

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 415 Point-of-sale Terminals
SPONSOR(S): Raschein
TIED BILLS: **IDEN./SIM. BILLS:** SB 402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	8 Y, 3 N	Butler	Anstead
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill allows the Department of the Lottery (Department) to create a program to allow the Department, a retailer, or a vendor to use "point-of-sale terminals" for the sale of lottery tickets or games. A point-of-sale terminal is a charge card reader, like those used at retail counters, self-service fuel pumps, or self-service checkout lanes.

The bill authorizes Department approved vendors and retailers to use point-of-sale terminals to facilitate sales of lottery tickets or games, provided that the purchaser is verified to be at least 18 years old and the terminal does not dispense lottery winnings.

A point-of-sale terminal may not reveal winning numbers and may not be used to redeem a winning ticket. Point-of-sale terminals and devices linked to them may not use video reels, mechanical reels, depictions of slot machines, or casino game themes.

The bill provides that it is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department, also known as the Florida Lottery, 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

Although lotteries were initially prohibited in the Florida Constitution, the Constitution was amended in 1986 to allow lotteries to be operated only by the state. The amendment was implemented in s. 24.102(2), F.S., which provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The Department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

A consumer who wishes to use a credit or debit card to purchase a lotto ticket or game must make such purchase as part of a transaction for goods and services other than lottery tickets of at least \$20.³

Vending machines that dispense lottery tickets, also known as full service vending machines (FSVM), are authorized in Florida so long as the machine or device:

- Dispenses a lottery ticket after a purchaser inserts a coin or currency in the machine.
- Is capable of being electronically deactivated for a period of 5 minutes or more.
- Is designed to prevent its use for any purpose other than dispensing a lottery ticket.⁴

In order to be authorized to use a FSVM, a retailer must:

- Locate the vending machine in the retailer’s direct line of sight to ensure that purchases are only made by persons at least 18 years of age.
- Ensure that at least one employee is on duty when the vending machine is available for use.⁵

All FSVMs must be leased by a vendor from the Department, and the Department is not authorized to sell a FSVM to a vendor.⁶ A FSVM may dispense change, but may not be used to redeem a winning lottery ticket, and the vending 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” but this restriction does not “preclude the use of casino game themes or titles on such tickets or signage or advertising displays on the machines.”⁷

The Department introduced 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 2012-2013.⁸

¹ s. 24.104, F.S.

² s. 24.121(2), F.S.

³ s. 24.118(1), F.S.

⁴ s. 24.112(15)(a), F.S.

⁵ s. 24.112(15)(b), F.S.

⁶ s. 24.111(2)(h), F.S.

⁷ s. 24.112(15)(c)-(d), F.S.

⁸ *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06, pg 2, Office of Program Policy Analysis and Gov’t Accountability (January 2014) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> 2 (last accessed Nov. 9, 2015) (hereinafter OPPAGA Report 14-06).

In its Financial Audit of Fiscal Year 2013-2014,⁹ the Department stated that sales from FSVM were over \$248 million, and that 500 FSVMs were installed at its top scratch-off ticket sales locations.

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.¹⁰ The Gaming Compact authorizes the Tribe to conduct certain gaming activities. It was ratified by the Legislature, with an effective date of July 6, 2010.¹¹ The Gaming Compact has a 20-year term, with certain provisions expiring after 5 years if not renewed by the Legislature.

Among other provisions, the Gaming Compact provides that in exchange for the exclusive right to offer slot machine gaming outside of Miami-Dade and Broward counties and banked card games at five of its seven casinos, the Tribe will make revenue sharing payments to the state. The state's share increases incrementally from 12% for the first \$2 billion in annual net win, to 25% for annual net win greater than \$4.5 billion. In Fiscal Year 2013-2014, the Tribe paid \$237 million.¹²

These revenue sharing payments may be reduced or eliminated by the Tribe, in accordance with the terms of the Gaming Compact, if the State of Florida authorizes others or engages in certain types of gaming in places where such activities were not already authorized prior to the Gaming Compact.¹³ The Gaming Compact defines several types of gaming that may affect the exclusivity agreement.¹⁴

"Lottery vending machines," if operated in accordance with Part III.R of the Gaming Compact, do not offend revenue sharing with the state.¹⁵ Lottery vending machines may dispense pre-printed paper instant lottery tickets, pre-determined electronic instant lottery tickets,¹⁶ or dispense a paper lottery ticket with numbers selected by the player or randomly by the machine.¹⁷ "Lottery Vending Machines" must not reveal the results on a pre-printed paper ticket, must not allow players to redeem any ticket (paper or electronic), and may not include or make use of video or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play.¹⁸

The Gaming Compact limits the number of Lottery Vending Machines at a single location to "not more than ten," and states that no Lottery Vending Machine that dispenses "electronic instant tickets may be installed at any licensed pari-mutuel facility."¹⁹

Any expansion of gaming or use of lottery vending machines, beyond what is specifically outlined in the Compact, will relieve the Tribe of its obligations to make revenue sharing payments to the State.²⁰

⁹ 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), available at http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf (last accessed Nov. 9, 2015).

