

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 Appropriations Subcommittee on General Government

BILL: CS/SB 1032

INTRODUCER: Regulated Industries Committee and Senator Richter and others

SUBJECT: Point-of-sale Terminals

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1032 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 18 years of age or older. A point-of-sale terminal does not reveal winning numbers or dispense lottery winnings and may not be used to redeem a winning ticket. Lottery ticket sales revenue generated from point-of-sale terminals must be used to enhance instructional technology resources for students and teachers in Florida.

Allowing the convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals may increase ticket sales. An impact conference would be needed to estimate the lottery ticket sales revenue that could be generated from point-of-sale terminals.

The bill is effective upon becoming law.

II. Present Situation:

The Florida Lottery

Section 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 must be undertaken as an entrepreneurial business enterprise; and
- The department must be accountable through audits, financial disclosure, open meetings, and public records laws.

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

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.⁶ 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,⁷ and the authority to act as a retailer for lottery sales may not be transferred.⁸ 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.⁹

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 \$20.¹⁰

¹ See s. 24.104, F.S.

² See s. 24.121(2), F.S.

³ See s. 24.105(17), F.S.

⁴ 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 March 25, 2015).

⁵ OPPAGA Report 2015-03, at page 1 (footnote 3).

⁶ 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.

⁷ Section 24.112(3)(c), F.S.

⁸ Section 24.112(4), F.S.

⁹ Section 24.112(10), F.S.

¹⁰ Section 24.118(1), F.S.

Section 24.115, F.S., authorizes the department to establish by rule a system to verify and pay winning lottery tickets:¹¹

- Any lottery retailer, as well as any lottery department office, may redeem a winning ticket valued at less than \$600.¹² Payments less than \$50 are generally paid by a retailer in cash, 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.¹³ 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.¹⁴ 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 percent of the unclaimed prize amount is deposited in the Educational Enhancement Trust Fund,¹⁵ and the remainder may be used for future prizes or special prize promotions.¹⁶

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.”¹⁷

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 2012-2013.¹⁸ In its most recent Financial Audit,¹⁹ the

¹¹ See Rule 53ER13-31, F.A.C.

¹² The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the 9 lottery district offices, or to lottery headquarters in Tallahassee.

¹³ 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.

¹⁴ See s. 24.115(1)(f), F.S.

¹⁵ 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.

¹⁶ See s. 24.115(2)(b), F.S.

¹⁷ 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).

¹⁸ *OPPAGA Report 14-06* at page 2.

¹⁹ 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 Mar. 25, 2015).

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.

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.²⁰ The Gaming Compact authorizes the Tribe to conduct Class III gaming.²¹ It was ratified by the Legislature, with an effective date of July 6, 2010.²² 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 seven²³ casinos, the Tribe will make revenue sharing payments to the state. The state's share increases incrementally from 12 percent for the first \$2 billion in annual net win, to 25 percent for annual net win greater than \$4.5 billion. In Fiscal Year 2013-2014, the Tribe paid \$237 million.²⁴

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."²⁵ The Gaming Compact also includes language about not using a

²⁰ 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 March 25, 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.*

²¹ 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.

²² See Chapter 2010-29, L.O.F.

²³ See the executed Gaming Compact at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last accessed Mar. 25, 2015). 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.

²⁴ See the Executive Summary and Conference results from the Revenue Estimating Conference (Feb. 20, 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 Mar. 25, 2015).

²⁵ 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 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-

lottery vending machine to redeem winning tickets, which is consistent with similar language in s. 24.112(15)(c), F.S.²⁶

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.²⁷

Office of Program Policy Analysis and Government Accountability (OPPAGA) Recommendations to Enhance Lottery Earnings

Section 24.123, F.S., requires the Legislature's 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.²⁸ In the last two years, the OPPAGA has issued Report No. 14-06, concerning options available to the department to enhance revenues,²⁹ and Report No. 15-03, concerning increases in lottery revenues, further enhancement options, and options to increase efficiency.³⁰

No monies from the General Revenue Fund are appropriated to the department, which is supported solely by game ticket sales. For Fiscal Year 2014-2015, the Legislature appropriated \$163.5 million for operations from lottery revenue, with 420 positions authorized.³¹ 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.³²

In addition to funding the operational appropriation, lottery revenue is used to pay prizes and retailer commissions.³³ In Fiscal Year 2013-2014, prizes totaled \$3.43 billion and retailer commissions totaled \$297.3 million.³⁴

Lottery Ticket Sales at Gas Pumps and Automated Teller Machines (ATMs)

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

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.

²⁶ 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."

