

The Florida Senate
PROFESSIONAL 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: Regulated Industries Committee

BILL: CS/SB 500

INTRODUCER: Regulated Industries Committee and Senator Saunders

SUBJECT: Instant Bingo

DATE: February 28, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.			GA	
3.				
4.				
5.				
6.				

I. Summary:

The bill provides for the playing of instant bingo at the already authorized locations provided in s. 849.0931, F.S. It provides new definitions that describe the tickets and the game and gives specifications for how the tickets must look and be manufactured. It requires that the Department of the Lottery select a list of instant bingo ticket manufacturers qualified under the standards of the North American Gaming Regulators Association that distributors or charitable, nonprofit, or veterans organizations may purchase, distribute, or sell.

This bill substantially amends section. 849.0931 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, card rooms, 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."

According to the League of Cities, some counties and municipalities further regulate the playing of bingo and charge fees. For example, the City of Daytona Beach prohibits the playing of bingo on Wednesday nights, and limits the times and number of sessions, limits the jackpots, and charges a fee.¹ Section 120.60, F.S., provides procedures when an agency receives an application for a license.

¹ City of Daytona Beach, Ord. No. 00-285, § 1, 7-5-2000.

The Florida Lottery was established by the Legislature in 1987, codified as Chapter 24, F.S., in order to implement Article X, Section 15 of the State Constitution.² Chapter 24, F.S., was enacted to enable “the people of the state to benefit from significant additional moneys for education and also enables the people of the state to play the best lottery games available.”³

The National Gaming Regulators Association “is a non profit professional association of gaming regulators throughout North America. The organization brings together agencies that regulate gaming activities and provides them a forum for the mutual exchange of regulatory information and techniques.”⁴ The Florida Department of the Lottery is not a member of the association. The National Gaming Regulators Association adopted standards for “pull-tabs” or instant bingo type games on October 12, 1991.⁵

The following states have authorized “instant bingo” games including Arizona,⁶ Delaware,⁷ Kansas,⁸ Maryland,⁹ Ohio,¹⁰ Texas,¹¹ and Virginia.¹² The Indian Gaming Regulatory Act classifies “pull-tab” bingo under its Class II gaming provisions.¹³ Idaho¹⁴ North Carolina¹⁵ do not include “instant bingo” games in the definition of bingo games.

III. Effect of Proposed Changes:

The bill creates a short title that provides that the act may be cited as the “Evelyn Wiesman-Price Act.

Definitions

The bill adds the definition of “deal” and defines it as a separate set or package of not more than 4000 instant bingo tickets in which the predetermined minimum prize payout is at least 65 percent of the total receipts from the sale of the entire deal.

The bill adds the definition of “flare” and defines it as the board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it:

- The game name;
- The manufacturer’s name or distinctive logo;
- The form number;
- The ticket count;

² Article X, Section 15 of the State Constitution authorizes *state-operated* lotteries.

³ See s. 24.102(1), F.S.

⁴ <http://www.nagra.org/> (last visited March 8, 2007).

⁵ <http://www.nagra.org/associations/5497/files/ProposedNAGRAPulltabStandards1.doc> (last visited March 8, 2007).

⁶ See Arizona Revised Statutes, s. 5-22.

⁷ See 28 Del. Code Ann. s. 1102.

⁸ See Kan. Stat. Ann. s. 79-4701.

⁹ See Md. Code, Crim. Code s. 13-407.

¹⁰ See Baldwin’s Ohio Rev. Code Ann. s. 2915.01.

¹¹ See Vernon’s Tex. Code Ann., Occupations Code, s. 2001.002.

¹² See Va. Code Ann. s. 18.2-340.16.

¹³ 25 U.S.C. s. 2703(7)(A).

¹⁴ See Idaho Code Ann. s. 67-7702.

¹⁵ See N. C. Gen. Stat. Ann. s. 14-309.6.

- The prize structure, including the number of symbols or number combinations for winning instant bingo tickets by denomination, with the respective winning symbols or number combinations;
- The cost per play; and
- The serial number of the game.

The bill adds the definition of “instant bingo” and defines it as a form of bingo that allows a player to open and remove a cover off a ticket that reveals whether the ticket is an instant prize winner or only contains numbers, letters, objects, or patterns without a prize.

The bill makes nonsubstantive conforming changes to include “instant bingo” throughout s. 849.0931, F.S.

The bill amends s. 849.0931(5), (6), and (7) F.S., to provide that instant bingo prizes are limited to those displayed on the ticket or game flare and the playing of instant bingo is not limited by the number of days per week which an organization can conduct bingo games.

Requirements for instant bingo

The bill creates s. 849.0931(13), F.S., to provide that:

- The cost of instant bingo tickets may not exceed \$1 and must be sold at the price printed on the ticket or game flare;
- The tickets may not be given away for free and no discounts are permitted for purchases of multiple tickets;
- Each deal of instant bingo tickets must have the same serial number and may not be repeated by the manufacturer on the same form for three years;
- The serial number for each deal must be clearly and legibly placed on the outside of each deal’s package, box or other container;
- The tickets must comply with the applicable standards for pull-tabs of the North American Gaming Regulators Association if they are manufactured, sold, or distributed in Florida;
- Except for the standards provided by the North American Gaming Regulators Association, an instant bingo ticket must:
 - Not be manufactured so that the ticket can be distinguished as a winning or losing ticket without opening it;
 - Use at least two-ply paper stock construction so the ticket is opaque;
 - Have a form number, the deal’s serial number, and the name or logo of the manufacturer conspicuously printed on the face or cover;
 - Have a form of winner protection allowing the organization to verify and authenticate the ticket which includes having the manufacturer provide a written description of the protection for each deal of tickets.
- Each manufacturer and distributor that sells or distributes instant bingo tickets to charitable, nonprofit, or veterans’ organizations must prepare an invoice that contains the following information:
 - The date of sale;

