

**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 Regulated Industries Committee

**BILL:** CS/SB 380

**INTRODUCER:** Regulated Industries Committee and Senator Diaz de la Portilla and others

**SUBJECT:** Game Promotion

**DATE:** January 19, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/CS
2.			CM	
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This Committee Substitute (CS) amends game promotions, which are authorized under s. 849.094, F.S. Under current law, all game promotions with a total announced prize over \$5,000 must register the game promotion with the Department of Agriculture and Consumer Services (DACS), file with DACS a copy of the rules and regulations of the game promotion and a list of all prizes offered, file a \$100 filing fee, and establish a trust account. Each game promotion operator must also provide DACS with a certified list of the names and addresses of all persons who have won prizes that value more than \$25.

This CS increases the regulations that apply to electronic game promotions or game promotions that provide electronic devices or computer terminals with video display monitors that reveal or display the results of a game promotion. This CS requires every electronic game promotion to register with DACS, file a copy of the rules and regulations of the game promotion, and establish a trust account. In addition, each operator of an electronic game promotion, regardless of prize amount, must submit a \$100 per electronic device or computer terminal fee as well as an independent certification that the game promotion software operates only games with a preconfigured finite pool of entries, provides an entrant with the ability to participate in the absence of a purchase, does not distinguish an entrant who has made a purchase from one who

has not, uses video displays that do not determine the result of the game promotion, and complies with the game promotion regulations in s. 849.094(2), F.S.

The CS imposes signage requirements on electronic game promotions that require the operator to post a sign inside the premise and on each piece of electronic equipment warning that the displays are for amusement only and that the displays do not determine the result of the game promotion. Operators who provide electronic devices or operate electronic game promotions must limit the advertisement on the exterior of the premise to the consumer product sold and that a game promotion is offered in connection with the sale of a consumer product. The exterior of the premise may not suggest that gambling takes place inside the premise or use images commonly associated with slot machines.

The CS provides that the electronic devices may not dispense coins or currency. The CS prohibits the use of mechanical or electromechanical reels in connection with a game promotion. The CS provides that compliance with s. 849.094, F.S., removes the electronic device from the definition of slot machines.

This CS provides that counties or municipalities may adopt ordinances, codes, plans, rules, resolutions, or other measures to regulate electronic game promotions. Counties or municipalities may also prohibit a future operator from using electronic devices or computer terminals with video display monitors used to reveal the results of a game promotion.

The CS takes effect on July 1, 2012.

This CS substantially amends the following section of the Florida Statutes: 849.094.

## **II. Present Situation:**

### **Game Promotions**

Although gambling is generally illegal,<sup>1</sup> game promotions are regulated under s. 849.094, F.S.<sup>2</sup> In 1971, the Legislature enacted s. 849.094, F.S., which provides for game promotions in connection with the sale of consumer products.<sup>3</sup> Section 849.094(1)(a), F.S., defines “game promotion” as:

a contest, game of chance, or gift enterprise, conducted within or throughout the state or other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present. However, “game promotion” shall not be construed to apply to bingo games conducted pursuant to s. 849.0931.

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<sup>1</sup> Section 849.08, F.S., provides that “[w]hoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.”

<sup>2</sup> Section 849.094, F.S., does not explicitly authorize game promotions but instead defines the term “game promotion” and provides requirements for the conduct of certain game promotions. *See Beasley Broadcasting, Inc. v. Department of State, Division of Licensing*, 693 So.2d 668 (Fla. 2d DCA 1997).

<sup>3</sup> *See* ss. 1-9, ch. 71-304, L.O.F.

This provision is intended to allow companies to promote their products or services with a promotion. Prior to the passage of this statute, game promotions were considered illegal lotteries.

