create and administer a program
12 that allows a person who is 18 years of age or older to purchase
13 a lottery ticket or game at a point-of-sale terminal. The
14 department may adopt rules to administer the program.

15 (20) Have the authority to create and administer a program
16 that allows a person who is 18 years of age or older to make an
17 online purchase of a lottery ticket. The department may adopt
18 rules to administer the program.

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete lines 5 - 8

23 and insert:

24 Department of the Lottery to create and administer a
25 program that authorizes certain persons to purchase a
26 lottery ticket or game at a point-of-sale terminal;
27 authorizing the department to adopt rules; authorizing
28 the department to create and administer a program that
29 provides for the sale of lottery tickets through the
30 Internet; authorizing the department to adopt rules;
31 amending s. 24.112, F.S.;



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Communications, Energy, and Public Utilities
Fiscal Policy
Military and Veterans Affairs, Space, and
Domestic Security
Regulated Industries

SENATOR MARIA LORTS SACHS

Deputy Democratic Whip
34th District

The Honorable Rob Bradley, President
208 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

November 4, 2015

Dear Chair Bradley:

Please excuse my absence from Regulated Industries on Wednesday November 4th, 2015. Due to a personal commitment I am unable to attend.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Maria Sachs".

Senator Maria Sachs
District 34

REPLY TO:

- Delray Beach City Hall, 100 NW 1st Avenue, Delray Beach, Florida 33444 (561) 279-1427 FAX: (561) 279-1429
- 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Regulated Industries Committee

Judge:

Started: 11/4/2015 10:57:34 AM

Ends: 11/4/2015 11:22:32 AM

Length: 00:24:59

10:57:33 AM Recording Paused
11:00:48 AM Recording Resumed
11:02:19 AM Tab 1 SB 176 Senator Brandes
11:04:45 AM Roll call on SB 176
11:04:54 AM SB 176 Favorable
11:05:13 AM Tab 2 SB 402 Senator Richter
11:06:00 AM Amendment Barcode #399538
11:07:43 AM Senator Stargel
11:08:18 AM Senator Margolis responds
11:11:11 AM Senator Richter comments on amendment
11:12:30 AM Senator Margolis closes on amendment
11:13:05 AM Amendment failed
11:13:35 AM Senator Stargel
11:13:50 AM Senator Richter
11:14:01 AM Senator Stargel
11:14:17 AM Senator Richter
11:14:52 AM Department of Lottery spokesman, Mike Manley
11:15:27 AM Senator Stargel
11:17:17 AM Brian Pitts, Justice - 2- Jesus
11:20:24 AM Senator Richter closes on bill
11:20:43 AM SB 402 Favorable
11:21:53 AM Motion by Senator Flores for show voting on bill
11:22:10 AM Senator Margolis motion to vote on bill
11:22:11 AM Senator Margolis moved to rise.