

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 Committee on Rules

BILL: CS/SB 1370

INTRODUCER: Judiciary Committee and Senator Perry

SUBJECT: Lottery Games

DATE: April 27, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Parks</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Kraemer</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1370 states that every contract between the Department of the Lottery (department) and a lottery ticket vendor must include a provision requiring the vendor to prominently place or print the words “WARNING: GAMBLING CAN BE ADDICTIVE” on all tickets. The bill also states that every contract between the department and a ticket retailer must include a provision requiring the retailer to prominently display a sign (provided by the department) with the same warning at the tickets’ point of sale.

The bill will have a fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill provides for an effective date of July 1, 2017.

II. Present Situation:

Section 15 of Article X of the State Constitution (1968) allows lotteries to be operated by the state. The relevant provisions of statute which specify how the Florida Lottery must be operated are set forth 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.

The department operates the Florida 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 5 percent of the ticket price, 1 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. Contracting with a retailer with a felony criminal history is prohibited,⁷ and the authority to act as a retailer may not be transferred.⁸

Retailers may not extend credit or lend money to a person to purchase a lottery ticket. 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) is allowed, if the lottery ticket purchase is part of a purchase transaction for other goods and services that cost \$20 or more.⁹

The department may establish by rule a system to verify and pay winning lottery tickets:¹⁰

- Any lottery retailer, as well as any department office, may redeem a winning ticket valued at less than \$600.¹¹ 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 department office may redeem a winning ticket valued at \$600 or more.¹² 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).

¹ See s. 24.104, F.S.

² See s. 24.121(2), F.S.

³ See s. 24.105(17), F.S.

⁴ Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, Report No. 14-06, *See Lottery Transfers Have Recovered; Options Remain to Enhance Transfers 2* (January 2014), (hereinafter *OPPAGA Report 14-06*), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf>, (last visited Apr. 13, 2017).

⁵ See Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, Report No. 15-03, *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency 1 n.3* (Jan. 2015), (hereinafter *OPPAGA Report 15-03*), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last visited Apr. 13, 2017).

⁶ See s. 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 See s. 24.112(3)(c), F.S.

⁸ See s. 24.112(4), F.S.

⁹ See s. 24.118(1), F.S.

¹⁰ See s. 24.115, F.S., and Fla. Admin. Code R. 53ER15-31 (2015).

¹¹ The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

¹² 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.

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.¹³ 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.

The department may adopt rules governing the types of lottery games to be conducted,¹⁴ including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”¹⁵

The department introduced full service vending machines in retail stores across the state in November 2013.¹⁶ In its most recent Financial Audit, the department stated that 500 vending machines used in the 2015-2016 fiscal year reflected an increase in sales of more than \$36 million, more than 14 percent over the prior fiscal year.¹⁷

Scratch-off Games

The department’s legislatively-approved performance standards are reported in its long-range program plan for the 2017-2018 fiscal year.¹⁸ In that plan, the department noted that it set a new all-time sales record in the 2015-2016 fiscal year with sales reaching \$6.06 billion, exceeding those in the prior year by more than \$479 million and resulting in a transfer of more than \$1.69 billion to the Educational Enhancement Trust Fund.¹⁹ Further, the department indicated that the success of the Florida Lottery was a result of the agency’s continued efforts to expand and revise its roster of games. During the 2015-2016 fiscal year, scratch-off ticket sales exceeded \$3 billion for the fourth consecutive year, and broke all-time scratch-off sales records for the fifth consecutive year.²⁰

Scratch-off games have a finite lifecycle based on the number that are printed and how they sell; at the end of the lifecycle of a game, the department replaces it with more profitable games. Typically, 12 to 15 scratch-off games are closed each calendar quarter. The following criteria are used to determine when to end games:

¹³ See s. 24.115(1)(f), F.S.

¹⁴ See s. 24.105(9)(a), F.S.

¹⁵ Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, Laws of Fla., 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).

¹⁶ *OPPAGA Report 14-06*, *supra* note 5, at 2.

¹⁷ See State of Florida Auditor General, Report No. 2017-103, *Financial Audit of the Department of the Lottery, for the Fiscal Year Ended June 30, 2016, and 2015 30* (Jan. 2015), http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf (2017 Financial Audit section) (last visited Apr. 13, 2017).

¹⁸ See Florida Lottery, Long Range Program Plan (Sept. 13, 2016), <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14600&DocType=PDF> (last visited Apr. 13, 2017).

¹⁹ *Id.* at pages 3-4.

²⁰ *Id.* at page 4.

- There are no remaining top prizes;
- There is no available inventory to order; and
- Current sales levels, inventory levels, contract requirements, seasonality, unforeseen circumstances, changing market conditions or print defects.²¹

The department currently promotes responsible lottery play and directs persons struggling with a gambling problem to contact the 1-888-ADMIT-IT telephone line for assistance.²²

III. Effect of Proposed Changes:

The bill amends s. 24.111, F.S., concerning vendors of lottery tickets, to require that every contract between the Department of the Lottery and a ticket vendor include a provision that the vendor must place or print a warning on all lottery tickets which prominently reads: “WARNING: GAMBLING CAN BE ADDICTIVE.”

The bill also amends s. 24.112, F.S., concerning retailers of lottery tickets, to require that every contract between the department and a ticket retailer include a provision that the retailer must prominently display a sign, provided by the department, with the text “WARNING: GAMBLING CAN BE ADDICTIVE” at the tickets’ point of sale.

The bill will likely only be held to affect contracts entered into after the effective date. The Florida Supreme Court has ruled that a substantive statute cannot operate retrospectively unless the Legislature provides clear intent that it should do so; even then, the statute may not be applied retroactively if it “impairs vested rights, creates new obligations, or imposes new penalties.”²³ Here, the bill creates a new obligation for lottery ticket vendors to provide for the marking of all tickets, and it arguably impairs vendors and retailers’ right to contract under art. I, s. 10, Fla. Const. Thus, the bill will likely be deemed prospective.

The bill provides for an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²¹ *OPPAGA Report 15-03, supra* note 5, at 10.

²² See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Florida Lottery) for SB 1370, dated Mar. 7, 2017 on file with Senate Committee on Regulated Industries) at page 2.

²³ See *State Farm v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995) (citations omitted).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of the Lottery indicated that the original version of the bill would have no fiscal impact on state government.²⁴ However, that version of the bill did not include the provision requiring the department to provide warning signs for retailers. The department will likely incur expenses producing and distributing these signs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 24.111 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 Judiciary on April 19, 2017:

The committee substitute removes the language for retailers which would have required them to print warning labels on lottery tickets and replaces it with the language requiring retailers to display warning signs.

B. Amendments:

None.

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

²⁴ *Id.* at page 3.