

INTERIM PROJECT TITLE:

Review Internet Cafes Used for Electronic Game Promotions

DATE DUE: October 1, 2011

PROJECT NUMBER: 2012-137

ISSUE DESCRIPTION and BACKGROUND:

In November 2008, the Senate Committee on Regulated Industries issued *Interim Report 2009-123: Review of Electronic Gaming Exceptions for Adult Arcades and Game Promotions*. The report was initiated in response to complaints and inquiries regarding whether the adult arcades and electronic game promotions/sweepstakes/Internet cafes (generally known as “Internet Cafes”) are operating legally under ch. 849, F.S., the chapter that governs gambling in the state.

Senator Dean requested that the Senate professional staff of the Regulated Industries Committee review the game promotion situation and tax structure again. Agriculture Commissioner Putnam was quoted in a recent newspaper article indicating that the legal status of the electronic game promotions needed to be clarified by the Legislature.

Section 849.094, F.S., requires that all game promotions register with the Department of Agriculture and Consumer Services (DACCS) if the prizes offered are greater than \$5,000. This section also imposes filing, posting, and bonding requirements on operators of game promotions.

The report found that Internet Cafes offer electronic game promotions in connection with the sale of Internet time or prepaid phone cards, which utilize machines that simulate gambling devices. Verifying that such devices are utilized to operate a game promotion rather than operate an illegal gambling device has proved problematic for law enforcement. The report indicated that law enforcement was seeking clarification as to what constituted a legal game promotion.

In the three years since the publication of *Interim Report 2009-123*, the number of businesses operating Internet Cafes has increased significantly. In addition, a number of legal issues have been raised concerning ambiguities in the game promotion statute. First, it is unclear how the provisions apply to non-profit organizations. Does the statute provide an exception to the requirements of s. 849.094, F.S., for non-profit groups or does the statute exclude those groups from conducting game promotions? Second, there have been issues raised concerning consideration and whether customers of Internet Cafes are purchasing sweepstakes entries.

In response to the increase in the number of Internet Cafes and concerns expressed by constituents, local governments have or are considering enacting ordinances concerning electronic game promotions. For example, Seminole County enacted an ordinance which bans “simulated gambling devices” in the county. The ordinance was challenged by an operator of an Internet Café, Allied Veterans of the World, Inc. On May 6, 2011, the U.S. District Court, Middle District of Florida, denied Allied Veterans’ request to enter a preliminary injunction against the county to stop the implementation of the new ordinance in *Allied Veterans of the World, Inc. and Phone-Sweeps, LLC. v. Seminole County, Florida*, F.Supp.2d (M.D. Fla 2011). In contrast to the ban in Seminole County, Jacksonville passed an ordinance that imposed additional regulations on Internet Cafes. In addition, at least one state, North Carolina, has implemented legislation to ban Internet Cafes.

Three bills were introduced during the 2011 legislative session concerning electronic game promotions. SB 222 by Senator Fasano proposed to require electronic game promotions that have a prize pot of \$1 or greater to register with the DACS, purchase a surety bond or maintain a prize escrow account, post their rules, and meet other statutory requirements. In contrast, SB 576 by Senator Oelrich and HB 217 by Representative Plakon proposed to ban all electronic game promotions. In addition, Senate professional committee staff met with representatives from some of the operators of electronic game promotions. Representatives of the industry recommended that all electronic based game promotions that utilize simulated gambling register with DACS. Some representatives further recommended that the statutory bond be increased and that DACS be given the authority to certify electronic game promotion software.

OBJECTIVE:

The objectives of this issue brief are to:

- Update the research concerning electronic game promotions presented in *Interim Report 2009-123: Review of Electronic Gaming Exceptions for Adult Arcades and Game Promotions*;
- Identify ambiguities in the game promotion statute;
- Identify local ordinances that either regulate or restrict the operation of electronic game promotions and review related legal challenges;
- Review 2011 Legislation that proposed to either regulate or restrict businesses operating as electronic game promotions; and
- Identify related laws in other states.

METHODOLOGY:

Senate professional staff will conduct the research necessary to update the electronic game promotion portion of the 2009 interim report; survey local governments to determine whether they have or are considering regulating or restricting the operation of electronic game promotions; review related legal challenges; and research related laws in other states.