

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Community Affairs Committee

BILL: SB 2148

SPONSOR: Senator Argenziano

SUBJECT: Bingo

DATE: April 16, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Imhof	Imhof	RI	<b>Fav/ 3 amendments</b>
2.	Herrin	Yeatman	CA	<b>Favorable</b>
3.			GA	
4.				
5.				
6.				

## Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

### I. Summary:

The bill amends s. 849.0931, F.S., relating to the conduct of bingo games to provide the following:

- Defines the terms “bingo session or session,” “calendar week,” “day,” and “member.”
- Amends the definitions for the terms “bingo,” and “bingo card.”
- Raises jackpot limits to \$500 from \$250 and it limits all other games to pay no more than \$100 from \$50.
- Allows one jackpot per session to be a “progressive jackpot” with a payout of 65 percent of the proceeds.
- Provides for the valuation of merchandise and other non-cash prizes.
- Prohibits free bingo games, except as provided in s. 489.0931(13), F.S.
- Limits the number of bingo games that may be conducted per session and per day.
- Permits persons involved in the conduct of a bingo game to be compensated.
- Provides for the inspection of game objects before the commencement of any bingo game.
- Provides for the verification of winning cards or sheets for any individual.

- Permits an organization or person involved in the conduct of the bingo game to hold or reserve a seat for a person not present if the player has paid the appropriate charge for the occupancy of such seat.
- Requires that accommodations in accordance with the Americans with Disabilities Act must be made for persons with disabilities.
- Prohibits any person who has been convicted within the last 10 years of a felony including fraud, embezzlement, gambling, theft, or racketeering, from conducting or assisting in the conduct of a bingo game, or to be a bingo lessor or employed by a bingo lessor.
- Prohibits a bingo organization from lending, selling, or allowing its identity to be used by anyone for the purpose of conducting bingo.
- Prohibits persons under the age of 18 from conducting, assisting in the conduct, or playing bingo on any bingo premises.
- Provides for state preemption of bingo regulation.

The bill also amends s. 849.161, F.S. to permit an authorized bingo facility to operate amusement games or machines.

This bill substantially amends sections 849.0931 and 849.161 of the Florida Statutes.

## **II. Present Situation:**

Chapter 849, F.S., contains specific exceptions to the general gambling prohibition and authorizes certain gambling activities such as, cardrooms, bingo, penny-ante poker, arcade amusement games, and amusement games and machines. Specifically, s. 849.0931, F.S., authorizes the playing of charitable bingo.

Bingo was authorized in 1967 by the Florida Legislature to provide charitable, nonprofit, and veterans' organizations a way to raise money for their charitable projects and activities. No statutory provision exists for statewide enforcement or interpretation of the bingo law. Enforcement of the law is the responsibility of local law enforcement agencies. Several counties have passed their own bingo ordinances to address problems associated with the game.

Section 849.0931, F.S., authorizes bingo games to be conducted for money by certain organizations under narrowly prescribed parameters. Pursuant to sections 849.0931(1)(c) and (4), F.S., organizations which are authorized to conduct bingo games include:

1. Charitable, nonprofit, and veterans' organizations, which are defined as tax-exempt under 501 (c) of the Internal Revenue Code of 1954, or section 528 of the Internal Revenue Code of 1986, and have been in existence and active for at least three years; and,
2. Condominium associations, cooperative associations, homeowners' associations as defined in s. 617.301, F.S., mobile home owners' associations, and a group of residents of a mobile home park or recreational vehicle park, as defined in chapters 723 and 513, F.S.

These organizations must be directly involved in the operations of the bingo game and may not act merely as sponsors. Members of the organization must conduct the game and cannot be

compensated in any way for this role. In addition, the organization which conducts the game must be “located in the county, or within a 15 mile radius of, where the bingo game is located,” as provided in section 894.0931(9), F.S. The property where the games are held must be owned or leased by the authorized organization or owned by the charitable organization that will benefit from the proceeds of the game.

Section 849.0931, F.S., defines how the bingo proceeds, which remain after prizes have been awarded, can be used. Charitable, nonprofit, and veterans’ organizations must donate the proceeds to the organizations listed endeavors. Net proceeds generated from bingo games conducted by condominium associations, cooperative associations, homeowners’ associations, mobile home owners’ associations, and a group of residents of a mobile home park or recreational vehicle park, however, must be donated to a charitable tax-exempt organization or returned to the players in the form of prizes. In addition, these associations have the option of carrying over the proceeds for use as prize money in subsequent games, with the proviso that players cannot be charged to participate in the subsequent games until these excess proceeds are exhausted. The statute also establishes restrictions on bingo jackpots. No jackpot may exceed the value of \$250 in actual money or its equivalent. There cannot be more than three jackpots on any one day of play and all other game prizes may not exceed \$50. An organization cannot conduct bingo more than two days per week.

