

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 641 Amusement Games or Machines

SPONSOR(S): Trumbull and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 268

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------|--------|---------|------------------------------------------|
| 1) Regulatory Affairs Committee | | Anstead | Hamon |
| 2) Appropriations Committee | | | |

SUMMARY ANALYSIS

The bill creates s. 546.10, F. S., the "Family Amusement Games Act," to provide for the use and activation of amusement games and machines, the award of points, coupons or prizes, limits on prize values, and locations authorized for the operation of amusement games and machines.

The bill provides that in addition to the use of a coin, an amusement game may be activated by currency, card, coupon, slug, token, or similar device and may be played if the person playing or operating the game or machine controls the outcome of the game by application of skill.

The bill excludes certain games and devices from the definition of "amusement game or machine," and specifically does not authorize certain types of games, such as video poker and other casino style games.

The bill authorizes the person playing the game or machine to receive points or coupons that may be redeemed for onsite merchandise under certain conditions. It also authorizes direct merchandise games, such as "claw" machines.

The bill only authorizes amusement games or machines at certain locations, including arcade amusement centers or truck stops (as currently authorized), certain bowling centers, hotels, restaurants, and on the premises of certain retailers.

The bill increases the maximum redemption value of points or coupons a player may receive for a single game played from 75 cents to \$5.25 and increases the maximum wholesale value of merchandise dispensed directly to 10 times that amount (\$52.50). The caps will be adjusted annually, based on changes in the consumer price index.

The bill repeals s. 849.161, F.S., relating to amusement games or machines.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

There is a general prohibition against gambling in Florida. Chapter 849, F.S., prohibits keeping a gambling house, running a lottery, and the manufacture, sale, lease, play, or possession of slot machines. Certain exceptions to these prohibitions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games, bingo, cardrooms, charitable drawings, game promotions (sweepstakes), bowling tournaments, and amusement games and machines.¹

Section 849.161, F.S., currently titled “Amusement Games or Machines; When Chapter Inapplicable,” provides that gambling laws do not prohibit amusement games or machines that:

- Are activated by insertion of a coin;
- May entitle a player, by application of skill, to receive points or coupons - the cost value of which does not exceed 75 cents on any game played - that may be exchanged for merchandise; and
- Are located at either an arcade amusement center with at least 50 coin-operated amusement games or machines or at a truck stop.

Current law specifically distinguishes and excludes the following games from the exemption for authorized amusement games or machines:²

- Casino-style games in which the outcome is determined by factors “unpredictable by the player”;
- Games in which the player does not control the outcome through skill;
- Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under 15 U.S.C. 1178;³ or
- Video poker games or any other game or machine that may be construed as a gambling device under Florida law.

Whether a game is “unpredictable by the player” has been interpreted by the Florida Supreme Court. In a case challenging whether a miniature bowling alley game was a slot machine, the Court held that a miniature bowling game was not a prohibited game under the slot machine statute because the element of unpredictability was not inherent in the machine. It found that if the element of unpredictability is “inherent in the machine,” it would be prohibited. Slot machines were defined at the time as devices that operated, as a result of the insertion of a coin, based on “any element of chance” or other outcome unpredictable by the player, and allowed the player to receive any “thing of value.” The Court determined that the element of unpredictability cannot simply be based on a player who may “not be sure what score he can accomplish.” In addressing whether a device would be removed from a “standing of respectability and legality to one of one-armed banditry,” the Court stated “[w]e all know full well the vicious devices [s. 849.16, F.S.] was calculated to destroy, but we know also that a too drastic and intolerant interpretation of an act of this kind may well result in undermining its true and lofty purpose.”⁴

¹ s. 849.161, F.S.

² s. 849.161(1)(a), and (4), F.S.

³ Slot machines which deliver or entitle a player to money or property as the result of the application of chance are defined as gambling devices pursuant to 15 U.S.C. s. 1171. Exclusions include: pari-mutuel betting machinery for use at a racetrack, a coin-operated bowling alley, a shuffleboard, marble machine or pinball machine, or mechanical gun, if they are not designed and manufactured primarily for gambling, and which when operated do not deliver any money or property, or entitle a person to receive any money or property, and any so-called claw, crane, or digger machine and similar device which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or state fairs, are excluded pursuant to 15 U.S.C. s. 1178.

