

**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 Rules Committee

BILL: SB 418

INTRODUCER: Senator Flores

SUBJECT: State Lotteries

DATE: March 14, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Young/Harrington</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Pugh/Gault</u>	<u>Cooper</u>	<u>CM</u>	<b>Favorable</b>
3.	<u>Pugh/Gault</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Florida requires state lottery retailers to make their retail locations accessible to disabled patrons, and Department of the Lottery rules require retailers to be compliant with the federal Americans with Disabilities Act. Current Department of the Lottery rules also give players, disabled or not, the option to tell lottery retailers their selections, rather than mark play slips.

SB 418 will require lottery retailers to assist blind or visually impaired players, at their request, in filling out a lottery ticket. The bill also specifies that a retailer or a retailer’s employee will not be held liable for a scrivener’s error causing a mismarked ticket, absent a court finding of intentional fraud or malice.

The bill takes effect July 1, 2011.

SB 418 amends s. 24.112, F.S.

**II. Present Situation:**

General Background

The Department of the Lottery (department) is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., provides legislative purpose and intent in regard to the lottery.

It specifies, in part:

“The purpose of this act is to implement s. 15, Art. X of the State Constitution in a manner that enables 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.”

That section also specifies that the intent of the Legislature was “[t]hat the lottery games be operated by a department of state government that functions as much as possible in the manner of an entrepreneurial business enterprise.” Additionally, it requires the department to be a self-supporting, revenue-producing enterprise.

Another provision, s. 24.104, F.S., requires the department to operate the state lottery “so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens.”

#### Assistance for Disabled

Section 24.112(13), F.S., currently specifies that lottery retailers must make their retail locations accessible for disabled persons. It specifies that there must be ramps, wide aisles, turnaround areas, parking spaces, and other such facilities to ensure accessibility for disabled persons to participate in the Florida Lottery.

Inspections and enforcement of the provisions of s. 24.112(13), F.S., are under the enforcement authority of the Florida Building Code under s. 553.80, F.S.

The department has indicated that, currently, department game rules<sup>1</sup> specify that tickets in terminal-generated games—those that can be initiated by means of a play slip—also can be initiated by the player verbally giving his or her desired numbers to the retailer. The verbally requested numbers can then be manually selected on the ticket terminal by the retailer to produce a ticket with the player’s desired numbers.

The department expects retailers to comply with applicable accessibility requirements and these requirements are included in the department’s contracts with the retailers. Retailers also are subject to the federal Americans with Disabilities Act.

There are approximately 13,200 lottery retailers in Florida, according to the department’s estimates.

#### Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was enacted in 1990. Congress indicated that the ADA was enacted in part to address the finding that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem” and that disabled individuals were relegated to “lesser services, programs, activities, benefits, jobs, or other opportunities.”<sup>2</sup>

The overarching purpose of the ADA was to provide a “national mandate” to end discrimination based on disabilities, provide a national and enforceable standard that addresses discrimination,

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<sup>1</sup> For example, the Florida Department of the Lottery rule 53 ER 10-39 (1)(c)(1), F.A.C., states that a person may choose to play the Cash 3 game by making a verbal communication to the retailer instructing them on which selections to make.

<sup>2</sup> 42 U.S.C. s. 12101(a).

to ensure that the Federal Government plays a central role in enforcement against discrimination, and to invoke the power of the United State Congress to address the areas of discrimination against disabled persons.<sup>3</sup>

Section 12132 of the ADA provides: “[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” Under this provision, disabled persons are not to be discriminated against and retailers who sell Florida Lottery tickets must be accessible to customers who have disabilities, including visual impairments.

#### Legal interpretations of “malice” and “intentional fraud”

When a word is not specifically defined by statute, reviewing courts apply its plain and ordinary meaning. Florida courts have recognized the ordinary meaning of the word “malice” to be synonymous with its legal definition, which is “wrongfully, intentionally, without legal justification or excuse.”<sup>4</sup>

Florida courts have not specifically defined intentional fraud, but “intent” is an element of actual fraud, which they have defined. Fraud requires that four elements be met: (1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation induces another to act on it; and (4) consequent injury by the party acting in reliance on the representation.<sup>5</sup>

### **III. Effect of Proposed Changes:**

Section 1: Amends s. 24.112(13), F.S., to expand the statutory accessibility requirements beyond physical access to include help in filling out and purchasing tickets for blind and visually impaired customers who request such assistance.

Additionally, the bill specifies that neither the retailer nor the employee of a retailer will be liable for any actual or alleged scrivener’s error unless there is a finding by a court of intentional fraud or malice.

Section 2: Specifies an effective date of July 1, 2011.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

<sup>3</sup> 42 U. S. C. s. 12101(b).

<sup>4</sup> Seese v. State, 955 So.2d 1145, 1149 (Fla. App. 4 Dist., 2007).

<sup>5</sup> Townsend v. Morton, 36 So.3d 865, 868 (Fla. App. 5 Dist., 2010).

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:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.