

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 815 Bingo
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Garcia
TIED BILLS: IDEN./SIM. BILLS: CS/SB 0364

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Insurance, Business & Financial Affairs Policy Committee, 8 Y, 6 N, As CS, Marra, Cooper.

SUMMARY ANALYSIS

Instant bingo, also known as pull tabs, is a game played using a physical card. The player removes a cover, or covers, from the card to reveal pictures, numbers or letters, some combinations of which have been designated as prize winners.

Certain groups, including nonprofit organizations, condominium associations and homeowners' associations, are authorized to offer instant bingo.

In some states, instant bingo tickets may be dispensed from a machine. Instant bingo dispensers vary from low-tech vending machines, which dispense tickets from a preprinted roll, to high-tech games with features allowing faster and more engaging play. The Florida Attorney General has issued an opinion that instant bingo ticket dispensers would meet the definition of slot machines, and therefore, are illegal.

The bill would authorize the use of an instant bingo ticket dispenser to dispense instant bingo tickets. The bill defines 'instant bingo ticket dispenser' to require the device have the following characteristics:

- Dispenses an instant bingo ticket as the sole item of value dispensed.
Is activated upon the insertion of United States currency,
Performs no gaming functions,
Requires a winning ticket to be paid by a bingo game operator,
Is capable of recording each ticket dispensed, the number of coins or amount of currency received for each ticket, and totals of each for all tickets dispensed,
Does not contain a video display monitor visible to the customer or generate noise,
Is incapable of determining whether a dispensed bingo ticket is a winning or losing ticket,
Is incapable of simulating or displaying an interactive game of skill or chance to represent a winning or losing outcome,
Is incapable of simulating or displaying rolling or spinning wheels, and
Is not part of an electronic network.

The bill exempts such dispensers from regulation as a slot machine.

The bill may have an insignificant impact on the Department of Lottery sales of scratch-off lottery tickets and other products, but such impact is likely insignificant.

The bill provides an effective date of July 1, 2010.

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

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## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Bingo**

The Legislature authorized bingo as an exception to gambling prohibitions in 1967.<sup>1</sup> Bingo is limited to charitable, nonprofit and veterans' organizations. There is no statewide oversight of bingo; local law enforcement enforces the bingo laws.

To be eligible to offer bingo to raise money, organizations must be

- a 501(c)3 exempt organization, engaged in charitable, civic, community, benevolent, religious or scholastic works or other similar activities, and have been in existence for 3 years, or
- a condominium association, cooperative association, homeowners' association, mobile home owners' association, group of residents of a mobile home park as defined in chapter 723, or group of residents of a mobile home park or recreational vehicle park as defined in chapter 513.

The organization must directly conduct – not simply sponsor – the game. The property where the bingo game is held must be owned or leased by the authorized organization.

Bingo players must be at least 18 years old.

Intentional violations of the bingo statute are punished as first-degree misdemeanors.

##### **Instant Bingo**

Instant bingo, also known as pull tabs, is a game played using a physical card. The player removes a cover, or covers, from the card to reveal pictures, numbers or letters, some combinations of which have been designated as prize winners.

In 2007, the Legislature authorized instant bingo. Organizations eligible to conduct traditional bingo are also eligible to conduct instant bingo.

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<sup>1</sup> Section 849.0931, F.S. The law survived a challenge as an unconstitutional lottery. Greater Loretta Improvement Assoc. v. State, 234 So. 2d 665 (1970).

The instant bingo game must meet certain requirements, including:

- Instant bingo must be offered at the same place traditional bingo is offered.
- Tickets must be sold at the price printed on the ticket, not to exceed \$1.
- A deal of instant bingo tickets may not exceed 4,000 tickets.
- Each ticket in a deal must bear the same serial number.
- The predetermined minimum prize payout must be at least 65%.
- Outcomes constituting wins must be posted before the sale of any ticket from the deal.

Instant bingo tickets must also meet manufacturing requirements, including:

- It must be impossible to identify whether a ticket is a winner until opened.
- It must be made of at least 2-ply paper and be opaque.
- It must comply with standards adopted by the North American Gaming Regulators Association (NAGRA).

Under federal law, instant bingo is taxed as Unrelated Business Taxable Income because the game does not meet the definition of bingo as provided in the “bingo game exception.”<sup>2</sup>

Florida does not collect taxes on traditional or instant bingo.

### **Ticket Dispensers as Slot Machines**

Instant bingo dispensers vary from low-tech vending machines, which dispense tickets from a preprinted roll, to high-tech games with features allowing faster and more engaging play,<sup>3</sup> such as:

- Scanning the ticket to determine whether it is a winning ticket, then displaying a game of slots, or other game of chance, to depict the winning outcome to the player;
- Printing tickets upon sale from a cartridge within the machine; and/or
- Electronically tabulating a player’s winnings and printing a final receipt when the player “cashes out.”

