

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
Third Reader

Senate Bill 796

(Senator Guzzone)

Budget and Taxation

Rules and Executive Nominations

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Instant Ticket Lottery Machines - Veterans' Organizations - Repeal of the Pre-Printed Ticket Requirement

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This bill repeals the requirement that licensed veterans' organizations use pre-printed instant lottery tickets for their instant ticket lottery machines (ITLMs). The State Lottery and Gaming Control Agency (SLGCA) must ensure that authorized ITLMs for veterans' organizations operate in the same manner as specified electronic instant bingo machines. **The bill takes effect July 1, 2022.**

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Fiscal Summary

**State Effect:** General fund revenues from the State income tax may decrease minimally beginning in FY 2023, and general fund expenditures may increase for SLGCA in FY 2023, as discussed below.

**Local Effect:** Local income tax revenues may decrease minimally beginning in FY 2023, as discussed below.

**Small Business Effect:** Minimal.

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Analysis

**Current Law:** SLGCA may issue specified veterans' organizations a license for up to five pull tab machines. Veterans' organizations in counties on the Eastern Shore are not eligible. A licensed veterans' organization must locate and operate its pull tab machines at its principal meeting hall in the county. After deductions for commissions and prize payouts, 10% of the proceeds are distributed to the Maryland Veterans Trust Fund, and the remainder goes to the State Lottery Fund. A licensed veterans' organization must purchase

or lease the pull tab machines from SLGCA but may not use receipts from the sale of pull tabs that would otherwise go to the State Lottery Fund to purchase or lease the machines.

In *Chesapeake Amusements Inc. v. Riddle*, the Maryland Court of Appeals took up the issue of “whether a dispensing machine with a video screen that displays the contents of the tickets that it dispenses and emits a musical tone that signals when a winning ticket is being dispensed is a ‘slot machine,’” as defined by Maryland law. The Court of Appeals found that the machine in question was not a slot machine. In response to this decision, Chapter 474 of 2008 altered the definition of “slot machine” to include a machine that reads a game of chance and a machine that delivers a game of chance.

Chapter 629 of 2013 clarified that SLGCA must ensure that the element of chance in the conduct of gaming through the ITLMs is consistent with the holding in the case of *Chesapeake Amusements Inc. v. Riddle*, 363 Md. 16 (2001), in that the element of chance must be wholly within the pre-printed instant lottery ticket, and that player enhancements in an instant ticket lottery machine may not affect the element of chance being wholly within the pre-printed instant lottery ticket.

#### *Commercial Electronic Bingo and Tip Jar Machines*

An entity licensed to offer instant bingo under a commercial bingo license on July 1, 2007, or a qualified nonprofit organization, may continue to operate a game of instant bingo in the same manner using electronic machines, provided that:

- the machines were in operation for a one-year period ending December 31, 2007, or under a commercial bingo license on December 31, 2007;
- the entity does not operate more than the number of machines in operation on February 28, 2008; and
- the conduct of the gaming and operation of the machines are consistent with all other provisions of the Criminal Law Article.

A county may not issue a commercial bingo license under Title 13 of the Criminal Law Article or under any public local law to an entity that was not licensed to conduct commercial bingo on or before June 30, 2008.

**State and Local Revenues:** ITLMs and electronic instant bingo machines are currently treated differently for income tax reporting purposes. ITLMs fall under the definition of a lottery game, so prizes over \$600 must be reported for tax purposes. Electronic instant bingo machines are classified as a Class II gaming device, so prizes over \$1,200 won on those machines are reported for tax purposes. SLGCA advises that operating ITLMs in the same manner as electronic instant bingo machines may cause ITLMs to be classified as a Class II gaming device, thus changing tax reporting requirements for those machines. To

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the extent that this would cause less ITLM prize winnings to be reported for tax purposes, general fund revenues from the State income tax may decrease minimally beginning in fiscal 2023. Likewise, local income tax revenues may decrease minimally to the extent less ITLM prize winnings are reported.

While the bill may draw some gaming revenues away from the State lottery and casino facilities, the impact is likely small enough that overall gaming revenues are not materially affected.

**State Expenditures:** SLGCA oversees ITLMs, so the bill may require SLGCA to replace existing machines with new machines, replace related equipment, test the new machines, and train employees on the new machines. SLGCA can likely do all of these activities with existing resources.

However, SLGCA has a contract with an ITLM vendor that ends in February 2024. Ending the contract before the termination date likely increases expenditures for SLGCA by an indeterminate amount. While the cost of the vendor is currently paid by the veterans' organizations, the organizations are guaranteed 50% of net profits from ITLMs, so SLGCA may be limited in its ability to pass on any increased costs. Thus, general fund expenditures for SLGCA may increase in fiscal 2023 to cancel its existing contract. It is unknown if there will be additional expenditures or cost savings for SLGCA beyond fiscal 2023 from entering into a new vendor contract for new machines.

**Additional Comments:** SLGCA advises that the ITLM program was designed to fit the definition of a lottery game to prevent the program from being considered an expansion of commercial gaming; therefore, a voter referendum for expanding gaming was not required for the ITLM program. SLGCA has concerns that allowing ITLMs to function like electronic instant bingo devices may lead to legal challenges to the program's status as a lottery product.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 1315 (Delegate Ebersole) - Ways and Means.

**Information Source(s):** Comptroller's Office; Maryland State Lottery and Gaming Control Agency; Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2022  
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