⁴ *Deeb v. Stoutamire*, 53 So.2d 873, 874 (Fla. 1951).

Section 212.02(24), F.S., defines coin-operated amusement machines as those operated by coin, slug, token, coupon, or similar device “for the purposes of entertainment or amusement.” Operators of coin-operated pinball machines, music machines, juke boxes, mechanical games, video games, arcade games, billiard tables, moving picture viewers, shooting galleries, and all other similar amusement devices, must pay for and conspicuously display a certificate authorizing the operation of a specified number of machines.⁵ A certificate must be obtained before machines are first operated in the state and by July 1 of each year thereafter. The annual fee is based on the number of machines multiplied by \$30.

A four percent tax is imposed on charges for the use of coin-operated amusement machines. If a machine is activated by a slug, token, coupon, or any similar device which has been purchased by a user, the four percent tax is imposed on the purchase price amount.⁶

Section 849.21, F.S., provides that any person may petition in circuit court for a writ of injunction against a nuisance created through the use, manufacture, ownership, storage, possession, sale, lease, transport, or operation of a “slot machine or device” outside of eligible facilities.⁷ However, such activities related to certain eligible pari-mutuel facilities defined in ss. 551.102, F.S., or the facilities of manufacturers or distributors as provided in s. 551.109(2)(a), F.S., are not prohibited nuisances, and are regulated under ch. 551, F.S.

Current law also provides that no bond is required when petitioning for a temporary injunction and that the judge may issue a restraining order to prevent removal or interference with the offending equipment.

In March 2013, a three-year, multi-state, multi-agency investigation into the operations of illegal gambling at so-called Internet cafes affiliated with Allied Veterans of the World concluded with the arrest of 57 people.⁸ Charges included racketeering and money laundering.⁹

During the 2013 Regular Session, ch. 2013-2, L.O.F. was enacted. This bill made several changes to s. 849.0935, F.S., s. 849.094, F.S., s. 849.16, F.S. and s. 849.161, F.S., to address the growing problem of casino-style games at Internet cafes and senior arcades that existed in many parts of Florida. The definition of slot machine in s. 849.16(1), F.S., was amended to include operation by a user “whether by application of skill or by reason of any element of chance or of any other outcome of such operation unpredictable by the user him or her”¹⁰

After the 2013 Regular Session, third parties cited s. 849.21, F.S., in petitions for injunctions against amusement arcades, including Chuck E. Cheese’s, Dave & Buster’s, and Festival Fun Parks (Boomers!).¹¹ Two cases remain pending.¹²

Effect of Proposed Changes:

The bill amends ch. 546, F.S., titled “Amusement Facilities,” to address various issues associated with the operation of authorized amusement games and machines (amusement machines) in the state. The bill provides that the act may be cited as the “Family Amusement Games Act.”

⁵ See s. 212.05(1)(h)3.a. and b., F.S.

⁶ See s. 212.05(1)(h)1, F.S.

⁷ See ss. 849.15 to 849.23, F.S.

⁸ Mary Ellen Klas, *Bill Banning Internet Cafes Becomes Law in Florida*, Governing, The States and Localities (April 11, 2013), <http://www.governing.com/news/state/mct-bill-banning-internet-cafes-becomes-law-in-florida.html>.

⁹ Larry Hannan, *Trial Begins for Jacksonville Attorney Accused of Masterminding Allied Gambling Ring*, The Florida Time Union (Sept. 19, 2013), <http://jacksonville.com/news/crime/2013-09-19/story/trial-begins-jacksonville-attorney-accused-masterminding-allied-gambling>.

¹⁰ Section 4, ch. 2013-2, L.O.F.

¹¹ Mary Ellen Klas, *Senior Arcades Suing to Have Dave & Buster’s, Boomers Shut Down*, Miami Herald (July 2, 2013), <http://www.miamiherald.com/news/local/community/miami-dade/article1952948.html>.

