

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: SB 428

INTRODUCER: Senators Oelrich and Gaetz

SUBJECT: Prohibition of Simulated Gambling Devices

DATE: January 17, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Pre-meeting
2.			RC	
3.				
4.				
5.				
6.				

I. Summary:

This bill prohibits the use of simulated gambling devices and creates the “Simulated Gambling Prohibition and Community Protection Act.” The bill defines the term “simulated gambling device” to mean a mechanically or electronically operated machine, network, system, or device that is intended to be used by an entrant to a game promotion, sweepstakes, drawing, raffle, or any game of chance and that is capable of displaying a simulated gambling display on a screen or other mechanism. Violations of the act constitute a felony of the third degree. However, the act does not prohibit activity that is lawfully conducted under Tribal-State Gaming Compacts or activity that is lawfully conducted pursuant to s. 849.161, F.S., the section that regulates arcade amusement machines.

The bill provides that operators of charitable drawings by chance and game promotions may not use simulated gambling devices to operate the drawing or game promotion.

The bill prohibits a charitable nonprofit organization from conducting a game promotion. The bill provides that any violation of the game promotion regulations constitutes a deceptive and unfair trade practice. The bill provides that nothing in this section shall prohibit a corporation or its wholly owned subsidiaries, or a franchisee association or cooperative thereof, that is registered under the federal Securities Exchange Act of 1934 and has total assets of not less than \$25 million from conducting a game promotion which can be played on an electronic communication device, including, but not limited to, a computer or a cellular telephone.

The bill amends s. 849.15, F.S., pertaining to the manufacture, sale, and possession of coin-operated devices, to include that it is unlawful to manufacture, sell, or possess any apparatus or part thereof that is otherwise prohibited from operation or possession in this state. The bill

amends s. 849.16, F.S., pertaining to the prohibition of slot machines to provide that a slot machine may be a system or network of computers or other devices, and not solely a single machine or device. The slot machine may operate by insertion of money, coin, code, account number, credit, or other object or method of activation, which may occur through remote activation.

The bill provides that nothing in this act may be construed to authorize the possession or operation of any machine or device that is prohibited under another other provision of law.

The act shall take effect upon becoming law.

This bill substantially amends the following sections of the Florida Statutes: 849.0935, 849.094, 849.15, and 849.16.

The bill makes conforming changes to and reenacts the following sections of the Florida Statutes: 895.02, 721.111, 16.56, 338.234, 655.50, 849.19, 896.101, and 905.34.

This bill creates section 849.162, Florida Statutes.

II. Present Situation:

Charitable Drawings by Chance

Although gambling is generally illegal,¹ charitable drawings by chance are authorized under s. 849.0935, F.S. Section 849.0935(1)(a), F.S., defines a “drawing by chance” as:

an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance to win a prize. The term “drawing” does not include those enterprises, commonly known as “matching,” “instant winner,” or “preselected sweepstakes,” which involve the distribution of winning numbers, previously designated as such, to the public.

Organizations which may conduct game drawings by chance include organizations which are exempt from federal income taxation pursuant to 26 U.S.C. s. 501(c)(3), (4), (7), (8), (10), or (19), and which have a current determination letter from the Internal Revenue Service, and its bona fide members or officers.²

Section 849.0935(3), F.S., requires all brochures, advertisements, notices, tickets, or entry blanks used in connection with a drawing by chance to conspicuously disclose:

- The rules governing the conduct and operation of the drawing;
- The full name of the organization and its principal place of business;
- The source of the funds used to award cash prizes or to purchase prizes;

¹ 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.”

² Section 849.0935(1)(b), F.S.

- The date, hour, and place where the winner will be chosen and the prizes will be awarded, unless the brochures, advertisements, notices, tickets, or entry blanks are not offered to the public more than 3 days prior to the drawing; and
- That no purchase or contribution is necessary.