¹⁰ *The Gaming Compact Between the Seminole Tribe of Florida and the State of Florida* (hereinafter "Gaming Compact") available at http://www.myfloralicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf. The Gaming Compact was approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. 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.*

¹¹ See ch. 2010-29, L.O.F.

¹² See the Executive Summary and Conference results from the Revenue Estimating Conference (July 14, 2015 and August 11, 2015) <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 Nov. 2, 2015).

¹³ See Gaming Compact, Part XII. Reduction of Tribal payments because of loss of exclusivity or other changes in Florida law, pg. 39

¹⁴ *Id.*

¹⁵ Gaming Compact, *supra* note 10, Part III.R., pg. 10-11.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Gaming Compact, *supra* note 10, Part XII.B.8, pg. 42.

²⁰ Gaming Comcast, *supra* note 10, Part XII.B, pg. 43.

OPPAGA Recommendations to Enhance Lottery Earnings

The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) is required to conduct an annual financial audit of the Department and provide recommendations to enhance the state lottery's earning capability and operational efficiency.²¹ In the last two years, OPPAGA has issued reports, concerning options available to the Department to enhance revenues and efficiency.²²

One option considered by OPPAGA was the use of point-of-sale terminals at gas pumps. 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. After reviewing limited data from other states, OPPAGA found that there was no negative effect on in-store sales.²³ The report also noted that "offering this option at ATMs may help expand the retailer network to non-traditional locations."²⁴

Lottery Ticket Sales at Gas Pumps and ATMs in Other States

In October 2012, the Minnesota Lottery allowed lottery tickets to be sold at gas pumps and ATMs.²⁵ However, those sales were discontinued in mid-2015 when the Minnesota legislature enacted legislation²⁶ prohibiting the sale of lottery tickets through devices incorporated in or adjacent to gas pumps and ATMs.²⁷

The Missouri Lottery allowed lottery tickets to be sold at gas pumps in late 2013 by retailers already selling lottery tickets. In Missouri, purchases at gas pumps and online are limited to quick-pick (random) plays for a single game drawing. Lottery tickets are payable by debit card; credit cards may not be used. Each cardholder can purchase up to \$100 in lottery tickets per week, per debit card, but 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 be in possession of the debit card and photo identification.

In August 2015, the California State Lottery Commission expanded a year-long pilot program for lottery purchases at fuel pumps from a single location to 87 locations in the Los Angeles and Sacramento areas.²⁸ The games available for purchase by credit or debit card are Mega Millions, Powerball, and SuperLotto Plus, with a \$20 maximum per purchase and a \$50 weekly limit.²⁹ Players are limited to selecting 5, 10, or 20 Quick Picks on Mega Millions or SuperLotto Plus, or 3, 5, or 10 Quick Picks on Powerball.

In California, a driver's license or state ID card is scanned to confirm the player is at least 18 years old, and there is a \$1.00 transaction fee to the Lottery's vendor. All lottery numbers are randomly selected by the machine, but there is no lottery "ticket" issued. The receipt from the fuel pump shows the player's lottery numbers, and players may opt to receive a text message with a link to their lottery numbers.

²¹ s. 24.123, F.S. See Also Department of the Lottery OPPAGA Reports, available at

<http://www.oppaga.state.fl.us/ReportsByAgency.aspx?agency=Lottery,%20Department%20of%20the>.

²² See OPPAGA Report 14-06. See Also *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 *OPPAGA Report 15-03*) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed Nov. 9, 2015).

²³ See *OPPAGA Report 14-06*, supra note 8, at 14.

²⁴ *Id.*

²⁵ See *OPPAGA Report 14-06*, supra note 8, at 11.

²⁶ See Minnesota Lottery, *Minnesota Online Gambling Legislative Update*, https://www.mnlottery.com/buy_tickets/buy_online/ (last visited Nov. 9, 2015). The legislation also mandated that the sale of eScratch tickets on the lottery's website be discontinued.

²⁷ See Minnesota Session Law Chapter 45--S.F.No. 229, s. 5, <https://www.revisor.mn.gov/laws/?id=45&year=2015&type=0> and MN. STAT. 349A.13 (2015) at https://www.revisor.mn.gov/statutes/?id=349A.13&year=2015&keyword_type=all&keyword=lottery (last visited Nov. 9, 2015).

²⁸ Bill Lindelof, *'Pay at the Pump' lottery tickets headed to more gas stations in Sacramento, state*, THE SACRAMENTO BEE (Aug. 5, 2015), <http://www.sacbee.com/news/local/article30088296.html>

²⁹ California Lottery, *Introducing 'Play at the Pump'*, available at <http://www.calottery.com/lucky-retailers/more-ways-to-buy/play-at-the-pump> (last visited Nov. 13, 2015).

Prize winnings of \$599 or less are automatically credited back to the card used for the purchase; prizes above \$600 must be redeemed at a lottery office.