A game promoter, or “operator,” is defined as “any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion, except any charitable nonprofit organization.”<sup>4</sup>

The law prohibits operators from manipulating their game promotion so that all or part of the winning game pieces are allocated to certain franchisees, agents, or lessees, or to certain geographic areas of the state. Operators may not:<sup>5</sup>

- Arbitrarily remove, disqualify, disallow, or reject any entry;
- Fail to award the prizes advertised;
- Publish false or misleading advertising about the game promotion;
- Require an entry fee, payment, or proof of purchase as a condition of entering the game promotion; or
- Force a lessee, agent, or franchisee to participate in a game promotion.

There is no license required to conduct a game promotion and game promotion proceeds are not taxed. Instead, operators of a game promotion with an announced total prize value of greater than \$5,000 must register the game promotion with the Department of Agriculture and Consumer Services (DACS or department) <sup>6</sup> and comply with the following requirements:

- File with DACS at least 7 days before the commencement of a game promotion a copy of the rules and regulations of the game promotion and a list of all prizes and prize categories offered. A \$100 non-refundable fee to DACS must accompany each filing.<sup>7</sup>
- Conspicuously post the rules and regulations of the game promotion in each retail outlet or place where the game is played or participated in by the public.<sup>8</sup>
- Legibly publish the rules and regulations in all advertising copy about the game promotion. If the advertisements include a website, a toll-free telephone number, or a mailing address where the full rules and regulations may be viewed, heard, or obtained for the duration of the promotion, the advertising copy only has to include the material terms of the rules and regulations.<sup>9</sup>
- Financially back the prize pool with either a trust account or a surety bond.<sup>10</sup>
  - The trust account must be obtained through a national- or state-chartered financial institution, with a balance sufficient to pay or purchase the total value of all prizes offered. On a DACS-supplied form, an officer of the financial institution holding the trust account shall report the amount of money in the account, who established the trust account, and the name of the game promotion

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<sup>4</sup> Section 849.094(1)(b), F.S.

<sup>5</sup> Sections 849.094(2) and (7), F.S.

<sup>6</sup> Section 849.094(3), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 849.094(3), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 849.094(4), F.S.

- for which the account was established. The form must be filed within 7 days of the game promotion.
- In lieu of the trust account, the operator may demonstrate to DACS that it has obtained a surety bond equal to the total amount of prizes offered.
  - DACS may waive this requirement if the operator has conducted game promotions in Florida for at least 5 consecutive years and has not had any criminal, civil, or administrative actions filed against him by the state related to s. 849.094, F.S.
  - Furnish DACS with a certified list of the names and addresses of all persons who won prizes valued at \$25 or more, and the dates on which they won. This list must be provided to DACS within 60 days of the winners being determined. DACS must retain this list for at least 6 months before disposing of it.<sup>11</sup>

The department has the authority to adopt rules to enforce the game promotion statute. Also, the department and the Department of Legal Affairs have the authority to bring action in circuit court against any operator that they have reason to believe is in violation of s. 849.094, F.S.

Violators of the provisions in s. 849.094, F.S., or the rules adopted by DACS, are guilty of a second-degree misdemeanor, punishable by a maximum 60 days in jail and a \$500 fine.<sup>12</sup> The department may also pursue civil penalties against violators of up to \$1,000 per violation, such as failure to post the game promotion rules or failing to maintain a surety bond in the amount of the total prize pot.

Section 849.094(10), F.S., provides that “this section does not apply” to activities or transactions regulated by the Department of Business and Professional Regulation, the activities of nonprofit organizations, or to any organization engaged in activities that do not involve the sale of consumer products or services. Also, DACS’ registration and oversight provisions do not apply to television or radio broadcasting companies licensed by the Federal Communications Commission.

When s. 849.094, F.S., was created in 1971, the Internet as we know it today did not exist, nor were computers or machines routinely used in connection with game promotions. Utilizing electronic machines as game promotions in so-called “Internet Cafes” is a relatively new occurrence in Florida. There is nothing in the statute that expressly authorizes or prohibits the use of electronic devices to aid in game promotions. Because electronic game promotions may look or function similar to slot machines, there is some uncertainty as to their legality.

