

1989

Session Law 89-366

Florida Senate & House of Representatives

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H 529 GENERAL BILL/2ND ENG by Thomas (Identical S 51)
Gambling/Penny-Ante Games; provides that it is not a crime to participate in specified games; provides definitions; provides restrictions; provides that debts arising from participation in such games are not legally enforceable; limits liability of condominium associations & unit owners. Creates 849.086. Effective Date: 10/01/89.

03/07/89 HOUSE Prefiled
03/10/89 HOUSE Referred to Regulated Industries; Appropriations
03/14/89 HOUSE Subreferred to Subcommittee on Pari-mutuels
04/04/89 HOUSE Introduced, referred to Regulated Industries; Appropriations -HJ 55; Subreferred to Subcommittee on Pari-mutuels; On Committee agenda—Regulated Industries, 04/05/89, 1:15 pm, 212-HOB—For ratification to subcommittee
04/06/89 HOUSE On subcommittee agenda—Regulated Industries, 04/10/89, 5:15 pm, 24-HOB
04/10/89 HOUSE Subcommittee Recommendation: Favorable
04/13/89 HOUSE On Committee agenda—Regulated Industries, 04/17/89, 10:40 am, 214-C
04/18/89 HOUSE Preliminary Committee Action by Regulated Industries: Favorable
04/19/89 HOUSE Comm. Report: Favorable by Regulated Industries -HJ 249; Now in Appropriations -HJ 249
04/24/89 HOUSE Subreferred to Subcommittee on Criminal Justice
05/10/89 HOUSE Withdrawn from Appropriations -HJ 449; Placed on Calendar
05/16/89 HOUSE Placed on Special Order Calendar
05/18/89 HOUSE Read second time: Amendment pending with point of order -HJ 534
05/22/89 HOUSE Pending amendment withdrawn with point of order withdrawn -HJ 557; Amendments adopted -HJ 557
05/23/89 HOUSE Read third time; Passed as amended; YEAS 100 NAYS 12 -HJ 571
05/23/89 SENATE In Messages
05/29/89 SENATE Received, referred to Judiciary-Criminal -SJ 499
06/01/89 SENATE Withdrawn from Judiciary-Criminal; Substituted for SB 51 -SJ 731; Passed as amended; YEAS 25 NAYS 11 -SJ 732
06/01/89 HOUSE In Messages
06/02/89 HOUSE Concurred; Passed as further amended; YEAS 101 NAYS 14 -HJ 1140
06/02/89 Ordered engrossed, then enrolled
06/20/89 Signed by Officers and presented to Governor
07/06/89 Became Law without Governor's Signature; Chapter No. 89-366.

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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.

****AS PASSED BY THE 1989 LEGISLATURE****

STORAGE NAME: \wp\sa\h0529-f.ri
DATE: June 29, 1989

**HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATED INDUSTRIES
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 529
RELATING TO: Penny-ante Gambling
SPONSOR(S): Representative Thomas
EFFECTIVE DATE: October 1, 1989
DATE BECAME LAW: July 6, 1989
CHAPTER #: 89-366, Laws of Florida
COMPANION BILL: SB 51
OTHER COMMITTEES OF REFERENCE: (1) Appropriations

I. SUMMARY:

Section 849.085, F.S., is created to allow gambling on certain games. The law allows individuals over the age of 18 years to play these games in the privacy of their residences and win \$10 or less per round, hand, or game and not violate s. 849.08, F.S., of the gambling statute. This legislation is an exception to s. 849.08, F.S., which specifically prohibits the playing of cards and other games for money or any other thing of value.

A. PRESENT SITUATION:

Section 849.08, F.S., prohibits the playing or engaging in any game at cards, keno, roulette, faro or other game of chance at any place, by any device, for money or other thing of value. Violation of this statute is a misdemeanor of the second degree. The playing of card games such as canasta, bridge, poker, etc., for anything of value or money, including penny-ante stakes are in violation of this section.