Section 849.0935(4), F.S., prohibits any organization which promotes, operates, or conducts a drawing by chance:

- To design, engage in, promote, or conduct any drawing in which the winner is predetermined by means of matching, instant win, or preselected sweepstakes or otherwise or in which the selection of the winners is in any way rigged;
- To require an entry fee, donation, substantial consideration, payment, proof of purchase, or contribution as a condition of entering the drawing or of being selected to win a prize. However, this provision shall not prohibit an organization from suggesting a minimum donation or from including a statement of such suggested minimum donation on any printed material utilized in connection with the fundraising event or drawing;
- To condition the drawing on a minimum number of tickets having been disbursed to contributors or on a minimum amount of contributions having been received;
- To arbitrarily remove, disqualify, disallow, or reject any entry or to discriminate in any manner between entrants who gave contributions to the organization and those who did not give such contributions;
- To fail to promptly notify, at the address set forth on the entry blank, any person, whose entry is selected to win, of the fact that he or she won;
- To fail to award all prizes offered;
- To print, publish, or circulate literature or advertising material used in connection with the drawing which is false, deceptive, or misleading;
- To cancel a drawing; or
- To condition the acquisition or giveaway of any prize upon the receipt of voluntary donations or contributions.

The section does permit an organization conducting a drawing by chance to limit the number of tickets distributed to each drawing entrant.³ In addition, any violation of this section is a deceptive and unfair trade practice.⁴ Any organization which violates s. 849.0935, F.S., is guilty of a misdemeanor of the second degree.⁵ Any organization or person who violates the provision related to posting the date, hour, and location where the winner will be chosen is guilty of a misdemeanor of the second degree, but the violation is only punishable by fine.

³ Section 849.0935(5), F.S.

⁴ Section 849.0935(6), F.S.

⁵ A misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days or by a fine not to exceed \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

Game Promotions

Game promotions are regulated under s. 849.094, F.S.⁶ In 1971, the Legislature enacted s. 849.094, F.S., which provides for game promotions in connection with the sale of consumer products.⁷ 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.

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.”⁸

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:⁹

- 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)¹⁰ 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.¹¹
- 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.¹²

⁶ 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).

⁷ *See* ss. 1-9, ch. 71-304, L.O.F.

⁸ Section 849.094(1)(b), F.S.

⁹ Sections 849.094(2) and (7), F.S.

¹⁰ Section 849.094(3), F.S.

¹¹ *Id.*

¹² Section 849.094(3), F.S.

- 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.¹³
- Financially back the prize pool with either a trust account or a surety bond.¹⁴
 - 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 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.¹⁵

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.¹⁶ 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.

¹³ *Id.*

¹⁴ Section 849.094(4), F.S.

¹⁵ Section 849.094(5), F.S.

¹⁶ Section 849.094(9), F.S.

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 2012.¹⁷

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.¹⁸

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.¹⁹

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

¹⁷ Six of the registered game promotions sell phone time and five sell Internet time. The representative from DACS stressed 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.

¹⁸ Section 849.094(2)(e), F.S., provides that it is unlawful for a game promotion operator to charge for entries into the sweepstakes.

¹⁹ 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.

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 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,²⁰ and two other cases have been brought but ultimately dismissed before trial.²¹

Chapter 849, F.S., prohibits slot machines²² and gambling houses.²³ Slot machines are authorized at certain pari-mutuel facilities in Miami-Dade and Broward counties.²⁴ Slot machines are also permitted on tribal facilities covered by the Seminole Indian Compact.²⁵

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

²⁰ *State v. Crisante*, 42-2010-CF-001543-BXXXX-XX (Marion County).

²¹ *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).

²² Section 849.15, F.S.

²³ Section 849.01, F.S.

²⁴ Article X, s. 23, Florida Constitution and ch. 551, F.S.

²⁵ *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).

(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 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.²⁶ According to the Florida Supreme Court, the unpredictability must “be inherent in the machine.”²⁷

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.”²⁸ 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

²⁶ Section 849.16, F.S.

²⁷ *Deeb v. Stoutamire*, 53 So.2d 873, 875 (Fla. 1951).

²⁸ *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.

Internet or telephone access when such merchandise or services are merely incidental and chance is determined at the point of sale.²⁹

In 2006, the Alabama Supreme Court reviewed a simulated gaming system used as a sweepstakes for a pari-mutuel facility in Birmingham.³⁰ 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.³¹ The court found 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.”³²

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 1971.³³ 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.³⁴ 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. However, according to representatives from the Internet Cafe industry, some Internet Cafes are operated by charitable nonprofit organizations under s. 849.0935, 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*³⁵ noted that local governments have been responding to the increase in the number of Internet Cafes in the past few years by passing

²⁹ *Id.*

³⁰ *See Barber v. Jefferson County Racing Association*, 960 So.2d 599 (Ala. 2006).

³¹ *Id.* at 612.

³² *Id.* at 615.

³³ *See* ch. 71-304, L.O.F.

³⁴ *Briefing Paper*, *supra* at n. 24.

