

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Gaming

BILL: PCS/SB 668 (457456)

INTRODUCER: Committee on Gaming

SUBJECT: Amusement Machines

DATE: March 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Guthrie</u>	<u>GM</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

PCS/SB 668 amends section 849.161, Florida Statutes, which authorizes, with restrictions, amusement games or machines at specified locations. The bill:

- Provides that, in addition to activation by insertion of a coin, an amusement machine may be activated by currency, card, coupon, token, or similar device.
- 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 (e.g., “claw” machine) to 10 times that amount (\$52.50). The caps will be adjusted annually, based on changes in the consumer price index.
- Provides that amusement machines may be placed not only in arcades or truck stops (as allowed under current law), but also in certain bowling centers, hotels, or restaurants. Machines that dispense merchandise directly (e.g., “claw” machines) may be placed in those locations or on the premises of certain retailers.

II. Present Situation:

In general, gambling is illegal in Florida.¹ Chapter 849, F.S., prohibits keeping a gambling house,² running a lottery,³ or the manufacture, sale, lease, play, or possession of slot machines,⁴

¹ Section 849.08, F.S.

² Section 849.01, F.S.

³ Section 849.09, F.S.

⁴ Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S.

but authorizes, with conditions, penny-ante games,⁵ bingo,⁶ charitable drawings,⁷ game promotions (sweepstakes),⁸ bowling tournaments,⁹ and amusement games and machines.¹⁰

Section 849.161, F.S., provides that gambling laws do not prohibit amusement games or machines that:

- Operate 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 onsite for merchandise; and
- Are located at 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 from the exemption for amusement games or machines:

- Casino-style games in which the outcome is determined by factors unpredictable by the player (s. 849.161(1)(a), F.S.);
- Games in which the player does not control the outcome through skill (s. 849.161(1)(a), F.S.);
- Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under s. 1178 (s. 849.161(4), F.S.);¹¹ or
- Video poker games or any other game or machine that may be construed as a gambling device under Florida law (s. 849.161(4), F.S.).

III. Effect of Proposed Changes:

The bill amends s. 849.161, F.S. It updates the definition “amusement games or machines” to include not only coin-operated machines, but also machines activated by insertion of currency, cards, coupons, slugs, tokens, or similar devices. The definition keeps the current law provision that the person playing an authorized game, by application of skill, controls the outcome. It also keeps the current law provision 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 definition of “amusement games or machines” by repeating language from subsection (4) of the 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

⁵ Section 849.085, F.S.

⁶ Section 849.0931, F.S.

⁷ Section 849.0935, F.S.

⁸ Section 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

⁹ Section 849.141, F.S.

¹⁰ Section 849.161, F.S.

¹¹ Slot machines are included as gambling devices pursuant to 15 U.S.C. s. 1171, but 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 devices 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.

- Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under s. 1178 (see footnote 10).

The bill moves prize restrictions out of the definition of “amusement games or machines” and into substantive provisions of law (specifically, subsections (5), (6), and (7)).

The bill amends the definition of “game played” to incorporate the new ways of activating a machine that are described in the updated definition of “amusement game or machine” (i.e., “by the insertion of currency, or a coin, card, coupon, slug, token, or similar device”).

The bill amends the definition of “merchandise” to specifically exclude not only (1) cash equivalents and (2) alcoholic beverages, but also (3) cards, tokens, or similar devices that can be used to activate a game, and (4) points or coupons—from a “direct merchandise” machine, for example—in excess of the limit that otherwise applies to points or coupons that may be redeemed onsite for other merchandise.

Subsection (2) keeps the current law provision that amusement games operated in conformance with s. 849.161, F.S., are exempt from the general prohibitions against gambling in ch. 849, F.S. Subsection (3) keeps the current law provision that the exemption applies only to machines that operated for entertainment of the public as bona fide amusement games.

Subsection (4) reiterates that the exemption for amusement games or machines does not authorize (1) casino-style games; (2) games in which the player does not control the outcome of the game through skill; (3) video poker games or any other game or machine that may be construed as a gambling device under Florida law; or (4) any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under s. 1178 (see footnote 10). These distinctions and exclusions also appear in the definition of “amusement games or machines.”

Free replays—Subsection (5) updates language in current law that authorizes an amusement game or machine from which a person, by application of skill, may win replays, subject to the restrictions in current law that the game or machine cannot accumulate more than 15 free replays or make a permanent record of free replays are not changed.

Redeemable points or coupons— Subsection (6) updates language in current law that authorizes an amusement game or machine from which a person, by application of skill, can receive points or coupons that can be redeemed onsite for merchandise, subject to the following conditions:

- The amusement game or machine is located at an arcade amusement center or truck stop, which are the only locations allowed under current law, or at a bowling center, hotel, or restaurant;¹²
- Points or coupons have no value other than for redemption onsite for merchandise;

¹² The bill expands the places where an authorized amusement machine may be located to include bowling centers defined in s. 849.141, F.S., or a public lodging establishment or public food service facility licensed by the Department of Business and Professional Regulation pursuant to ch. 509, F.S.

- The redemption value¹³ of points or coupons a person receives for a single game played does not exceed the cap specified in subsection (8), 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 (8).

Direct merchandise— Subsection (7) describes amusement games or machines from which a person, by application of skill, can receive merchandise directly (e.g., “claw machines”), 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; and
- The wholesale cost of the merchandise does not exceed 10 times the cap specified in subsection (8).

Subsection (8) provides that the cap on the redemption value of points or coupons is set at \$5.25 initially and adjusted for inflation annually. The bill provides that the Department of Revenue annually will 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.¹⁴

Section 2 of the bill provides for an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹³ 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. *See* s. 849.161(1)(e), F.S.

¹⁴ The current web address for the Department of Revenue’s publication relating to sales and use tax on amusement machines is <http://dor.myflorida.com/dor/forms/current/gt800020.pdf> (accessed March 8, 2014).

B. Private Sector Impact:

This bill does not have a significant private sector impact.

C. Government Sector Impact:

This bill does not have a significant government sector impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 849.161 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.