### **Electronic Game Promotions or Internet Cafes**

Internet Cafes or operators of electronic game promotions operate a game promotion through the use of an electronic computer terminal or other electronic device. There is no official estimate for how many Internet Cafes exist in the state but representatives of the industry estimate that there are somewhere between 450 to 1,000 Internet Cafes in Florida. According to a representative from DACS, there are eleven electronic sweepstakes currently registered as of January 2012.<sup>13</sup>

<sup>11</sup> Section 849.094(5), F.S.

<sup>12</sup> Section 849.094(9), F.S.

<sup>13</sup> Six of the registered game promotions sell phone time and five sell Internet time. The representative from DACS stressed

Electronic game promotions work similarly to other game promotions operated across the country. The customer, in most cases, purchases Internet time or long-distance calling cards (the consumer goods or service), and receives free entries into a game promotion. Customers of the Internet Cafe are not required to purchase anything in order to receive entries in the game promotion.<sup>14</sup>

A central computer server at the Internet Cafe randomly picks entries for the customer from the predetermined, finite pool of entries at the time when the customer purchases the consumer product. The calling minutes or Internet time along with the game promotion entries are typically associated with the customer's account at the time of purchase to allow the customer to access those entries and Internet time with an electronic card that can be swiped at any of the computers in the Internet Cafe.<sup>15</sup>

The customer can use the computer terminals to reveal the entries in an "entertaining fashion" or the customer can access the Internet. If the customer does not wish to reveal the entries in an entertaining fashion, the customer can ask the Internet Cafe attendant to swipe the card and tell the customer whether he or she has any winning entries.

Typically, the Internet Cafe customers swipe the electronic card through a card reader on the computers and select the type of game they want to play; the games are often referred to as "simulated games" because the games have no impact on the outcome of the game promotion or sweepstakes. The simulated games often resemble "casino-style games" such as poker, blackjack, slots, roulette, or even arcade style games such as matching or Tetris-type games. The games are interactive but the interaction has no effect on whether the player wins or loses. Even games that appear skill based are not; the entries received by the patron are already predetermined as winners or losers. Whether the customer is a winner in the game promotion is determined prior to the customer scanning the card at the computer terminal and playing the games. Winning customers can either receive the prize in cash, or use the winnings to make an additional consumer product purchase, such as additional Internet time or phone card minutes, and thereby receive more entries into the game promotion. In any event, in electronic game promotion operations, the time spent playing the games is not deducted from the phone card or Internet time.

### **Legality Concerns**

Law enforcement and local district attorneys have raised concerns about whether the use of an electronic simulated gaming machine in a game promotion is an illegal slot machine. Other issues have been raised concerning potential ambiguities in the game promotion statute, including whether the game promotion statute exempts nonprofit organizations from the statutory requirements in s. 849.094, F.S., or whether nonprofit organizations are excluded from

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that although only 11 are registered, each game promotion operates at multiple locations. In addition, only game promotions with prize pools over \$5,000 are registered.

<sup>14</sup> Section 849.094(2)(e), F.S., provides that it is unlawful for a game promotion operator to charge for entries into the sweepstakes.

<sup>15</sup> The game promotion entries are not loaded on to a play card but are associated with the account for the customer so that the customer or the cashier can immediately determine if the entries are winners.

conducting a game promotion entirely. In addition, the issue of consideration has been raised concerning whether customers of Internet Cafes are purchasing sweepstakes entries.

No appellate court in Florida has examined the legality of the use of electronic simulated gaming devices in conjunction with game promotions. Three cases have been identified at the circuit court level. One jury trial resulted in a not guilty verdict against the owners/operators of an Internet Cafe,<sup>16</sup> and two other cases have been brought but ultimately dismissed before trial.<sup>17</sup>

Chapter 849, F.S., prohibits slot machines<sup>18</sup> and gambling houses.<sup>19</sup> Slot machines are authorized at certain pari-mutuel facilities in Miami-Dade and Broward counties.<sup>20</sup> Slot machines are also permitted on tribal facilities covered by the Seminole Indian Compact.<sup>21</sup>

Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S., as:

(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.