Participants in bingo games must be at least 18 years old. The organization which is conducting the game “may refuse entry to any person...but such refusal of entry shall not be on the basis of race, creed, color, religion, sex, national origin, marital status, or physical handicap.”

Some counties and municipalities further regulate the playing of bingo and charge fees.

### **Coin Operated Amusement Games or Machines**

Arcade amusement centers having coin-operated amusement games or machines are exempted<sup>1</sup> from the prohibitions on gambling under ch. 849, F.S., as long as the games are games of skill.<sup>2</sup> An arcade amusement center as used in s. 849.161, F.S. means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.<sup>3</sup> The person playing or operating the game or machine is entitled to receive points or coupons which may be exchanged for merchandise only. Merchandise does not include cash and alcoholic beverages. The cost value of the merchandise or prize awarded in exchange for such points or coupons may not exceed 75 cents on any game played.<sup>4</sup>

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<sup>1</sup> Coin-operated games of chance (also known as slot machines) are not exempted. *See* s. 849.16, F.S.

<sup>2</sup> The Second District Court of Appeal has held that the Legislature’s use of only the term “coin” in arcade amusement center exception for machines which operate by means of insertion of a coin reflects that use of coin falls within the exception to the prohibition against gambling, and since defendants’ machines did not accept quarters and were operated by cash bills, defendants’ conduct was not protected by the exception to statutory gambling prohibitions. (*State v. Cyphers*, 873 So. 2d 471 (Fla. 2d DCA 2004). In 1995, the Attorney General opined that under s. 849.161, F.S., the playing of an amusement game or machine does not appear to require that the outcome of the game be dependent solely on skill, though skill must be a factor. Fla. AGO 95-27.

<sup>3</sup> Section 849.161(2), F.S.

<sup>4</sup> Section 849.161(1)(a) 1., F.S.

Also excluded from this exemption are those coin operated amusement games or devices designed and manufactured only for amusement purposes which by application of skill entitle the player to replay the game or device at no additional cost, if the game or device:

- can accumulate and react to no more than 15 free replays;
- can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay;
- can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as a gambling device in 24 U.S.C. s. 1171, which requires identification of each device by permanently affixing seriatim numbering and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under s. 1178.

Section 849.161(1)(a)2., F.S., also provides an exemption for retail dealers who operate truck stops as defined in ch. 336, F.S., and operate a minimum of six functional diesel fuel pumps. The truck stops can have amusement games or machines that operate by inserting a coin or other currency and, by application of skill, entitle a person to win points or coupons. The points or coupons can be redeemed for merchandise limited to noncash prizes, toys, novelties, and Florida Lottery products. Alcoholic beverages are excluded and the value of the points or coupons may not exceed 75 cents per game. The same exceptions for gambling devices and video poker games noted above also apply to this exemption.

### III. Effect of Proposed Changes:

**Section 1** amends s. 849.0931, F.S., to revise the definition of “bingo” to provide that players must cover or mark announced numbers on their cards. It amends the definition of “bingo card” to allow the electronic equivalent of a paper or pasteboard card to be used in a bingo game. It provides that each set of numbers on a bingo card shall not be less than 24 playing numbers. It allows for more than one set of numbers on a card creating multiple bingo cards. Multiple sets of bingo numbers on a single card are considered a single bingo card. The bill requires that bingo cards or the electronic equivalent be part of a group with recorded or programmed numbers to ensure that duplicate cards are not sold in any game.

“Bingo session or session” is defined to mean a series of bingo games played in a day or part of a day. It limits the organizations to one bingo session per day and two bingo sessions per calendar week. The bill does allow that a session in progress past midnight is to be considered played on the day the session began. It deletes the current definition for “session” that defines the term to mean a designated set of games played in a day or part of a day.

“Calendar week” is defined as 12:01 a.m. on Sunday through midnight on the following Saturday. “Day” is defined as beginning at 12:01 a.m. and ending at 12:00 midnight.<sup>5</sup>

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<sup>5</sup> *Merriam-Webster’s Collegiate Dictionary*, Eleventh Edition defines week in this context as “a 7-day cycle beginning on Sunday and ending on Saturday” and a day as “the mean solar day of 24 hours beginning at mean midnight.” Section 211.01(5), F.S., defines “day means the standard calendar period of 24 consecutive hours ending at 12 o’clock midnight.” Week is not defined in this context in the Florida Statutes.

The bill defines “member” to mean an individual who has qualified and has been granted membership in a nonprofit organization authorized to conduct bingo and who has legal residence in this state. A member who is conducting or assisting on a bingo game may not participate in that game and only members may assist in conducting a game. A member must be at least 18 years old and meet the criteria for membership of organization. An organization may not waive membership criteria to allow a person to conduct a bingo game. It conforms the limitation of prize and jackpot provisions to bingo “sessions.”