B. EFFECT OF PROPOSED CHANGES:

With certain restrictions, the playing and penny-ante betting for money or other thing of value on specific card games are allowed. Penny-ante gambling is defined as a game or series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah jongg in which the winnings of any player in a single, round, hand, or game does not exceed \$10 in value. These games are allowed in residential premises owned or rented and occupied by one of the participants, or the common or recreation areas of a condominium where one of the participants is a unit owner. No one under the age of 18 can participate.

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DATE: June 29, 1989
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The games are subject to the following additional restrictions:

No one can receive a commission or consideration for holding the game in his residence; nor can anyone directly or indirectly charge admission or other fee for participation in the game;

No one can solicit participants through advertising of any form, or advertise the time or place of a game, or that any certain person is a participant in a game;

No debt created or owed as a result of a penny-ante game is enforceable, nor can civil liability be created for damages arising from a game on the part of a condominium association or a unit owner who is a participant in a game.

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

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2. Direct Private Sector Benefits:

None

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

None

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

None

IV. COMMENTS:

Prior to the passage of this bill, federal legislation established a National Indian Gaming Commission to monitor and regulate gambling activities on reservations. Card games will be subject to state regulations regarding hours of play and betting limits.

The Department of Business Regulation has no position on this bill.

This legislation is partially the result of law enforcement officers arresting veterans'/nursing home residents for betting pennies in poker games.

The subject of this bill is not directly addressed in the Issues Conference Policy Statements or the Committee Mission Statements. The Comprehensive Plan has no impact on this subject.

Legislative History 1989 Session

A. Enacted Bill

House Bill 529 was introduced April 4, 1989, and referred to the Regulated Industries and Appropriations Committees; subreferred to the Subcommittee on Pari-Mutuels (HJ 00055). The Subcommittee on Pari-Mutuels acted favorably on the bill April 10; the Full Committee acted likewise on April 17; and forwarded the bill to Appropriations (HJ 00249). The bill was withdrawn from Appropriations May 10 (HJ 00449), placed on the Calendar May 15, and added to the Special Order Calendar May 16. Amendments were adopted adding other games and expanding penny-ante betting to include office sports pots. One amendment pertaining to pigeon competition was withdrawn (HB 557) on a point of order as it could not be applied to in house competition for penny-ante betting. The bill passed 100-12 on May 23 (HJ 00571) and was messaged to the Senate. On June 1 HB 529 was substituted for its companion SB 51 (SJ 00731); the substance of the language added in the amendments on the Floor in the House was removed; the Senate amended the

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penny-ante pot, reducing it to \$10; and HB 529 passed 25-11 (SJ 00732), as amended. On its return to the House, the House concurred in the Senate action and HB 529 passed 101-14 (HJ 01140). The bill passed in its original form except the pot was lowered to \$10.

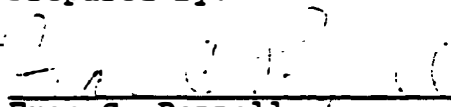
B. Disposition of Companion

Senate Bill 51 was introduced on April 4, referred to Judiciary-Criminal (SJ 0012), voted out favorably with 1 amendment and placed on the Calendar (SJ 0060). It was placed on Special Order (SJ 0560) with amendment adopted May 30 (SJ 0611). SB 51 passed as amended June 1, 28-7 (SJ 0730). The Senate reconsidered the bill, laid it on the table, and substituted HB 529 (SJ 0731).

V. SIGNATURES:

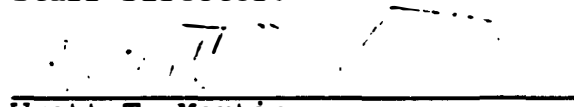
SUBSTANTIVE COMMITTEE:

Prepared by:



Fran C. Poppell

Staff Director:



Wyatt T. Martin

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: March 7, 1989BILL NO. SB 51DATE: February 17, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Duqger</u> <i>P.P.</i>	<u>Liepshutz</u> <i>MM</i>	1. <u>JCR</u>	<u>Fav/1 Amend.</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Gambling

BILL NO. AND SPONSOR:

SB 51 by
Senator KirkpatrickI. SUMMARY:

A. Present Situation:

Gambling in the form of playing cards, keno, roulette, faro, or other games of chance for money or anything else of value is a second degree misdemeanor. s. 849.08, F.S. It is also a second degree misdemeanor to set up, promote, or play games of chance by lot, or with dice, cards, or numbers for money or anything else of value. s. 849.11, F.S.

