

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 Regulated Industries

BILL: SB 1488

INTRODUCER: Senator Garcia

SUBJECT: Lottery Retailer Compensation

DATE: March 28, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Favorable
2.			AEG	
3.			FP	

I. Summary:

SB 1488 establishes in Florida law the commission rate payable to retailers for lottery ticket sales in Florida law at six percent of the purchase price of each ticket that is sold or issued as a prize by a retailer.

For the current Fiscal Year 2022-2023 ending June 30, 2023, the lottery retailer commission rate for ticket sales was set at 5.75 percent, pursuant to Chapter 2022-157, ss. 57-58, Laws of Florida implementing the General Appropriations Act. Should the proposed six percent rate in the bill not be adopted, the lottery retailer commission rate for ticket sales will revert on July 1, 2023 to a rate determined by the Department of the Lottery (department) under its authority to regulate “the manner and amount of retailer compensation,” with no specified commission rate stated in Florida law and no limitation on other retailer compensation that may be paid.

Florida Administrative Code Rule 53ER22-30, Retailer Compensation, has been adopted by the department to implement this provision and sets the commission rate at 5.75 percent.

See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Department of the Lottery

Operations

Section 15 of Article X of the State Constitution authorizes state-operated lotteries. Pursuant to this provision, the Florida Public Education Lottery Act¹ establishes a state lottery system intended primarily to generate revenue for public education of the state.² The department is charged with supervising and operating the lottery in accordance with the provisions of the Florida Public Education Lottery Act and rules adopted pursuant thereto.³

Section 24.102(2), F.S., provides the intent of the Legislature that:

- The net proceeds of lottery games must 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.

Lottery Revenues Attributable to Lottery Tickets

The department operates the Florida Lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens”⁴ for the benefit of public education.⁵

According to the Legislature’s Office of Economic and Demographic Research (EDR),⁶ lottery tickets sale amounts per person have increased dramatically, with a remarkable \$527.20 level in Fiscal Year 2021-2022.⁷

Lottery ticket sales have been increasing year-over-year. On February 21, 2023, the Revenue Estimating Conference reviewed lottery ticket sales and transfers occurring since the last conference in July 2022, and found that ticket sales for this 30-week period were \$630.7 million (12.5%) over the prior estimate, with transfers from ticket sales to the Educational Enhancement Trust Fund (EETF) of \$195.3 million (18.4%) above the prior estimate.⁸

¹ Sections 24.101 to 24.124, F.S.

² Section 24.102, F.S.

³ Section 24.105(2), F.S.

⁴ See s. 24.104, F.S.

⁵ See s. 24.121(2), F.S.

⁶ EDR is a research arm of the Legislature that forecasts economic and social trends that affect policy making, revenues, and appropriations and provides objective information to committee staffs and members of the Legislature in support of the policy-making process. See <http://www.edr.state.fl.us/Content/about/index.cfm> (last visited Mar. 21, 2023).

⁷ See EDR publication *Florida Gaming and the Lottery: Economics, Status and Impact*, Feb. 7, 2023 at http://www.edr.state.fl.us/Content/prat19esentations/gaming/GamingandLottery_2-7-23.pdf (last visited Mar. 21, 2023).

⁸ Also noted was the fact that some draw games (tickets printed using the department’s gaming system for drawings at specified times) have experienced abnormally large jackpots that significantly impacted ticket sales of those games. See Executive Summary of the Revenue Estimating Conference (Lottery Revenues) (Feb. 21, 2023) at <http://www.edr.state.fl.us/Content/conferences/lottery/lotterysummary.pdf> (last visited Mar. 21, 2023).