Slot machine, under Florida law, is defined to include any machine or device that includes the following elements:

1. Operates by insertion of money or any object;
2. The outcome is determined by any element of chance or unpredictability (from the player’s standpoint);
3. The player stands to receive, or become entitled to receive, money, anything of value or additional plays.

The sale of any merchandise along with the chance to win does not exempt a machine.<sup>4</sup>

The Florida Attorney General issued an opinion<sup>5</sup> that instant bingo ticket dispensers would meet the definition of slot machines, and therefore, are illegal.<sup>6</sup>

### **Proposed Changes**

The bill would authorize the use of an instant bingo ticket dispenser to dispense instant bingo tickets. The bill defines ‘instant bingo ticket dispenser’ to require the device have the following characteristics:

- Dispenses an instant bingo ticket as the sole item of value dispensed.

<sup>2</sup> See Julius M. Israel Lodge of B’nai B’rith No. 2113 v. Commissioner, 98 F.3d 190 (5<sup>th</sup> Cir. 1996); 26 U.S.C. s. 513(f).

<sup>3</sup> See Chesapeake Amusements v. Riddle, 363 MD. 16 (2001), for a review of types of games.

<sup>4</sup> Kirk v. Morrison, 108 Fla. 144, 146-147, (1933)(“A ‘slot machine’ is a gambling device where its operation is such that the player in any event will receive something, but stands a chance to win something in addition.”).

<sup>5</sup> Opinions of the Attorney General are advisory and persuasive, but are not binding law. Abreau v. Cobb, 670 So. 2d 1010, 1012 (Fla. 3rd DCA 1996).

<sup>6</sup> Fla. AGO 2008-35 (July 8, 2008); Cf. Chesapeake Amusements v. Riddle, 363 MD. 16 (2001)(Instant bingo dispenser that dispensed tickets off of a preprinted reel was not a slot machine as there was no element of chance inherent in the machine.)

- Is activated upon the insertion of United States currency,
- Performs no gaming functions,
- Requires a winning ticket to be paid by a bingo game operator,
- Is capable of recording each ticket dispensed, the number of coins or amount of currency received for each ticket, and totals of each for all tickets dispensed,
- Does not contain a video display monitor visible to the customer or generate noise,
- Is incapable of determining whether a dispensed bingo ticket is a winning or losing ticket,
- Is incapable of simulating or displaying an interactive game of skill or chance to represent a winning or losing outcome,
- Is incapable of simulating or displaying rolling or spinning wheels, and
- Is not part of an electronic network.

The bill exempts such dispensers from regulation as a slot machine.

**B. SECTION DIRECTORY:**

Section 1 amends s. 849.0931, F.S., to permit instant bingo tickets to be dispensed by an electronic or mechanical device and exempts such a device from regulation as a slot machine.

Section 2 provides an effective date of July 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

Any increase in gaming activities may affect state lottery sales. The bill authorizes instant bingo tickets to be purchased from dispensers. The lottery recently began selling lottery scratch-off tickets using dispensers and experienced a marked increase in sales. However, instant bingo ticket dispensers will only be located in nonprofit organizations, so any impact on lottery sales would be expected to be minimal.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Allowing the use of instant bingo ticket dispensers may increase sales and decrease personnel costs in eligible establishments.

**D. FISCAL COMMENTS:**

The bill may have an insignificant impact on the Department of Lottery sales of scratch-off lottery tickets and other products, but such impact is likely insignificant.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Sales Tax

The Department of Revenue reports:

Section 212.0515, F.S., requires sales tax to be remitted on sales of ... tangible personal property through vending machines. A 'vending machine' is defined as a machine, operated by currency ... which dispenses ... items of tangible personal property. [The bill's instant bingo dispensers] will fall within the definition of 'vending machine' and will be subject to [sales] tax. If it is not the intent of the sponsor for sales tax to be remitted on instant bingo tickets sold through machines, than language should be added to the bill to clarify that intent.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Insurance, Business and Financial Affairs Policy Committee met, adopted a strike-all amendment, and passed the bill as a Committee Substitute.

The CS clarified what sorts of characteristics an instant bingo ticket dispenser could and could not have in order to be exempt from prohibition as a slot machine. The CS defined 'instant bingo ticket dispenser' to require the device to have the following characteristics:

- Dispenses an instant bingo ticket as the sole item of value dispensed.
- Is activated upon the insertion of United States currency,
- Performs no gaming functions,
- Requires a winning ticket to be paid by a bingo game operator,
- Is capable of recording each ticket dispensed, the number of coins or amount of currency received for each ticket, and totals of each for all tickets dispensed,
- Does not contain a video display monitor visible to the customer or generate noise,
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