- The form number and serial number of each deal sold;
- The number of instant bingo tickets in each deal sold;
- The name of the distributor or organization to which each deal is sold;
- The price of each deal sold;
- The information on the invoice must be maintained by the manufacturer or distributor for three years.
- The invoice, or a true and accurate copy must be on the premises where the tickets or deals are sold or in play;
- The Department of the Lottery must keep a list of instant bingo ticket manufacturers qualified under the standards of the North American Gaming Regulators Association that are authorized to sell instant bingo tickets in Florida. The department must process all applications and place the manufacturers on a list as required by s. 120.60, F.S.;
- A distributor or a charitable, non profit, or veterans organization may only purchase, distribute or sell tickets that are manufactured by qualified instant bingo manufacturers on the list issued by the department.

The bill reenacts ss. 718.114 and 723.079(8), F.S. relating to condominium and homeowners' associations to incorporate the amendment to s. 849.0931, F.S.

The bill provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other:

The Department of Lottery provided the following constitutional analysis:

Article X, Section 7 of the State Constitution prohibits lotteries, other than the types of pari-mutuel pools authorized by general law on the effective date of the constitutional revision. The Florida Supreme Court held bingo as an exception to the prohibition, stating that the bingo law was a "contemporaneous construction" of the word "lottery." A further amendment to the constitution was adopted in 1986, Article X, Section 15, which authorized *state operated* lotteries.

Chapter 849, Florida Statutes, provides the codification of these prohibitions and contains specific exceptions which authorize gambling activities such as card rooms, bingo, and penny-ante poker.

This bill proposes to allow the sale of instant bingo tickets, which appear to be similar to instant lottery tickets sold by the state lottery and, therefore, may be subject to a constitutional challenge.

It is important to note that several state courts have reached different conclusions on whether the adoption of instant bingo is constitutional.

In California, the legislature statutorily expanded the definition of the term “bingo” to include “punchboard cards” (i.e. instant bingo). The constitutionality of this act was challenged because the term bingo had already been defined more narrowly by enabling legislation that was passed prior to and contingent on the adoption of the constitutional provision allowing charitable bingo.

In *People v. 8,000 Punchboard Card Devices*, 142 Cal. App. 3rd 618 (Ct. App., 1st Dist. Div. 4, (AL), the issue before the court was whether the amended definition was in violation of the constitutional amendments intent. The court held the act was constitutional. The court explained that because the state constitution has a limit on legislative power that statutory construction of a word is to be given substantial deference. More importantly, the court concluded that there was no common meaning of the word bingo and held that “punchboard bingo” was not “unreasonable or clearly inconsistent” with the constitutional provision.

In contrast to the California First District Court of Appeals holding, two later state Supreme Court cases in Kansas and Alabama have found laws unconstitutional that sought to expand the definition of bingo to include “instant bingo.” Like the California Legislature, the Kansas Legislature had adopted a statutory provision to expand the definition of bingo to include “instant bingo.”

The Kansas Supreme Court held the act to be unconstitutional, stating that although the state constitution grants the legislature broad powers to define bingo, in doing so, definitions adopted must bear reasonable and recognizable similarity to traditional bingo and other bingo-type games. *Kansas v. Parrish*, 256 Kan. 746 (Kan. 1994)¹⁶. *see also Piedmont v. Evans*, 642 So.2d 435 (Ala. 1994) (The Alabama Supreme Court held that “instant bingo” was an illegal lottery and the city ordinance adopting it was unconstitutional.)

Like Florida, the California, Kansas, and Alabama state constitutions had expressly prohibited lotteries or non-state lotteries, and each state had adopted constitutional or statutory provisions allowing charitable bingo.

¹⁶ The Kansas Constitution specifically authorized the bingo games in Art. 15, s. 3a. This section was amended by the electors at the general election held on April 4, 1995 which added a specific authorization for “instant bingo.”

Prior to the 2002 Legislative Session, Attorney General Bob Butterworth and Governor Jeb Bush in a joint letter to then Speaker Feeney, expressed that expanding the definition of bingo to include instant bingo “runs afoul of the constitutional prohibition of lotteries and can only be permitted by amending the Constitution.”(6) Whether the current Governor’s opinion remains the same, or the current Attorney General holds the same legal opinion as his predecessor, is undetermined.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Department of Lottery, the addition of pull tab bingo tickets is expected to generate additional revenue for the various organizations conducting bingo and, as a consequence, is expected to generate additional revenue for the various charities supported by these organizations.

C. Government Sector Impact:

The Department of Lottery states that it has not yet been determined how many new employees the Lottery would need in order to implement the bill’s provisions effectively. They did provide an initial estimate that would require three FTE’s to provide which would include one manager, one analyst, and one administrative assistant costing \$201,000.00 annually. The department stated that unless a license fee is in place to cover the operating needs, the funds would be taken from the Lottery’s expense fund which would in turn reduce the total amount given to The Educational Enhancement Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the Department of the Lottery to keep a list of qualified instant bingo ticket manufacturers. It does not provide any provisions regarding application or licensure except for the general provisions in s. 120.60, F.S.

VIII. Summary of Amendments:

None.

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