Section 551.102(8), F.S., defines a slot machine to mean:

any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or

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<sup>16</sup> *State v. Crisante*, 42-2010-CF-001543-BXXXX-XX (Marion County).

<sup>17</sup> *State v. Reed*, 42-2009-CA-004574-AXXXX-XX (dismissed); 42-2010-CF-001505-AXXXX-XX (nolle prosequi) (Marion County); and *State v. Ames*, 602009CF000951XXAFX (nolle prosequi) (Sumter County).

<sup>18</sup> Section 849.15, F.S.

<sup>19</sup> Section 849.01, F.S.

<sup>20</sup> Article X, s. 23, Florida Constitution and ch. 551, F.S.

<sup>21</sup> *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 128. Slot machines are authorized for all seven gaming facilities. The Tribe has three gaming facilities located in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa).

entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both.

Generally, any machine or device is a slot machine if, as a result of the insertion of any object, the user, by any element of chance or unpredictability, may receive any thing of value.<sup>22</sup> According to the Florida Supreme Court, the unpredictability must “be inherent in the machine.”<sup>23</sup>

As a whole, the Internet Cafe industry claims that there are many differences between an electronic game promotion and a slot machine. The industry notes that slot machines allow line bets, use random number generators, and the element of chance is built into the machine. Slot machines have no beginning or end and each individual play on the machine is independent of the last. Game promotions on the other hand reveal results from a finite predetermined pool of outcomes. The results shown on the terminal act as a representation of the predetermined outcome and once the outcome is drawn, the ticket cannot be drawn again and the outcome is discarded. Game promotions have a predetermined start and stop date and nothing is stored on the player terminal.

In September 2011, the Florida Attorney General stated that nothing in s. 849.094, F.S., “authorizes the use of slot machines.”<sup>24</sup> In addition, the Attorney General outlined the findings in an Alabama gambling case and noted that:

a Florida court may well utilize a similar analysis in determining whether the machines utilized in Internet cafes offering customers the ability to play slot machine type games constitute slot machines and whether the elements of consideration and chance are present even though the machines may offer customers merchandise or services such as Internet or telephone access when such merchandise or services are merely incidental and chance is determined at the point of sale.<sup>25</sup>

In 2006, the Alabama Supreme Court reviewed a simulated gaming system used as a sweepstakes for a pari-mutuel facility in Birmingham.<sup>26</sup> The sweepstakes operated similarly to Internet Cafes in Florida. The customer opens an account, is assigned a magnetic reader, and the account is assigned a number of predetermined sweepstakes entries from a pool of entries. The customer then uses a computer terminal to reveal whether his entries have won a prize. The court found that the customers were attracted to the establishment for the purpose of gambling and that the customers are more interested in gambling than in using the Internet time.<sup>27</sup> The court found

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<sup>22</sup> Section 849.16, F.S.

<sup>23</sup> *Deeb v. Stoutamire*, 53 So.2d 873, 875 (Fla. 1951).

<sup>24</sup> *Briefing Paper submitted to the Senate Regulated Industries Committee from the Office of the Attorney General Pam Bondi* (Sept. 2011). A copy of the paper is on file with the committee.

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

<sup>26</sup> *See Barber v. Jefferson County Racing Association*, 960 So.2d 599 (Ala. 2006).

<sup>27</sup> *Id.* at 612.

that the system was an illegal slot machine and stated that “the fact that chance takes place at the point of sale rather than at the readers themselves is simply inconsequential.”<sup>28</sup>

In addition to the above legality issue, there are concerns about whether or not s. 849.094, F.S., limits the conduct of game promotions to only for-profit corporations, excluding non-profit charitable organizations. Specifically, s. 849.094(1)(b), F.S., provides that an “operator” means “any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion, *except any charitable nonprofit organization.*” (emphasis added). This provision regarding charitable nonprofit organizations was in the definition of “operator” when the game promotion statute was first enacted in 1971.<sup>29</sup> Section 849.094(10), F.S., further provides that the section does not apply to activities of nonprofit organizations or to any organization engaged in any enterprise other than the sale of consumer products or services.

