

1989

Session Law 89-176

Florida Senate & House of Representatives

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H 102 GENERAL BILL/CS by Criminal Justice; Smith and others (Similar S 1171)

Gambling Equipment/Arresting Agency; deletes requirement that circuit court clerk retain all gambling machines, apparatus, or devices, & contents, for arrests made re gambling statutes; requires that arresting agency retain such equipment & material; provides that clerk of court may dispose of property after 3 years in certain circumstances; provides for use of reverse vending machines. Amends 849.16,.17, 43.195. Effective Date: 07/01/89.

01/13/89 HOUSE Prefiled
 01/19/89 HOUSE Referred to Criminal Justice
 01/20/89 HOUSE Subreferred to Subcommittee on Prosecution and Punishment; On Committee agenda—Criminal Justice, 02/08/89, 8:00 am, 16-HOB—For ratification of subreferral
 02/20/89 HOUSE On subcommittee agenda—Criminal Justice, 03/08/89, 8:00 am, 21-HOB
 03/09/89 HOUSE Subcommittee Recommendation: Favorable as a proposed Committee Substitute; On Committee agenda, pending subcommittee action—Criminal Justice, 03/21/89, 3:00 pm, 217-HOB
 03/23/89 HOUSE Preliminary Committee Action by Criminal Justice: Favorable as a CS
 03/24/89 HOUSE Comm. Report: CS by Criminal Justice, placed on Calendar
 04/04/89 HOUSE Introduced, referred to Criminal Justice -HJ 22; Subreferred to Subcommittee on Prosecution and Punishment; Comm. Report: CS by Criminal Justice, placed on Calendar -HJ 169; CS read first time -HJ 168
 04/11/89 HOUSE Placed on Special Order Calendar
 04/12/89 HOUSE Read second time -HJ 209
 04/13/89 HOUSE Read third time; CS passed; YEAS 118 NAYS 0 -HJ 216
 04/19/89 SENATE In Messages
 04/27/89 SENATE Received, referred to Judiciary-Civil; Judiciary-Criminal -SJ 229
 04/28/89 SENATE Extension of time granted Committee Judiciary-Civil
 05/05/89 SENATE On Committee agenda—Judiciary-Civil, 05/09/89, 3:15 pm, Room-1C-(309)
 05/09/89 SENATE Comm. Report: Favorable by Judiciary-Civil -SJ 311
 05/11/89 SENATE Now in Judiciary-Criminal -SJ 311; On Committee agenda—Judiciary-Criminal, 05/15/89, 2:00 pm, Room-2C-(301)
 05/12/89 SENATE Extension of time granted Committee Judiciary-Criminal
 05/15/89 SENATE Comm. Report: Favorable by Judiciary-Criminal, placed on Calendar -SJ 354
 05/30/89 SENATE Substituted for SB 1171; CS passed; YEAS 34 NAYS 0 -SJ 572
 05/30/89 Ordered enrolled
 06/13/89 Signed by Officers and presented to Governor
 06/27/89 Approved by Governor; Chapter No. 89-176

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NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h0102c.cj
DATE: June 13, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 102
RELATING TO: Evidence: Gambling Machines
SPONSOR(S): Criminal Justice, Representative Smith and others
EFFECTIVE DATE: Latter of July 1, 1989 or upon becoming a law.
DATE BECAME LAW: June 27, 1989
CHAPTER #: 89-176, Laws of Florida
COMPANION BILL(S): SB 1171
OTHER COMMITTEES OF REFERENCE: (1)
(2)

I. SUMMARY:

A. PRESENT SITUATION:

Section 849.17, F. S., provides that evidence of gambling seized by the arresting officer is to be delivered to the clerk of the circuit court in the county in which the seizure was made. The sheriff is required to make an inventory which shall be verified by the clerk. The clerk shall make the evidence available for prosecution of the charges.

Section 43.195, F. S., provides that physical evidence must be held by the clerk for a period of ten years in cases on which no appeal is pending or can be made.

B. EFFECT OF PROPOSED CHANGES:

This bill amends s. 849.17, F. S., to require the arresting agency to inventory and keep all of the evidence seized after an arrest for gambling. Such evidence would not be delivered to the clerk of the circuit court.

Section 849.16, F. S., would be amended to provide that reverse vending machines used in recycling would not be considered a gambling machine. A reverse vending machine is defined as one into which empty beverage containers are deposited for recycling and which provides a payment. An incentive bonus may be paid at irregular intervals.