Lottery Retailer Contracts and Compensation

The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.⁹ According to the Revenue Estimating Conference:

The Lottery currently contracts with over 13,400 retailers around the state to sell draw and scratch-off tickets. Retailers receive a flat 5.75% commission on all sales. There is no cap on the amount of sales commission a retailer can receive – the more a retailer sells, the more the retailer receives in commissions.¹⁰

The Revenue Estimating Conference determined that the increase in the retailer commission rate under the bill reduces the department's transfer to the Educational Enhancement Trust Fund from lottery ticket sales, by \$37.1 million for Fiscal Year 2023-2024.¹¹

For Fiscal Year 2022-2023 ending June 30, 2023, the lottery retailer commission rate for ticket sales was set at 5.75 percent for that fiscal year only, pursuant to Chapter 2022-157, ss. 57-58, Laws of Florida implementing the General Appropriations Act,¹² which eliminated the one percent cashing bonus to retailers for redeeming winning tickets in amounts less than \$600, and limited additional retailer compensation to the Florida Lottery Retailer Bonus Commission Program.¹³ Prior to Fiscal Year 2022-2023, retailers received commissions of five percent of the ticket price, and the one percent cashing bonus.¹⁴

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.¹⁵ 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 conviction or plea within the last 10 years is prohibited,¹⁶ and the authority to act as a retailer may not be transferred.¹⁷

⁹ See s. 24.105(16), F.S.

¹⁰ See http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2023/_pdf/impact0317.pdf at 252 (last visited Mar. 21, 2023).

¹¹ See the analysis of the bill made at the Impact Conference conducted Mar. 17, 2023, adopting the middle scenario for the increase in retailer commissions and a 0/negative indeterminate impact for the removal of the restriction on other types of retailer compensation, at http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2023/_pdf/impact0317.pdf at 252-255 (last visited Mar. 21, 2023).

¹² See ch. 2022-157, s. 58, Laws of Florida and s. 24.105(9)(i), F.S.

¹³ The bonus commission program was funded by Specific Appropriation 2759U of the General Appropriations Act, in the amount of \$2,325,000.

¹⁴ See Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Review of the Florida Lottery, 2022*, Report No. 23-02, (Jan. 2023), available at <https://oppaga.fl.gov/Documents/Reports/23-02.pdf>, at 1 (last visited Mar. 21, 2023).

¹⁵ 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.

¹⁶ See s. 24.112(3)(c), F.S. There is an exception to this prohibition, when the department determines that the person has been pardoned or has had his or her civil rights restored, he or she has engaged in lawful commerce and maintained good integrity and citizenship within the community, or the person in question has terminated his or her relationship with the retailer.

¹⁷ See s. 24.112(4), F.S.

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.¹⁸

The department may establish by rule, a system to verify and pay winning lottery tickets:¹⁹

- Any lottery retailer, as well as any department office, may redeem a winning ticket valued at less than \$600.²⁰ 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.²¹ 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.²² Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the winning drawing.

The department may adopt rules governing the types of lottery games to be conducted,²³ including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”²⁴

The department promotes responsible lottery ticket play and directs persons struggling with a gambling problem to contact the 1-888-ADMIT-IT telephone line for assistance.²⁵

¹⁸ See s. 24.118(1), F.S.

¹⁹ See s. 24.115, F.S., and Fla. Admin. Code R. 53ER23-8.

²⁰ *Id.* 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.

²¹ *Id.* 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.

²² See s. 24.115(1)(f), F.S.

²³ See s. 24.105(9)(a), F.S.

²⁴ 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).

²⁵ See <http://www.flalottery.com/playResponsibly> (last visited Mar. 21, 2023).

III. Effect of Proposed Changes:

SB 1488 establishes in Florida law the commission rate payable to retailers for lottery ticket sales in Florida law at six percent of the purchase price of each ticket that is sold or issued as a prize by a retailer.

For the current Fiscal Year 2022-2023 ending June 30, 2023, the lottery retailer commission rate for ticket sales was set at 5.75 percent, pursuant to Chapter 2022-157, ss. 57-58, Laws of Florida implementing the General Appropriations Act. The department implemented the increase in its administrative rules.²⁶ Should the proposed six percent rate in the bill not be adopted, the lottery retailer commission rate for ticket sales will revert on July 1, 2023 to a rate determined by the department under its authority to regulate “the manner and amount of retailer compensation,” with no specified commission rate stated in Florida law and no limitation on other retailer compensation that may be paid.

Prior to July 1, 2022, lottery retailers were compensated with a commission rate of five percent, and a one percent cashing bonus amount for paying player prizes of amounts less than \$600. Should the commission rate not be increased to six percent, the department indicates it will undertake rulemaking to restore the previous five percent retailer commission rate and the one percent cashing bonus commission, to re-establish the blended commission rate of 5.6 percent that existed prior to July 1, 2022.²⁷

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²⁶ See Fla. Admin. Code R. 53ER22-30, which set the commission rate at 5.75% and eliminated payment of a one percent cashing bonus amount for paying player prizes of amounts less than \$600.

