

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 402

INTRODUCER: Fiscal Policy Committee and Senator Richter and others

SUBJECT: Point-of-sale Terminals

DATE: December 4, 2015      REVISED: \_\_\_\_\_

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

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**I. Summary:**

CS/SB 402 allows limited use of “point-of-sale terminals” for the sale of lottery tickets or games. 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 at least 18 years of age or older and the terminal does not dispense lottery winnings. A point-of-sale terminal may not reveal winning numbers, dispense lottery winnings, or be used to redeem a winning ticket.

Allowing the convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals may increase ticket sales. The Revenue Impact Conference met on November 20, 2015, and determined the bill will have a positive, indeterminate impact to the state.

This bill is effective upon becoming law.

**II. Present Situation:**

**The Florida Lottery**

Article X, s. 15 of the Florida Constitution 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 and compliance with financial disclosure, open meetings, and public records laws.

The department's purpose is to maximize revenues "consonant with the dignity of the state and the welfare of its citizens,"<sup>1</sup> for the benefit of public education.<sup>2</sup> The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.<sup>3</sup> Retailers receive commissions of 5 percent of the ticket price, 1 percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.<sup>4</sup>

Lottery tickets can be purchased with 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 costing at least \$20.<sup>5</sup>

The department has the authority 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."<sup>6</sup>

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.<sup>7</sup> In its most recent Financial Audit, the 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.<sup>8</sup> The department's total ticket sales increased by 7.09 percent for Fiscal Year 2013-14 to \$5.37 billion.<sup>9</sup>

### **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<sup>10</sup> tribal facilities in Florida.<sup>11</sup> The

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<sup>1</sup> Section 24.104, F.S.

<sup>2</sup> See s. 24.121(2), F.S.

<sup>3</sup> See s. 24.105(17), F.S.

<sup>4</sup> The Florida Legislature, Office of Program Policy Analysis and Gov't Accountability, *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Improve Efficiency*, p. 1, fn. 3, Report No. 15-03 (January 2015), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed Dec. 4, 2015).

<sup>5</sup> Section 24.118(1), F.S.

<sup>6</sup> Sections 24.105(9)(a) and 24.122(15), F.S.

<sup>7</sup> The Florida Legislature, Office of Program Policy Analysis and Gov't Accountability, *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, p. 2, Report No. 14-06 (January 2014), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> (last accessed Dec. 4, 2015).

<sup>8</sup> State of Florida Auditor General, *Financial Audit of the Department of the Lottery, for the Fiscal Years Ended June 30, 2014, and 2013*, p. 7, Report No. 2015-092 (January 2015), available at [http://www.myflorida.com/audgen/pages/pdf\\_files/2015-092.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf) (last accessed Dec. 4, 2015).

<sup>9</sup> *Id.* at p. 4.

<sup>10</sup> The Tribe has three gaming facilities in Broward County (Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), one in Collier County (Seminole Indian Casino-Immokalee), one in Glades County (Seminole Indian Casino-Brighton), one in Hendry County (Seminole Indian Casino-Big Cypress), and one in Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa).

<sup>11</sup> *Gaming Compact between the Seminole Tribe of Florida and the State of Florida*, available at [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last accessed Dec. 4, 2015).

gaming compact has a 20-year term and was ratified by the Legislature, with an effective date of July 6, 2010.<sup>12</sup>

The gaming compact authorizes the Tribe to conduct Class III gaming<sup>13</sup> which includes 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.<sup>14</sup> 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<sup>15</sup> 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.<sup>16</sup> In Fiscal Year 2014-15, the Tribe paid \$255.6 million.<sup>17</sup>

The gaming compact provides that any expanded gaming beyond what is specifically acknowledged in the compact relieves the Tribe of its obligations to make substantial revenue sharing payments to the state.<sup>18</sup> The gaming compact allows for the types of lottery games authorized under ch. 24, F.S., on February 1, 2010.<sup>19</sup> However, the compact does not allow for any games that are "player-activated or operated machine or device other than a Lottery Vending Machine" or the use of a lottery vending machine to redeem winning tickets.<sup>20</sup>

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

The 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.<sup>21</sup> The OPPAGA noted that expanding product distribution could increase revenues for education.<sup>22</sup> A suggested option was Play at the Pump, which would allow for lottery purchases to be part of a transaction while buying gas or using an ATM. A benefit of the Play at the Pump option is the possible expansion of the retailer network to nontraditional locations.<sup>23</sup>

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 and found that states that have these types of games have not been negatively affected.<sup>24</sup>

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<sup>12</sup> Chapter 2010-29, L.O.F.