B. Effect of Proposed Changes:

SB 51 would mean that playing "penny-ante games" in strict accordance with the bill's enumerated restrictions would not be criminal. These games would be defined as games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah jongg where any player's winnings in a single game would not exceed \$25.

The following restrictions would apply to any penny-ante game: no game could be conducted anywhere except in a "dwelling"; no admission fee could be charged, nor could a commission be received for hosting a game; no advertising of a game or for participants would be allowed; no person under 18 years of age could play; and no debt resulting from a game would be legally collectable.

"Dwelling" would include residential premises owned or rented and occupied by a game participant or the common or recreational areas of a condominium where a game participant was a unit owner. The condominium association and unit owners not participating in penny-ante games within the common or recreational areas of the condominium would be immune from any civil liability resulting from such games.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

During the 1987 session, a bill identical to SB 51 was heard by the Judiciary-Criminal Committee. It was temporarily postponed because a question arose as to whether the "dwelling" restriction in the bill would prevent penny-ante games from being played, unregulated, on Florida Indian reservations, especially in light of the analysis used by the United States Supreme Court in California v. Cabazon

Band of Mission Indians, 480 U.S. 202 (1987). The Court in Cabazon held that California's law regulating bingo could not be enforced on the California Indian reservation because Congress had not expressly authorized such enforcement. The practical effect of Cabazon was to allow bingo to be conducted, unregulated, on a California Indian reservation, in violation of state law.

Congress, in response to Cabazon, recently enacted federal legislation establishing a system of regulation for Indian gaming. Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2467 (1988). Under the federal legislation, penny-ante games would be regulated by the tribes and the federal government through a newly created National Indian Gaming Commission. The only state regulations that would apply to penny-ante games on Indian reservations would be periods or hours of operation and limitation on pot sizes. SB 51 places no time restrictions on the operation of penny-ante games, but it does restrict the pot size to \$25 per game. So, although the restrictions in SB 51, including the "dwelling" restriction, would not prohibit the Indians from playing penny-ante games commercially on their reservations, such games would be regulated by the federal government, and by the state, to the extent that the Indians would have to observe the \$25 pot restriction in SB 51.

Some of the federal regulations that would be imposed upon the Indians under the federal legislation would include: providing the Commission with annual outside independent audits of the games, and audits of contracts for supplies, services, or concessions for a contract amount exceeding \$25,000 annually; conducting background investigations on primary management officials and key employees of the games and notifying the Commission of the results; and assuring the Commission that the tribes would have sole proprietary interest and responsibility for the conduct of any gaming, and that the net revenues would only be used for certain specified purposes.

Article X, section 7 of the Florida Constitution prohibits the Legislature from authorizing a lottery, unless it is one of the constitutionally recognized exceptions. The Florida Supreme Court has construed a lottery as being an enterprise involving a prize, awarded by chance, for a consideration, and the vice of which infests the whole community or state. Lee v. City of Miami, 163 So. 486 (Fla. 1935). It is unclear under existing case law whether any of the forms of gambling provided under this bill would constitute a lottery. However, technically, SB 51 does not appear to authorize penny-ante gambling, but rather to exclude from prosecution persons engaging in penny-ante gambling when done in accordance with prescribed conditions.

IV. AMENDMENTS:

#1 by Judiciary-Criminal:
Lowers the \$25 pot limitation to \$10.

SENATE COMMITTEE AMENDMENT

SB 51

No. 1
(reported favorably)

HB _____

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

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Senate Amendment

On page 1....., line 25....., strike the word "\$25"

If amendment is text from another bill insert:

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

and insert:

\$10

CODING: Words **stricken** are deletions; words **underlined** are additions.

* Amendment No. 1, taken up by committee: 3/7/89 Adopted x *

* Offered by Senator Johnson Failed _ *

(Amendment No. _____ Adopted ___ Failed ___ Date __/__/__)