²⁷ See Department of the Lottery, *2023 Agency Legislative Bill Analysis for SB 1488* at 3 (Mar. 16, 2023) (on file with the Senate Committee on Regulated Industries).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill sets the commission payable to retailers for lottery ticket sales in Florida law at a rate of six percent of the purchase price of each ticket that is sold or issued as a prize by a retailer. The bill increases this commission rate to six percent from the one-year increase of 5.75 percent enacted for Fiscal Year 2022-2023 pursuant to legislation implementing the General Appropriations Act.

Should the proposed six percent rate in the bill not be adopted, the lottery retailer commission rate for ticket sales will revert on July 1, 2023 to a rate determined by the DOL under its authority to regulate “the manner and amount of retailer compensation,” with no specified commission rate stated in Florida law, possibly reducing the commission amounts payable to retailers in future years.

C. Government Sector Impact:

The Revenue Estimating Conference considered the impact of the bill on state revenues on March 17, 2023, finding that under the bill:

The limitation on other retailer compensation in current law is removed, thereby allowing the Lottery discretion to implement additional forms of retailer compensation such as the 1% cashing bonus commission which was in effect in FY 2021-22. The department has yet to make a determination on the additional 1% cashing bonus commission for FY 2023-24.

The retailer commission rate prior to FY 22-23 was 5%. Additionally, the retailers earned 1% cashing bonus commission for winning ticket payouts paid at location. The blended retailer commission rate for the base commission and the cashing bonus commission was 5.6%. For Fiscal Years 2023-24 and thereafter, the estimates adopted by the Revenue Estimating Conference assume a blended retailer commission rate of 5.6%.²⁸

²⁸ See http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2023/_pdf/impact0317.pdf at 252 (last visited Mar. 21, 2023).

The Revenue Estimating Conference adopted the following estimate for the increase in retailer commissions and a 0/negative indeterminate impact for the removal of the restriction on other types of retailer compensation.²⁹ It reduces the Department of Lottery transfer to the Educational Enhancement Trust Fund from lottery ticket sales.

	GR		Trust		Local/Other		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2023-24	0.0	0.0	(37.1)	(37.1)	0.0	0.0	(37.1)	(37.1)
2024-25	0.0	0.0	(37.9)	(37.9)	0.0	0.0	(37.9)	(37.9)
2025-26	0.0	0.0	(38.3)	(38.3)	0.0	0.0	(38.3)	(38.3)
2026-27	0.0	0.0	(38.7)	(38.7)	0.0	0.0	(38.7)	(38.7)
2027-28	0.0	0.0	(39.0)	(39.0)	0.0	0.0	(39.0)	(39.0)

(In \$ millions)

In its analysis of the bill, the department states that the commission rate of five percent was adopted by rule in 1987 and remained unchanged until July 1, 2022 when it was increased by the Legislature for the Fiscal Year ending June 30, 2023, and that retailers also received a separate one percent cashing bonus commission until July 1, 2023.³⁰

Should the commission rate not be increased to six percent, the department indicates it will undertake rulemaking to restore the previous five percent commission rate and the one percent cashing bonus commission, to re-establish the blended commission rate of 5.6 percent that existed prior to July 1, 2022.³¹

The department states that at a six percent commission rate, Florida’s rate for scratch off games would be comparable to that of nine states, (and lower than nine states); for draw games, a six percent commission rate in Florida would be comparable to that of 10 states (and lower than seven states).³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 24.105 of the Florida Statutes.

This bill repeals section 58 of chapter 2022-157, Laws of Florida.

²⁹ See http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2023/_pdf/impact0317.pdf at 253 (last visited Mar. 21, 2023).

³⁰ See Department of the Lottery, *2023 Agency Legislative Bill Analysis for SB 1488* at 2 (Mar. 16, 2023) (on file with the Senate Committee on Regulated Industries).

³¹ *Id.* at 3.

³² *Id.* at 4.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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