The Florida Attorney General noted that the definition of a game promotion “expressly excludes charitable nonprofit organizations” and the game promotion provisions, as a result, cannot be utilized by those entities.<sup>30</sup> Instead, gambling activities permitted for nonprofit organizations are typically found under s. 849.0935, F.S., pertaining to charitable drawings by chance, and s. 849.0931, F.S., pertaining to charitable bingo.

Because of the exception from the definition of an operator of a game promotion, charitable nonprofit organizations do not register the sweepstakes with the Department of Agriculture and Consumer Services and are not otherwise required to comply with the requirements of s. 849.094, F.S.

### **Inconsistent State-wide Enforcement**

The Senate Committee on Regulated Industries issued Interim Report 2012-137: *Review Internet Cafes Used for Electronic Game Promotions*<sup>31</sup> noted that local governments have been responding to the increase in the number of Internet Cafes in the past few years by passing moratoriums prohibiting the growth of the Internet Cafes, passing bans, or passing regulatory ordinances. According to survey results conducted for that report, only two counties have moved to regulate Internet Cafes: Leon and Duval.

Duval passed the first ordinance regulating Internet Cafes in October 2010. The ordinance limits the number of locations, regulates, and taxes the games.<sup>32</sup> The ordinance allows facilities that were operating as of August 2010, to receive a permit but thereafter caps the number of permits to 20 for the county. The ordinance requires independent laboratory certification that confirms the software used to run the sweepstakes complies with state and local laws. Operators must also submit a \$500 application fee and permit fees for the location and per device. Signage requirements limit the advertisement of the facility to the goods or service sold, plus the operator

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<sup>28</sup> *Id.* at 615.

<sup>29</sup> See ch. 71-304, L.O.F.

<sup>30</sup> *Briefing Paper, supra* at n. 24.

<sup>31</sup> The report can be found at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-137ri.pdf>

<sup>32</sup> Duval County Ordinance 2010-326 was codified as ch. 156, and can be found at:

<http://www.coj.net/Departments/Environmental-and-Compliance/Docs/Chapter-156-Electronic-Game-Promotions.aspx> (Last visited January 17, 2012).



may advertise that a sweepstakes is being offered. The signage may not suggest gambling is occurring inside or display images associated with slot machine graphics. In addition, the operator must maintain a bond in the amount of the total announced value of all prizes or \$50,000, whichever is less. Armed security guards are also required during nighttime operating hours.

In an ordinance similar to the Duval ordinance, Leon County earlier this year also passed a regulatory ordinance. Starting in September 2011, an applicant for a “Simulated gambling facility” must submit fingerprint cards, a criminal background check certification letter, rules and regulations for the game promotion, certification by an independent testing laboratory, and proof of a trust account or copy of a bond for an amount equal to the total value of announced prizes or \$50,000, whichever is less. The applicant must also submit information about all owners and affiliates of the applicant and a list of all products and services sold, including the sales price for each item, which must be reasonable market value. The application must be accompanied by a \$500 application fee and an annual permit fee that is determined per device used in the establishment. The permit fee ranges from \$2,500 (1-20 devices) to \$12,500 (81-100 devices). In addition, each applicant must submit an additional \$50 per device for the annual simulated gambling device inspection fee.

In contrast to the regulatory ordinances, Seminole County passed an ordinance to ban all simulated gambling devices in January 2011,<sup>33</sup> which is currently being challenged in federal court as an unconstitutional limitation on free speech.<sup>34</sup> The ordinance defines a “simulated gambling device” as “any device that, upon connection with an object, is available to play or operate a computer simulation of any game, and which may deliver or entitle the person or persons playing or operating the device to a payoff.” The case is currently on appeal to the United States Court of Appeals, 11th Circuit. The City of Winter Garden<sup>35</sup> and Baker County<sup>36</sup> have also passed ordinances to prohibit the use of simulated gaming displays used commonly in Internet Cafes. Hillsborough County has also recently passed an ordinance to ban Internet Cafes.

Several other counties have addressed the issue in various ways.<sup>37</sup>

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<sup>33</sup> Seminole County Ordinance 2011-1, available at: [http://www.seminolecountyfl.gov/ca/pdf/Ordinance\\_2011-1.pdf](http://www.seminolecountyfl.gov/ca/pdf/Ordinance_2011-1.pdf) (Last visited January 17, 2012).

<sup>34</sup> *Allied Veterans of the World v. Seminole County*, case 6:11-cv-155-Orl-28DAB (M.D. Fla. 2011). In February 2011, a temporary restraining order was issued to enjoin Seminole County from enforcing the ordinance, available at: <http://www.leoncountyfl.gov/ADMIN/Agenda/attach/110222/A2102.pdf> (Last visited September 9, 2011). In May 2011, the court denied Plaintiff’s motion for a preliminary injunction and ordered that the temporary restraining order was no longer in effect and that Seminole County was entitled to enforce the ordinance. In September 2011, the court denied Plaintiff’s motion to stay trial court proceedings pending its appeal to the U.S. Court of Appeals for the 11th Circuit.

<sup>35</sup> A copy of the ordinance can be viewed at: <http://www.cwgdn.com/files/city-clerk/ordinances/Ord%2011-03%20Prohibiting%20Commercial%20Gaming%20Devices.pdf> (Last visited September 15, 2011).

<sup>36</sup> A copy of the ordinance can be viewed at: <http://www.ordinancewatch.com/files/LocalGovernment/LocalGovernment54345.pdf> (Last visited September 9, 2011).

<sup>37</sup> See various articles at: <http://www.floridagamingwatch.com/internet-cafe-news-and-information2/> (Last visited January 17, 2012).

Along with Sheriffs, State Attorneys, and Chiefs of Police, it has been reported that the Commissioner of the Department of Agriculture and Consumer Services recommends clarification on the issue because it is leading to uneven enforcement across the state.<sup>38</sup>

Internet Cafes are spreading in other states as well. A few states have started to address the issue and have passed legislation in an attempt to ban the activity. In North Carolina, the legislature moved to ban the activity by banning server-based game promotions in 2010.<sup>39</sup> In Virginia, the legislature amended the definition of “illegal gambling” and specified that it included the purchase of a product, Internet access, or other thing of value if the purchaser is credited with free points that may be redeemed for money and the purchase of the product, Internet access, or other thing of value would be insufficient value in and of itself to justify the purchase or is merely incidental to the chance to win money.<sup>40</sup> In Massachusetts, Attorney General Coakley issued a permanent regulation to ban Internet Cafes in June 2011. In a press release for Attorney General Coakley, the report noted that “[t]he regulation makes it clear that companies cannot skirt our laws by disguising gambling as something else, such as the sale of internet access. . . . Though the businesses purport to sell goods or services, such as internet access or phone cards, the Attorney General’s investigation found those sales were a pretext for unlawful lotteries, online slot parlors, sweepstakes and similar gambling. The regulation makes clear that these practices are against the law.”<sup>41</sup> Other states have also taken various actions at the state or local level.<sup>42</sup>

### III. Effect of Proposed Changes:

This CS increases the regulations that apply to electronic game promotions.

The CS provides a definition for “department” to mean the Department of Agriculture and Consumer Services. The CS amends the definition of “operator” to provide that an operator is any person, firm, corporation, or association or agent or employee who operates or conducts a game promotion to promote the sale of its consumer products or services.

The CS deletes the references to charitable nonprofit organizations, which excepted the organizations from the definition of “operator” of a game promotion. Under this CS, charitable nonprofit organizations may operate a game promotion.

The CS requires every operator that provides electronic devices or computer terminals with video display monitors that reveal or display the results of a game promotion to file a copy of the rules and regulations of the game promotion at least seven days before the commencement of the game promotion. The operator must also file a list of all prizes and prize categories offered. The filing must include the physical location of each electronic device or computer terminal and a separate terminal fee for each electronic device or computer terminal that is a component of the game promotion. The annual fee is \$100 per electronic device or computer terminal.

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<sup>38</sup> <http://saintpetersblog.com/2011/05/adam-putnam-internet-cafe-laws-need-clarity/> (Last visited September 14, 2011).

<sup>39</sup> N.C. Gen. Stat. s. 14-306.3.

<sup>40</sup> VA Code s. 18.2-352.

<sup>41</sup> <http://www.mass.gov/ago/news-and-updates/press-releases/2011/ag-issues-permanent-regs-banning-internet-cafes.html> (Last visited January 15, 2012).

<sup>42</sup> *Supra* at n. 37.

The CS provides that DACS may not accept a filing from any operator of a game promotion who has been found guilty of or entered a plea of nolo contendere to, regardless of adjudication, or who fails to satisfy a judgment, for a violation of this section.

Each operator of a game promotion that provides electronic devices or computer terminals with video display monitors that reveal or display the results of a game promotion must obtain a surety bond in an amount equal to the total value of all prizes offered and file with the department and shall file the bond with the department at least seven days before the commencement of the game promotion. All bonds filed with the department must include the account number and amount of the bond. Bonds shall be in favor of the department for the use and benefit of any consumer who qualifies for the award of a prize under the rules and regulations of the game promotion, but who does not receive the prize awarded. The bond shall be applicable and liable only for the payment of claims adjudicated by the department.

The CS provides that a list of winners of prizes awarded over \$25 must be submitted to the department within 60 days after the winners are determined. The CS provides that the final determination of winners must be 60 days after the ending of the game promotion as stated in the original filing with the department.

In addition, each operator of an electronic game promotion that provides electronic devices or computer terminals with video display monitors that reveal or display the results of a game promotion, regardless of prize amount, must submit an independent certification that the game promotion software operates only games with a preconfigured finite pool of entries, provides an entrant with the ability to participate in the absence of a purchase, does not distinguish an entrant who has made a purchase from one who has not, uses video displays that do not determine the result of the game promotion, and complies with the requirements of s. 849.094(2), F.S.

The CS imposes signage requirements on electronic game promotions requiring the operator to post a sign inside the premise and on each piece of electronic equipment warning that the displays are for amusement only and that the displays do not determine the result of the game promotion. Operators who provide electronic devices or operate electronic game promotions must limit the advertisement on the exterior of the premise to the consumer product sold and that a game promotion is offered in connection with the sale of a consumer product. The exterior of the premise may not suggest that gambling takes place inside the premise or use images commonly associated with slot machines.

The CS provides that the electronic devices may not dispense coins or currency. The CS prohibits the use of mechanical or electromechanical reels in connection with a game promotion. The CS provides that compliance with s. 849.094, F.S., removes the electronic device from the definition of slot machines.

The CS provides that counties or municipalities may adopt ordinances, codes, plans, rules, resolutions, or other measures to regulate existing or future electronic game promotions. Counties or municipalities may also prohibit a future operator from using electronic devices or computer terminals with video display monitors used to reveal the results of a game promotion.

The CS takes effect on July 1, 2012.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The CS provides that municipalities and counties may further restrict electronic game promotions through ordinances but does not require any county to do so.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The CS requires each operator that provides electronic devices or computer terminals with video display monitors that reveal or display the results of a game promotion to pay an annual \$100 per device or terminal filing fee to the Department of Agriculture and Consumer Services.

##### **B. Private Sector Impact:**

In 2011, Florida State University's Center for Economic Forecasting and Analysis studied the impact that Internet Cafes have on the state. The study analyzed the data supplied by Internet Cafes in Florida<sup>43</sup> and summarized the characteristics of the average Internet Cafe. The study found that each Internet Cafe employs approximately 13 individuals, which accounts for over 4,000 to 13,000 jobs statewide. Each Internet Cafe generates between \$62,000 and \$400,000 in sales per month. Overall, these businesses generate between over \$250 million and \$750 million annually in income. A second set of survey results presented slightly lower results; overall, according to the report, both sets of data suggest that Internet Cafes produce jobs, generate a high level of income, and have a positive fiscal impact on the state.<sup>44</sup>

Regulating electronic game promotions or Internet Cafes would provide legal clarity to these businesses that are currently operating throughout the state. The regulations and requirements may restrict the number of operators that could operate an Internet Cafe or run an electronic game promotion.