²⁷ See last sentence in paragraph B of Part XII of Gaming Compact at page 43.

²⁸ See <http://www.oppaga.state.fl.us/ReportsByAgency.aspx?agency=Lottery,%20Department%20of%20the> (last visited March 25, 2015) for a list of OPPAGA reports related to the Department of the Lottery.

²⁹ See *OPPAGA Report 14-06*, at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> (last accessed March 25, 2015).

³⁰ 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 Mar. 25, 2015).

³¹ *Id.* at page 10.

³² *Id.* at page 2.

³³ See s. 24.121(2) and (3), F.S.

³⁴ *Id.* at page 1.

stations and ATMs.³⁵ Players 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 is verified by a scan of a driver's license, and the lottery purchase shows on the receipt. Tickets may be printed, or a player may opt to receive lottery numbers in a text or email message. Players may track ticket purchases on the lottery's website.³⁶ For prizes less than \$600, the lottery credits the bank account associated with the debit card; no visit to a retailer is required for redemption of a winning ticket.

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.³⁷ Purchases are limited to quick-pick (random) plays³⁸ 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. 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. The OPPAGA found that during the short period this option has been available in Minnesota, there has been no negative effect on in-store sales.³⁹ The report noted that "offering this option at ATMs may help expand the retailer network to non-traditional locations."⁴⁰

In its most recent report on Florida Lottery revenues and operations,⁴¹ the 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.

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

³⁵ See *OPPAGA Report 14-06* at page 11.

³⁶ See <https://mnlottery-etickets.com/> (last visited Mar. 25, 2015).

³⁷ See http://www.molottery.com/numbers/alternative_distribution.shtm (last visited March 25, 2015).

³⁸ Teleconference with S. Goedde at Missouri Lottery (Mar. 17, 2014). Purchasers may select packages for Powerball® of 3, 5 or 10 plays only and for MegaMillions® of 5, 10 or 20 plays only.

³⁹ See *OPPAGA REPORT 14-06* at page 14.

⁴⁰ *Id.*

⁴¹ See *OPPAGA Report 15-03*, note 30 *supra*.

retail locations under certain conditions. Payments for lottery tickets at a point-of-sale terminal may be paid by credit card, debit card, or retailer-issued charge cards.

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 over 18 years of age. A point-of-sale terminal has 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.

Lottery ticket sales revenue generated from point-of-sale terminals must be used to enhance instructional technology resources for students and teachers in Florida.

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:

CS/SB 1032 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.⁴²

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 convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals may increase lottery ticket sales by an indeterminate amount. An impact conference would be needed to estimate the lottery ticket sales revenue that could be generated from point-of-sale terminals. The bills directs this revenue for the enhancement of instructional technology resources for students and teachers in Florida.

It is estimated that the vendor will absorb the majority of the costs to establish the program with minimal costs to the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides the requirements for a point-of-sale terminal to facilitate the sales of a lottery ticket or game. The terminal must dispense a paper lottery ticket, utilize a platform that is certified or approved by the department, must not reveal the winning numbers, and the winning numbers are selected at a subsequent time and different location through a drawing by the Florida Lottery. The point-of-sale terminal may not be used to redeem a winning ticket. The point-of-sale terminal or any device linked to the terminal may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles on the lottery ticket, signs, or advertising.

Under the Gaming Compact between the State of Florida and the Seminole Tribe of Florida, the Florida Lottery may conduct lottery games through player-activated or operated machines that meet the definition of "Lottery Vending Machine" in the Gaming Compact,⁴³ without violating the exclusivity provisions of the Gaming Compact.⁴⁴ There are three types of lottery vending machines. The third type of machine is defined as:

⁴² See *OPPAGA Report*, No. 14-06 at page 14.

⁴³ See the executed Gaming Compact at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last accessed Mar. 25, 2015), at pages 10-11 (paragraphs 1-3 of Part III, Section R).

⁴⁴ *Id.* at page 42 (paragraph 8 of Part XII, Section B).

3. A machine to dispense a paper lottery ticket with numbers selected by the player or randomly by the machine. The machine does not reveal the winning numbers and the winning numbers are selected at a subsequent time and different location through a drawing by the Florida Lottery. The machine, or any machine or device linked to the machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The machine may not be used to redeem a winning ticket. This does not preclude the use of casino game themes or titles for signage or advertising displays on the machine.

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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on March 24, 2015:

The committee substitute requires lottery ticket sales revenue generated from point-of-sale terminals to be used to enhance instructional technology resources for students and teachers in Florida.

- B. **Amendments:**

None.