¹² *Nebb v. CEC Entertainment, Inc., d/b/a Chuck E. Cheese*, Case No. CACE-13-024356 (03), Broward County Circuit Court; and *DeVarona v. Dave & Buster’s*, Case No. CACE-13-016547 (09), Broward County Circuit Court.

The bill:

- Updates activation methods for amusement machines, in addition to coins;
- Expands the locations authorized for the operation of amusement machines;
- Clarifies authorized methods for the redemption of points and coupons and the dispensation of prizes to players;
- Updates the maximum value for points and coupons that may be redeemed by a player, and specifies a maximum value for the wholesale cost of merchandise that may be received by a player under certain conditions; and
- Provides a method for the Department of Revenue to calculate annual adjustments to the maximum value for the redemption of points and coupons.

The bill creates s. 546.10, F.S., titled “Amusement games or machines.”

The bill defines “amusement game or machine” to include coin-operated machines, and machines activated by insertion of currency, cards, coupons, slugs, tokens, or similar devices.

The bill includes the current law provisions that amusement games or machines do not include casino-style games or “games in which the player does not control the outcome of the game through skill.” The bill expands the current definition of amusement machine by repeating language from current law that authorized games do not include:

- Video poker games or any other game or machine that may be construed as a gambling device under Florida law; or
- Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under s. 1178.

The bill includes the current law definition in s. 849.161(1)(b), F.S., for “arcade amusement center,” requiring 50 amusement games or machines. The definition includes the current law provision that the amusement center be operated for the entertainment of the general public.

The bill amends the definition of “merchandise” to specifically exclude cash equivalents, specifically, gift cards and certificates,¹³ alcoholic beverages, cards, coupons, points, slugs, tokens, or similar devices that can be used to activate an amusement game or machine, and points or coupons with a redemption value higher than the maximum legal value. The maximum legal value is currently 75 cents, but is proposed to be adjusted for inflation to \$5.25 with annual adjustments by the Department of Revenue.

The bill creates requirements for the award to a player of free replays, redeemable points or coupons, and prizes dispensed directly from an amusement machine. It provides the requirements for an amusement machine to allow a player (by application of skill) to win free replays. The provisions in current law that an amusement machine cannot accumulate more than 15 free replays or make a permanent record of free replays are not changed.

The bill also provides the requirements for an amusement machine to allow a player, by application of skill, to receive points or coupons that can be redeemed onsite for merchandise, subject to the following conditions:

¹³ Section 501.95(1)(b), F.S., defines “gift certificate” as a certificate, gift card, stored value card, or similar instrument purchased for monetary consideration when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction, but this term shall not include tickets as specified in s. 717.1355, F.S., or manufacturer or retailer discounts and coupons.

- The amusement machine is located at an arcade amusement center or truck stop, as authorized under current law, or at a bowling center, public lodging or hotel, or public food service establishment or restaurant;¹⁴
- Points or coupons have no value other than for redemption onsite for merchandise;
- The redemption value¹⁵ of points or coupons a person receives for a single game played does not exceed the cap specified in subsection (7), which is set at \$5.25 initially and adjusted for inflation annually; and
- The redemption value of points or coupons a person receives for playing multiple games simultaneously or competing against others in a multi-player game, does not exceed the cap specified in subsection (7).

The bill provides requirements for an amusement machine, like a claw machine, to allow a player, by application of skill, to receive merchandise directly,¹⁶ provided:

- The amusement game or machine is located at an arcade amusement center, truck stop, bowling center, hotel, restaurant, or on the premises of a retailer as defined in s. 212.02, F.S.;¹⁷ and
- The wholesale cost of the merchandise does not exceed 10 times the cap, which is set at \$5.25.