³⁵ The report can be found at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-137ri.pdf>

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.³⁶ 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 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 2011,³⁷ which is currently being challenged in federal court as an unconstitutional limitation on free speech.³⁸ 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

³⁶ 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).

³⁷ Seminole County Ordinance 2011-1, available at: http://www.seminolecountyfl.gov/ca/pdf/Ordinance_2011-1.pdf (Last visited January 17, 2012).

³⁸ *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.

United States Court of Appeals, 11th Circuit. The City of Winter Garden³⁹ and Baker County⁴⁰ 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.⁴¹

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.⁴²

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 2010.⁴³ 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.⁴⁴ 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.”⁴⁵ Other states have also taken various actions at the state or local level.⁴⁶

III. Effect of Proposed Changes:

Section 1. This bill prohibits the use of simulated gambling devices and creates the “Simulated Gambling Prohibition and Community Protection Act.” The bill finds that there is a compelling state interest in prohibiting the use of electronic machines and devices used for simulated gambling or gaming. The section defines terms, including the following:

- “Simulated gambling device” means a mechanically or electronically operated machine, network, system, or device that is intended to be used by an entrant to a

³⁹ A copy of the ordinance can be viewed at: <http://www.cwgd.com/files/city-clerk/ordinances/Ord%2011-03%20Prohibiting%20Commercial%20Gaming%20Devices.pdf> (Last visited September 15, 2011).

⁴⁰ A copy of the ordinance can be viewed at:

<http://www.ordinancewatch.com/files/LocalGovernment/LocalGovernment54345.pdf> (Last visited September 9, 2011).

⁴¹ See various articles at: <http://www.floridagamingwatch.com/internet-cafe-news-and-information2/> (Last visited January 17, 2012).

⁴² <http://saintpetersblog.com/2011/05/adam-putnam-internet-cafe-laws-need-clarity/> (Last visited September 14, 2011).

⁴³ N.C. Gen. Stat. s. 14-306.3.

⁴⁴ VA Code s. 18.2-352.

⁴⁵ <http://www.mass.gov/ago/news-and-updates/press-releases/2011/ag-issues-permanent-regs-banning-internet-cafes.html> (Last visited January 15, 2012).

⁴⁶ *Supra* at n. 41.

- game promotion, sweepstakes, drawing, raffle, or any game of chance and that is capable of displaying a simulated gambling display on a screen or other mechanism.
- “Simulated gambling display” means visual or aural information capable of being perceived by a user which takes the form of actual or simulated gambling or gaming play. The term includes, but is not limited to, displays depicting the following types of games:
 - Reel games or simulations of reel games, such as slot machines, eight liners, or pot-of-gold.
 - Card games or simulations of card games, such as video poker.
 - Video games representing a game regulated by Florida law, such as bingo, sweepstakes, game promotions, drawings, or raffles.
 - Video games representing a game prohibited by Florida law, such as craps, keno, and lotteries.
 - Any video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols.

The bill provides that the terms “gambling,” “gaming,” or “game” is not used to incorporate any legal definitions of the term and does not necessitate the presence of elements of consideration, chance, or prize.

The bill provides that a person may not design, promote, or operate a simulated gambling device to:

- Conduct a game promotion, sweepstakes, drawing, raffle, or any game of chance, including the entry process or the revealing of a prize or outcome; or
- Promote a game promotion, sweepstakes, drawing, raffle, or any game of chance that is conducted through the use of a simulated gambling display, including the entry process or the revealing of a prize or outcome.

Violations of the act constitute a felony of the third degree.⁴⁷ A finding that a machine or device is a simulated gambling device under this section does not preclude a finding that it is also a slot machine or device prohibited under s. 849.16, F.S. It provides that it is the intent of this section to prohibit any mechanism that seeks to avoid the application of this section through the use of subterfuge or pretense. The act does not prohibit activity that is lawfully conducted under Tribal-State Gaming Compacts or activity that is lawfully conducted pursuant to s. 849.161, F.S., the section that regulates arcade amusement machines.

Section 2. The bill amends s. 849.0935, F.S., pertaining to charitable drawings by chance to exclude game promotions from the definition of “drawing by chance” and to include the term “raffle” to mean a drawing by chance. The bill prohibits an organization from conducting a drawing which uses a simulated gambling device or to design, engage in, promote, or conduct a drawing through the use of a mechanically or electronically operated machine, network, system, or device that allows the entrant to the drawing to operate, play, or otherwise interact with the

⁴⁷ A third degree felony is punishable by a term of imprisonment not to exceed five years or a fine not to exceed \$5,000. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

machine. The bill increases the criminal penalty for any violation pertaining to the use of a simulated gambling device to a misdemeanor of the first degree.⁴⁸

Section 3. The bill amends s. 849.094, F.S., pertaining to game promotions. The bill amends the definition of “game promotion” to include the term “sweepstakes.” The bill defines “operator” of a game promotion to include an enterprise or organization. It provides that the lottery prohibition in s. 849.09, F.S., does not prohibit the operation of a game promotion if the operator complies with the provisions of this section. The bill provides that an organization, as defined in s. 849.0935, F.S., may not operate a game promotion. The bill prohibits the use of a simulated gambling device in connection with a game promotion. The bill further prohibits the operator of a game promotion to design, engage in, promote, or conduct a game promotion through the use of any mechanically or electronically operated machine, network, system, or device that is owned, leased, or controlled by the organization and operated, played, or interacted with by an entrant to the game promotion.

The bill prohibits the Department of Agriculture and Consumer Services from authorizing the operation or possession of a slot machine or device or any other device that is otherwise prohibited from operation or possession in the state and may not authorize game promotions to be conducted through the use of any mechanically or electronically operated machine, network, system, or device. Compliance with the rules of the department is not a defense to the charge of possession of a slot machine or violation of any other law. The bill increases the criminal penalty for any violation pertaining to the use of a simulated gambling device to a felony of the third degree.⁴⁹

The bill provides that violations of s. 849.094, F.S., or soliciting another to violate this section, is a deceptive and unfair trade practice. The bill provides that nothing in this section shall prohibit a corporation or its wholly owned subsidiaries, or a franchisee association or cooperative thereof, that is registered under the federal Securities Exchange Act of 1934 and has total assets of not less than \$25 million from conducting a game promotion which can be played on an electronic communication device, including, but not limited to, a computer or a cellular telephone.

Section 4. The bill amends s. 849.15, F.S., pertaining to the manufacture, sale, and possession of coin-operated devices, to include that it is unlawful to manufacture, sell, or possess any apparatus or part thereof that is otherwise prohibited from operation or possession in this state.

Section 5. The bill amends s. 849.16, F.S., pertaining to the prohibition of slot machines to provide that a slot machine may be a system or network of computers or other devices, and not solely a single machine or device. The slot machine may operate by insertion of money, coin, code, account number, credit, or other object or method of activation, which may occur through remote activation.

⁴⁸ Misdemeanors of the first degree are punishable by a term of imprisonment not to exceed one year or a fine not to exceed \$1,000. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

⁴⁹ A third degree felony is punishable by a term of imprisonment not to exceed five years or a fine not to exceed \$5,000. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

Sections 6-14. The bill makes conforming changes to and reenacts the following sections of the Florida Statutes: 895.02, 721.111, 16.56(1)(a), 338.234(1), 655.50(3)(g), 849.19, 896.101(2)(g), and 905.34(3).

Section 7. The bill provides that nothing in this act may be construed to authorize the possession or operation of any machine or device that is prohibited under another other provision of law.

Section 15. The bill provides that the act becomes effective upon becoming law.

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 would require businesses that currently operate as Internet Cafes or sweepstakes cafes to substantially amend their business practices or shut down. The businesses would no longer be able to conduct electronic game promotions utilizing electronic devices and computer terminals to reveal the entries.

C. Government Sector Impact:

According to the Florida Department of Law Enforcement, there is no known fiscal impact. If the businesses continue to operate electronic sweepstakes cafes or Internet Cafes after the effective date of this bill, law enforcement may continue to engage in routine criminal investigative activities and the Florida Department of Law Enforcement may assist in those criminal investigations. According to the Department of Agriculture and Consumer Services, the fiscal impact of this bill is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill prohibits the use of simulated gaming devices in connection with a game promotion. In both Leon County and Duval County, the counties have passed ordinances regulating the use of electronic devices in game promotions. This bill would require those businesses to cease their game promotions or substantially amend their business practices.

The bill prohibits using a simulated gambling device for the conduct of a drawing, raffle, or any other game of chance. The bill provides exceptions for the Tribal-State Compact and games under s. 849.161, F.S., but drawings and games conducted by the Department of the Lottery are not excluded. This could have an impact on potential lottery expansion and growth.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.