In January, 2015, the North Carolina Education Lottery implemented its similar “play at the pump” program (with 117 locations as of July, 2015). North Carolina has a \$70 weekly limit per debit card, and the available games are Cash 5, Mega Millions, and Powerball.³⁰ North Carolina also has a self-exclusion program which allows a player to exclude cards from being used for any lottery play at fuel pumps.³¹

Effect of the Bill

The bill allows the Department to create a program to allow the Department, a retailer, or a vendor to sell lottery tickets or games at point-of-sale terminals.

The bill defines “point-of-sale terminal” as “an electronic device used to process credit card, debit card, or other similar charge card payments at retail locations which is supported by networks that enable verification, payment, transfer of funds, and logging of transactions.”

The bill provides the Department with the authority to “create a program that allows a person who is 18 years of age or older to purchase a lottery ticket or game at a point-of-sale terminal” and provides the Department may “adopt rules to administer the program.”

The bill requires that point-of-sale terminals:³²

- Must dispense a paper lottery ticket with numbers selected by the player or randomly by the machine;
- Do 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;
- May not be used to redeem winning tickets;
- Must recognize a valid driver license or other process to verify that the purchaser is at least 18 years of age;
- Must be in compliance with all department requirements for lottery sales; and,
- Must be certified by the department.

Only “tickets” or “games” are permitted to be purchased at point-of-sale terminals, although neither “ticket” nor “game” are defined within ch. 24, F.S.

The bill does not limit the location or number of the point-of-sale terminals.

A point-of-sale terminal would likely not be considered a “vending machine” under the current statutory definition in s. 24.112(15), F.S., and thus, a point-of-sale terminal would likely not be restricted by any regulations currently in statute that apply to “vending machines” that dispense lottery tickets or FSVMs.

As such, a point-of-sale terminal will not be required to be in line of sight of the retailer,³³ does not have to be equipped with a remote deactivation system,³⁴ and is not required to be owned and controlled by the Department and leased to the vendor.³⁵

³⁰ North Carolina Education Lottery, *\$227,196 Cash 5 jackpot win in Brunswick County*, (July 5, 2015), available at <http://www.nc-educationlottery.org/news/2015/7/5/227196-Cash-5-jackpot-win-in-Brunswick-County>.

³¹ See <https://ncelonthe.com/Terms> (last visited Nov. 2, 2015).

³² These requirements track some of the requirements of “lottery vending machines” in the Gaming Compact.

³³ s. 24.112(15)(b)1., F.S.

³⁴ s. 24.112(15)(a)2., F.S.

³⁵ s. 24.111(2)(h), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 24.103, F.S., to define a “point-of sale terminal.”

Section 2 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.

Section 3 amends s. 24.112, F.S., to provide that point-of-sale terminals may be used to facilitate the sale of lottery tickets or games.

Section 4 provides that the bill will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminable. The language as written is permissive and provides the Department with the authorization to create a program that authorizes the use of point-of-sale terminals, but does not require the Department to do so. As such, there may be no revenue as a direct result of this legislation. If the Department implements point-of-sale terminals at lottery vendors, revenues may be significant.

2. Expenditures:

Indeterminable. The language as written is permissive and provides the Department with the authorization to create a program that authorizes the use of point-of-sale terminals, but does not require the Department to do so. As such, there may be no expenditures as a direct result of this legislation. If the Department implements point-of-sale terminals at lottery vendors, expenditures may be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow retailers and vendors approved by the Department to use point-of-sale terminals for sales of lottery tickets or games. 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.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill provides rulemaking authority for the Department to create a program that authorizes the use of point-of-sale terminals and to further define the types of point-of-sale terminals that may be used to purchase lottery tickets or games.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other states with similar programs limit the type of game available for sale at gas pumps, how many tickets may be purchased, the types of tickets, and limit the payment methods available to consumers. This bill does not have such limitations.

In California, Missouri, and North Carolina, there is a maximum limit to the amount a consumer may purchase from a lottery vending machine or point-of-sale terminal.³⁶

The Department of Agriculture and Consumer Services, who inspect gasoline pumps, has reported issues related to a scheme involving the use of “skimmers” on card readers at gasoline pumps. Skimmers are devices that attach to the credit card readers to steal credit card information.³⁷ Stolen credit card information is often then used to purchase and resell diesel fuel.³⁸ Point-of-sale terminals, with no limit on credit or debit card purchases and no requirement that the identification used to purchase the lotto ticket match the name on the credit or debit card, may provide an opportunity to expand this existing fraud on consumers, gasoline stations, and the State.

The Gaming Compact limits the use of lottery vending machines, of which point-of-sale terminals are included, to only ten installations at any facility or location, and prohibits installation at pari-mutuel facilities. There is no such limitation in this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

³⁶ California has a \$20 maximum per purchase and a \$50 weekly limit, Missouri has a \$100 weekly limit per debit card, and North Carolina has a \$70 weekly limit per debit card.

³⁷ Department of Agriculture and Consumer Services, *Protecting Consumers at the Pump* (Oct. 22, 2015) (on file with the Business and Professions Subcommittee)

³⁸ *Id.*