<sup>13</sup> The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2710.

<sup>14</sup> *Supra* note 11.

<sup>15</sup> *Id.* 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.

<sup>16</sup> *Supra* note 11 at 33.

<sup>17</sup> Revenue Estimating Conference, *Indian Gaming Revenues Executive Summary* (December 2, 2015), available at <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf> (last accessed Dec. 4, 2015).

<sup>18</sup> *Supra* note 11 at 43.

<sup>19</sup> *Id.* at 10 and 42.

<sup>20</sup> *Id.* and s. 24.112(15)(c), F.S.

<sup>21</sup> Section 24.123, F.S. The Joint Legislative Auditing Committee directed the OPPAGA to conduct the required examination.

<sup>22</sup> *Supra* note 4 at 15.

<sup>23</sup> *Id.* at 16.

<sup>24</sup> *Id.* See also at 17, fn. 3, for a discussion of Minnesota's implementation of such an option.

### III. Effect of Proposed Changes:

The bill 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. The bill specifies that the rules, at a minimum, must:

- Limit the dollar amount of lottery tickets or games that a person may purchase at point-of-sale terminals;
- Create a process to enable a customer to restrict or prevent his or her own access to lottery tickets or games; and
- Ensure that the program does breach the exclusivity provisions of any Indian gaming compact to which the state is a party. **(Section 2)**

The bill defines the term “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. **(Section 1)**

A point-of-sale terminal allows the purchase of lottery tickets while purchasing of other retail goods or services. Current lottery vending machines dispense lottery tickets only.

The bill allows the department, a retailer operating from one or more locations, or a vendor approved by the department to use point-of-sale terminals to sell lottery tickets or games.

**(Section 3)** The bill provides that a point-of-sale terminal must:

- Dispense a paper lottery ticket with numbers selected by the purchaser or selected randomly by the machine after the purchaser uses a credit, debit, or other similar card issued by a bank, savings association, credit union, or a charge card company or retailer;
- Recognize a valid driver license or use another age verification process approved by the department to ensure that only persons at least 18 years of age may purchase a lottery ticket or game;
- Process a lottery transaction through a platform that is certified or otherwise approved by the department; and
- Be in compliance with all applicable department requirements related to the lottery ticket or game offered for sale.

A point-of-sale terminal may not:

- Reveal winning numbers, which are selected at a subsequent time and different location through a drawing by the Florida Lottery;
- 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. This does not preclude the use of casino game themes or titles on a lottery ticket or game or on the signage or advertising displays on the terminal;
- Be used to redeem a winning ticket.

The bill is effective upon becoming a law. **(Section 4)**

**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:

The bill allows retailers and vendors approved by the department 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.<sup>25</sup>

## C. Government Sector Impact:

The bill authorizes the department to establish 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 and commissions to retailers by an indeterminate amount, as noted by the department.<sup>26</sup> The Revenue Impact Conference met on November 20, 2015, and determined the bill will have a positive, indeterminate impact to the state.

It is estimated that the vendor will absorb the majority of the costs to establish the program with minimal costs to the department.<sup>27</sup>

**VI. Technical Deficiencies:**

None.

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<sup>25</sup> *Id.*

<sup>26</sup> See 2016 Department of Lottery Legislative Bill Analysis for SB 402, pp. 3-4, October 14, 2015 (on file with the Senate Committee on Fiscal Policy).

<sup>27</sup> *Id.* at 4.

**VII. Related Issues:**

Under the gaming compact, the department may conduct lottery games through player-activated or operated machines that meet the definition of “Lottery Vending Machine” without violating the gaming compact.<sup>28</sup> The gaming compact requirements of a “Lottery Vending Machine” are identical to the requirements provided by the bill for point-of-sale terminals. However, the bill does allow for the use a credit, debit, or other similar card issued by a bank, savings association, credit union, or a charge card company or retailer at point-of-sale terminals which is not included in the gaming compact’s definition of “Lottery Vending Machine.”

The bill provides authority for the department to adopt rules for the purchase of lottery tickets at point-of-sale terminals.

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

**CS by Fiscal Policy on December 3, 2015:**

The CS specifies that the rules adopted by the department must:

- Limit the dollar amount of lottery tickets or games that a person may purchase at point-of-sale terminals;
- Create a process to enable a customer to restrict or prevent his or her own access to lottery tickets or games; and
- Ensure that the program does breach the exclusivity provisions of any Indian gaming compact to which the state is a party.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>28</sup> *Supra* note 11 at 10.