

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1367 Definition of the Term "Slot Machine or Device"
SPONSOR(S): Tourism & Gaming Control Subcommittee, Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 1770

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism & Gaming Control Subcommittee	9 Y, 6 N	Bowen	Barry
2) Commerce Committee	15 Y, 13 N	Bowen	Hamon

SUMMARY ANALYSIS

Florida law generally prohibits gambling, including slot machines, with limited exceptions.

A recent case, *Gator Coin v. DBPR*, has created some uncertainty over whether certain machines known as pre-reveal machines are prohibited slot machines under the current statutes. A pre-reveal game is one in which the player must press a preview button before they can play. The preview button displays the outcome of the next game but not the game after that. The trial court in *Gator Coin* determined that the machines are prohibited slot machines, and the ruling is currently under appeal.

The bill adds language to the definition of "slot machine or device" in the gambling statutes to more clearly prohibit pre-reveal machines and games.

The bill does not have a fiscal impact on state or local government.

Provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law generally prohibits gambling.¹ Exceptions to the general prohibition include the Florida Lottery,² pari-mutuel wagering³ on three types of horseracing,⁴ greyhound dog racing,⁵ and jai alai,⁶ slot machines at certain pari-mutuel facilities,⁷ authorized cardrooms,⁸ and specified gaming at certain tribal facilities.⁹

While authorized in a limited number of locations, slot machines are otherwise prohibited in Florida.¹⁰

Section 849.16, F.S. defines “slot machine or device” as follows:

(1) Any machine or device is a slot machine or device within the provisions of this chapter if it is one that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

In recent years, the advent of new technologies and new products in Florida led to questions about whether certain new activities were permissible activities or illegal gambling under Florida law, including the statutory ban on slot machines.

In 2013, the Legislature clarified that Internet café style gambling machines were illegal in the state. The legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prize are prohibited slot machines.¹¹

¹ s. 849.08, F.S.

² The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Section 24.102, F.S., creates the Department of the Lottery.

³ “Pari-mutuel” means a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. S. 550.002(22), F.S.

⁴ The definition of “horserace permitholder” specifies thoroughbred racing, harness racing, and quarter horse racing. s. 550.002(15), F.S.

⁵ See s. 550.002(29), F.S.

⁶ A ball game of Spanish origin played on a court with three walls. s. 550.002(18), F.S.

⁷ See FLA. CONST. art. X, s. 23; ch. 551, F.S.

⁸ Sections 849.086, F.S.

⁹ ss. 285.710 and 285.712, F.S.

¹⁰ Section 849.15, F.S., originally enacted by s. 1, ch. 18143, L.O.F. (1937).

¹¹ FLA. HOUSE OF REPRESENTATIVES SELECT COMMITTEE ON GAMING, *Final Bill Analysis of 2013 CS/HB 155*, p. 1 (Apr. 19, 2013).

In 2015, the Legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida law and prevent the expansion of casino-style gambling. The Legislature clarified the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.¹²

In 2017, a case called *Gator Coin v. DBPR*¹³ tested whether or not a new type of machine is a prohibited slot machine under current law. The case arose when the Department of Business and Professional Regulation's Division of Alcoholic Beverages and Tobacco (DBPR), while conducting a routine inspection, identified so-called pre-reveal machines in a sports bar. A "multiple game system with a preview feature," or "pre-reveal" game, is one in which the player must press a preview button that displays the outcome of the game before they can play. The preview button shows the outcome of the next game but not the game after that.¹⁴

This discovery led to determination by DBPR that they were prohibited slot machines.¹⁵ *Gator Coin*, the business that leased the games to the sports bar, removed the machines and filed suit against the state. In March 2017, a Leon County Circuit Court judge issued a declaratory judgment stating that because the outcome of the next game is always known, the pre-reveal game isn't a game of chance or skill.¹⁶ Therefore, the court initially ruled that the pre-reveal machines are not prohibited slot machines.¹⁷

Soon after the initial order, the Seminole Tribe of Florida intervened in the case, contending that allowing pre-reveal machines would violate their exclusive right to offer slot machines outside of South Florida.¹⁸ In June 2017, on rehearing, the court reversed itself and ruled that pre-reveal games are illegal slot machines.¹⁹ The court's order stated that the games are properly viewed as a series of games, in which some games in the series had unknown outcomes, qualifying it as gambling under Florida law.²⁰ The decision has been appealed by *Gator Coin* and is pending at the First District Court of Appeals, which is expected to issue a ruling in the coming months.

Effect of the Bill

The bill adds language to the definition of "slot machine or device" to explicitly prohibit pre-reveal machines and games. Specifically, the bill provides that a machine is a slot machine if it "includes a preview of the outcome or whether the outcome is known, displayed, or capable of being known or displayed to the user."

The bill would essentially codify the trial court's ruling in the *Gator Coin* case, which concluded that pre-reveal machines are prohibited slot machines.

B. SECTION DIRECTORY:

Section 1: Amends s. 849.16, F.S., relating to machines or devices which come within provisions of law defined.

Section 2: Provides an effective date of July 1, 2018.

¹² s. 546.10, F.S.

¹³ *Gator Coin v. DBPR*, No. 2015-CA-2629, at *1 (Fla. Cir. Ct. Jul. 10, 2017).

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 2-3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Tourism & Gaming Control Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Removed a provision stating that “slot machine or device” includes any machine that is defined as “class III gaming” under the Indian Gaming Regulatory Act.

- Removed a penalty provision relating to amusement games or machines stating that anyone who violates the section and infringes on the exclusivity given to the Seminole Tribe under the gaming compact is liable to the Tribe for a minimum of \$10,000 per machine and reasonable attorney fees.

The staff analysis has been updated to reflect the committee substitute.