Section 43.195 would be amended to provide that physical evidence must be held for three years in cases on which no appeal is pending or can be made.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 provides that gambling evidence seized shall be retained by the arresting agency, rather than the clerk of the circuit court.

Section 2 provides that reverse vending machines are not gambling machines.

Section 3 provides that clerks may dispose of evidence after three years.

Section 4 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

This bill would encourage recycling.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

Section 2 of this bill which deals with recycling is consistent with section 187.201(13), F. S., of the State Comprehensive Plan.

IV. COMMENTS:

Section 1 of this bill was requested by the Pasco County Clerk of the Court.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



Susan G. Bisbee

Staff Director:



Robin S. Hassler

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: May 15, 1989BILL NO. CS/HB 102DATE: May 11, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Lang</u>	<u>Smawley</u>	1. <u>JCI</u>	<u>Favorable</u>
2. <u>Dugger</u> <i>D.D.</i>	<u>Liepshutz</u>	2. <u>JCR</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Gambling Equipment/
Arresting Agency

BILL NO. AND SPONSOR:

CS/HB 102 by
Committee on Criminal Justice
and Reps. Smith and Long

I. SUMMARY:

A. Present Situation:

Chapter 849, F.S., regulates gambling in Florida. Sections 849.15-849.23, F.S., make illegal the manufacture, sale, possession, etc. of a slot machine or similar device and provide a penalty therefor.

Section 849.16, F.S., defines what is a slot machine or similar device. A machine or device falls within the meaning of the section if the insertion of any piece of money or other object causes the machine to operate, and by element of chance unpredictable to the person who inserted the coin or other object, the person receives any piece of money, thing of value, or token which may be exchanged for any money or thing of value.

When a slot machine or device is seized, the sheriff must make an inventory. Upon making a seizure, the sheriff must deliver the machine or device to the clerk of the circuit court. s. 849.17, F.S. The clerk must keep the machine or device and produce it at any investigation, prosecution, or proceeding relating to charges of violation of any of the applicable sections. Id.

Pursuant to s. 43.195, F.S., the clerk of the circuit court or county court may dispose of items of physical evidence which have been held as exhibits for more than 10 years, in cases in which no appeal is pending or can be made. Items of physical evidence would include the machines seized pursuant to ch. 849, F.S., as well as all other items of physical evidence.

B. Effect of Proposed Changes:

The bill would provide that ch. 849, F.S., would not apply to a reverse vending machine. A reverse vending machine would be defined as a machine into which empty containers are deposited for recycling and which provides a payment of money, merchandise, vouchers, or other incentives.

The bill would provide that a reverse vending machine could pay out a random incentive bonus greater than the guaranteed payment in the form of money. A reverse vending machine expressly would not be a slot machine within the meaning of that term in s. 849.16.

Under the provisions of the bill, the arresting agency, not the clerk of the circuit court, would retain the machine or device and related evidence seized and would produce it when needed.

The bill would clarify that the arresting agency, not the sheriff, would make the inventory of the items seized.

Clerks would be permitted to dispose of items of physical evidence after 3 years, rather than after 10 years.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

A person depositing a beverage container in a reverse vending machine would have the possibility of receiving an incentive bonus upon such deposit.

B. Government:

None.

III. COMMENTS:

The Florida Constitution prohibits lotteries except pari-mutuel pools and state operated lotteries. Art. X, ss. 7 and 15, Fla. Const. The state constitution does not define the term "lottery".

In 1935 the Florida Supreme Court held that certain coin-operated devices defined by statute and a "slot machine" were not within the constitutional prohibition against lotteries. See Lee v. City of Miami, 163 So. 486 (Fla. 1935), Hardison v. Coleman, 164 So. 520 (Fla. 1935). These cases have not been overruled.

In 1937 the Legislature made slot machines and similar devices illegal. The current statute defining a slot machine or device, s. 849.16, F.S., is substantially the same as the 1937 law.

In 1939, 4 years after the Lee and Hardison decisions and 2 years after the enactment of legislation prohibiting slot machines, the Supreme Court held that a lottery has three elements: a prize, an award by chance, and consideration. Little River Theatre Corp. v. State, 185 So. 855, 861. Based upon this broad definition of lottery, slot machines and similar devices may be subject to the constitutional prohibition against lotteries. However, no court has decided this issue.

Given this history, it is unclear what the outcome would be if a constitutional challenge was made to the provision in the bill authorizing a reverse vending machine.

IV. AMENDMENTS:

None.