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<sup>43</sup> The Florida State University did not conduct independent research but relied on self reporting from in-state Internet Cafes.

<sup>44</sup> *The Economic Impact of Internet Cafes in Florida*, Final Report, Center for Economic Forecasting and Analysis, The Florida State University (May 2011). A copy of the report is on file with the committee.

**C. Government Sector Impact:**

The Department of Agriculture and Consumer Services indicated that the CS should result in additional game promotions registering with the department; as a result of the increase, the program that oversees this activity within the department would not have sufficient revenue to cover expenditures required to operate the program. The program would have a negative impact of approximately \$201,873 during the first year and a negative impact of approximately \$143,753 in subsequent years. The department indicated that it would require the following full time employees: 1 Regulatory Consultant, 1 Regulatory Specialist III, and 2 Senior Clerks.

The Revenue Estimating Conference has not estimated the impact of this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The CS does not authorize the use of simulated gaming; instead, the CS restricts and adds regulation to operators that utilize electronic devices or computer terminals with video display monitors to reveal the results a game promotion. While the revelation may involve a game or simulation of a game, the CS is silent on that issue.

In 2010, the state entered into a tribal-state compact (compact) with the Seminole Indian Tribe of Florida (Tribe), granting the Tribe substantial exclusivity on Class III and casino-style gaming in exchange for revenue sharing with the state.<sup>45</sup> The compact specified that if an expansion of gaming occurs, Tribal payments may be reduced or may cease. Although certain expansion would trigger the cessation or reduction in payments, the compact excludes certain gaming that would have no impact on revenue sharing payments. In Part XII.B.9. of the compact, the conduct of games authorized under ch. 849, F.S., as of February 1, 2010, is an exception that would have no impact on revenue sharing payments. Because game promotions were already legal and authorized under ch. 849, F.S., as of February 1, 2010, and because electronic game promotions were already operating in the state as of February 1, 2010, the addition of further regulation on electronic game promotions should have no impact on tribal payments to the state. Although law enforcement in some parts of the state have viewed the conduct of electronic game promotions operating as Internet Cafes to be illegal, prosecutions have not been successful and the Internet Cafes have continued to operate statewide. It is unclear how the Tribe would interpret the amendments to s. 849.094, F.S. If payments under the compact cease, payments would resume once any new gaming stops.<sup>46</sup>

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<sup>45</sup> *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 128.

<sup>46</sup> *Id.* at Part XII.A.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries Committee on January 19, 2012:**

The CS amends the definition of “operator.” The CS removes the \$1 registration threshold in the bill to require all game promotions to register and comply with all game promotion regulations. The CS requires electronic game promotions to provide certification that the software complies with the game promotion regulations in s. 849.094(2), F.S. The CS imposes signage requirements on electronic game promotions requiring the operator to post a sign inside the premise and on each piece of electronic equipment warning that the displays are for amusement only and that the displays do not determine the result of the game promotion. Operators who provide electronic devices or operate electronic game promotions must limit the advertisement on the exterior of the premise to the consumer product sold and that a game promotion is offered in connection with the sale of a consumer product. The exterior of the premise may not suggest that gambling takes place inside the premise or use images commonly associated with slot machines. The CS provides that the electronic devices may not dispense coins or currency. The CS provides that compliance with s. 849.094, F.S., removes the electronic device from the definition of slot machines. The CS provides that a county or municipality may further regulate the use of electronic devices or computer terminals used to reveal the results of a game promotion and may also prohibit a future operator from using such a device.

- B. **Amendments:**

None.