#### *Jackpot Limits*

The jackpot limits are raised to \$500 from \$250 and all other game limits are raised from \$50 to no more than \$100. The bill allows one jackpot per session to be a “progressive jackpot” with a payout of 65 percent of the proceeds. It allows a consolation prize of no more than \$100 if the progressive jackpot is not won.

Current law permits no more than three jackpots in any one session. The bill deletes this limit and allows one additional jackpot per session known as progressive jackpot game with a prize payout of 65 percent of proceeds. The bill would permit a consolation prize of no more than \$100, if the progressive jackpot is not won in a session. The bill provides a method for repeating games until a “cover-all” winner of the progressive jackpot is determined. An organization may not permit its progressive jackpot to be played during another organization’s session, and each organization must have its own and independent jackpot. Organizations must maintain records of such progressive games for audit purposes.

#### *Non-cash Prizes*

The bill provides that, if merchandise or other non-cash prizes are awarded, the value of the merchandise or other non-cash prize shall be the purchase price of the merchandise regardless of whether the merchandise was purchased or donated. It requires that any merchandise that is offered as a bingo prize must have been paid in full before being offered as a prize. The bill also applies the prize limitation to all bingo games.

#### *Free Bingo Games*

The bill prohibits free bingo games, except as provided in s. 849.0931(13), F.S., which provides for a free bingo game when a game is canceled due to a game malfunction.

#### *Conduct of Bingo Games*

The bill provides that each bingo game can only be conducted by a single organization. It also provides that an organization cannot conduct bingo more than two days per week with no more than two sessions per day. The bill also limits the conduct of bingo games to two sessions per day in any authorized premises.

Under current law, each person involved in the conduct of a bingo game may not be compensated in any way for the operation of a bingo game. The bill deletes this restriction.

Current law requires that, before the commencement of any bingo game, the objects to be placed in the bingo receptacle must be inspected in the presence of a disinterested person. The bill changes this requirement and requires inspection in the presence of two or more randomly selected players.

Current law requires that winning cards or sheets must be verified by an officer of the licensee if the caller is the person designated as the member in charge for the occasion. The bill changes this requirement to provide that the verification must be in the presence of another individual.

Under current law, the organization or person involved in the conduct of the bingo game may not hold or reserve a seat for a person not present. The bill would permit seats to be held or reserved for a player if the player has paid the appropriate charge for the occupancy of such seat, but no member of the sponsoring organization may reserve or make a payment for the purpose of reserving a seat for any player. The bill deletes the provision in current law that prohibits the holding, setting aside, or reserving of any cards from one session to another for any player.

The bill requires that accommodations must be made in accordance with the Americans with Disabilities Act for persons with disabilities.

The bill prohibits any person who has been convicted within the last 10 years of a felony including fraud, embezzlement, gambling, theft, or racketeering, from conducting or assisting in the conduct of a bingo game, or to be a bingo lessor or employed by a bingo lessor.

The bill prohibits a bingo organization from lending, selling, or allowing its identity to be used by anyone for the purpose of conducting bingo.

It also prohibits any person who conducts a bingo game from participating as a player during that game, but the person conducting the bingo game may assist a player by monitoring the player's bingo cards to allow the player to use other facilities on the bingo premises.

The bill prohibits persons under the age of 18 from conducting, assisting in the conduct, or playing bingo on any bingo premises.

#### *State Preemption*

The bill amends subsection (14) s. 849.0931, F.S., to provide for state preemption of bingo regulation. Except for zoning and matter relating to the safety, health, and welfare of bingo patron, the bill preempts the regulation of bingo to the state. If a local government has any existing regulation or ordinance that was adopted before March 1, 2005, that restrict or limit the number of days of operation of bingo facilities, the ordinance may be amended to conform with s. 849.0931, F.S. The bill provides that all regulations and ordinances provided for in s. 849.0931(14), F.S., shall remain in full force and effect until repealed by the enacting county or municipality.

#### *Amusement Games or Machines*

**Section 2** amends s. 849.161, F.S., which pertains to amusement games or machines, to provide that ch. 849, F.S., is not applicable to any bingo facility authorized by s. 849.0931(12)(a)-(d), F.S. This provision would permit an authorized bingo facility to operate amusement games or machines.

**Section 3** provides the bill would take effect July 1, 2005.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.





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## VIII. Summary of Amendments:

**Barcode 252890 by Regulated Industries:**

Defines the term “calendar week” as beginning on Sunday at midnight.

**Barcode 271914 by Regulated Industries:**

Defines the term “day” to mean the standard calendar period of 24 consecutive hours ending at midnight.

**Barcode 170456 by Regulated Industries:**

Corrects a cross-reference by replacing the statutory reference to 24 U.S.C. s. 1171 with 15 U.S.C. s. 1171.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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