REVISED: May 9, 1989

BILL NO. SB 1171

DATE: May 3, 1989

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1.	Lang <i>AL</i>	Smawley <i>SA</i>	1. JCI _____	Fav/1 amend. _____
2.	_____	_____	2. _____	_____
3.	_____	_____	3. _____	_____
4.	_____	_____	4. _____	_____

SUBJECT:

Circuit Court/Gambling Equip.

BILL NO. AND SPONSOR:

SB 1171 by
Senator Thurman

I. SUMMARY:

A. Present Situation:

Chapter 849, F.S., regulates gambling in Florida. Sections 849.15-849.23, F.S., make illegal the manufacture, sale, possession, etc. of a slot machine or similar device and provide a penalty therefor.

Section 849.16, F.S., defines what is a slot machine or similar device. A machine or device falls within the meaning of the section if the insertion of any piece of money or other object causes the machine to operate, and by element of chance unpredictable to the person who inserted the coin or other object, the person receives any piece of money, thing of value, or token which may be exchanged for any money or thing of value.

When a slot machine or device is seized, the sheriff must make an inventory. Upon making a seizure, the sheriff must deliver the machine or device to the clerk of the circuit court. s. 849.17, F.S. The clerk must keep the machine or device and produce it at any investigation, prosecution, or proceeding relating to charges of violation of any of the applicable sections. Id.

B. Effect of Proposed Changes:

Under the provisions of the bill, the arresting agency, not the clerk of the circuit court, would retain the slot machine or device and related evidence seized and would produce it when needed.

The bill would clarify that the arresting agency, not the sheriff, would make the inventory of the items seized.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

#1 by Judiciary-Civil:

Provides clerk of court may dispose of items of physical evidence held as exhibits for more than 3 years, in cases in which no appeal is pending.

Defines a reverse vending machine as a machine into which empty beverage containers are deposited and which provides a payment of money or other incentives. Upon deposit of a beverage container, the machine may pay out an incentive bonus.

Provides that a reverse vending machine is not a slot machine under s. 849.16, F.S., nor is it subject to the other provisions in ch. 849, F.S.

SENATE COMMITTEE AMENDMENT

SB 1171

No. 1
(reported favorably)

HB _____

The Committee on...Judiciary-Civil....recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Senate Amendment

On page 2, between lines 10 and 11,

If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No Yes -

insert:

Section 2. Section 43.195, Florida Statutes, is amended to read:

43.195 Disposal of physical evidence filed as exhibits.--The clerk of any circuit court or county court may dispose of items of physical evidence which have been held as exhibits in excess of 3 30 years in cases on which no appeal is pending or can be made. Items of evidence having no monetary value which are designated by the clerk for removal shall be disposed of as unusable refuse. Items of evidence having a monetary value which are designated for removal by the clerk shall be sold and the revenue placed in the clerk's general revenue fund.

Section 3. Section 849.16, Florida Statutes, is amended to read:

849.16 Machines or devices which come within provisions of law defined.--
(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

SENATE COMMITTEE AMENDMENT

SB 1171

HB _____

1 machine or device is caused to operate or may be operated and
2 if the user, by reason of any element of chance or of any
3 other outcome of such operation unpredictable by him, may:

4 ~~(a){1}~~ Receive or become entitled to receive any piece
5 of money, credit, allowance, or thing of value, or any check,
6 slug, token, or memorandum, whether of value or otherwise,
7 which may be exchanged for any money, credit, allowance, or
8 thing of value or which may be given in trade; or

9 ~~(b){2}~~ Secure additional chances or rights to use such
10 machine, apparatus, or device, even though it may, in addition
11 to any element of chance or unpredictable outcome of such
12 operation, also sell, deliver, or present some merchandise,
13 indication of weight, entertainment, or other thing of value.

14 (2) Nothing contained in this chapter shall be
15 construed, interpreted, or applied to the possession of a
16 reverse vending machine. As used in this section, a reverse
17 vending machine is a machine into which empty beverage
18 containers are deposited for recycling and which provides a
19 payment of money, merchandise, vouchers, or other incentives.
20 At a frequency less than upon the deposit of each beverage
21 container, a reverse vending machine may pay out a random
22 incentive bonus greater than that guaranteed payment in the
23 form of money, merchandise, vouchers, or other incentives.
24 The deposit of any empty beverage container into a reverse
25 vending machine does not constitute consideration nor shall a
26 reverse vending machine be deemed to be a slot machine within
27 this section.

28 (Renumber subsequent section.)
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