However, the cap on the redemption value of points or coupons, which is set at \$5.25 initially, will be adjusted for inflation annually. The bill provides that the Department of Revenue will annually adjust the cap based on the change in the Consumer Price Index for All Urban Consumers, U.S. City Average, and the new cap will take effect July 1. The adjusted cap will be published in a brochure accessible from the Department of Revenue's website relating to sales and use tax on amusement machines.¹⁸

The bill provides that "notwithstanding any other provision of law, an action to enjoin the operation of any game or machine at any location listed" - arcade amusement center, truck stop, bowling center, hotel, restaurant, or on the premises of a retailer – is limited for filing by the following:

- The Attorney General;
- The state attorney of the circuit where the amusement machine is located;
- Any federally recognized tribal government with sovereign powers and rights of self-government that is a party to a compact with the state; or
- The Department of Agriculture and Consumer Services or the Department of Business and Professional Regulation, in the case of a duty to enforce an alleged violation of law.

The bill repeals s. 849.161, F.S., the current "Amusement games or machines" regulation.

B. SECTION DIRECTORY:

Section 1 cites the Act as the "Family Amusement Games Act."

Section 2 creates s. 546.10, F.S., to provide definitions for terms, authorize amusement games or machines in conformance with specified provisions, authorize direct receipt of merchandise under certain

¹⁴ The bill expands the places where an authorized amusement machine may be located to include bowling centers defined in s. 849.141, F.S., a public lodging establishment or public food service facility licensed by the Department of Business and Professional Regulation pursuant to ch. 509, F.S.

¹⁵ The bill defines "redemption value" as the imputed value of coupons or points, based on the wholesale cost of merchandise for which those coupons or points may be redeemed.

¹⁶ An amusement machine that dispenses merchandise with "an unpredictable outcome or chance which is inherent in the machine" qualifies as a slot machine. *See* 89-05 Fla. Op. Att'y Gen. 1 (1989) (An opinion by the Florida's Attorney General determined that a "coin operated crane game having an unpredictable outcome or chance which is inherent in the machine qualifies as a 'slot machine' within the meaning of s. 849.15(1), F.S.").

¹⁷ The bill allows for amusement machines that give points or coupons at all of the same locations that claw machines are permitted except for retailers.

¹⁸ The Florida Department of Revenue, *Sales and Use Tax on Amusement Machines* (March 2015),

<http://dor.myflorida.com/dor/forms/current/gt800020.pdf>.

circumstances, provide a cap on the redemption value of points or coupons, require the Department of Revenue to recalculate and publish the cap annually, and provide for enforcement actions.

Section 3 amends s. 551.102, F.S., to conform a cross-reference.

Section 4 repeals s. 849.161, F.S., relating to amusement games or machines.

Section 5 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires the Department of Revenue to annually recalculate the maximum cap on the redemption value of a coupon or a point received by a player and to publish the cap, as adjusted, in a brochure accessible on its website relating to sales and use tax on amusement games or machines.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not have a significant private sector impact. The law currently requires registration with the Department of Revenue of all amusement machine operators as defined in s. 212.05(1)(h)2., F.S., and registration of all amusement machines by location.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In order to further limit the use, operation and definition of such machines, the definition of “amusement games or machines” could be amended to include “no material element of chance inherent in the game or machine” or “no outcome is determined by factors unpredictable by the player.”

The term “card” is used and a card is authorized to be used to operate an amusement machine. However, it is not defined and could be interpreted to mean that a credit card could be used.

The current limitation on the places that can operate amusement games and machines does not take into account all of the places currently operating such machines.

A cap is set on the redemption value for each play of the machine, but a cap is not set on the maximum accumulated value of a prize that could be received after the accumulation of points and coupons from play nor is there a limitation of how much can be charged for one play.

The section setting a maximum value of points and coupons per game played at \$5.25 does not reference points and coupons specifically nor limit the definition of maximum value to the issuance of points or coupons to players.

The limitation provided on who can bring an action to enjoin the operation of any game or machine has been limited to the Attorney General, the state attorney, Indian tribes, the Department of Business and Professional Regulation and the Department of Agriculture and Consumer Services without specific regard for the types of potential suits or persons harmed by the operation of such machines.

Conforming amendments of cross references in the Florida Statutes that include the terms “amusement machine” and “coin-operated” should be considered.

Currently, there is not a limitation on whether the machine could be made to manipulate the level of difficulty of the game without the players’ knowledge, thus making the game too difficult for any person to win.

The sponsor has agreed to make these changes regarding these issues via amendment to the current version of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES