

**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 Regulated Industries

BILL: PCS/SB 268 (417072)

INTRODUCER: Regulated Industries Committee

SUBJECT: Amusement Games or Machines

DATE: March 17, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	<b>Pre-meeting</b>
2.			FT	
3.			AP	

**I. Summary:**

PSC/SB 268 (417072) creates section 546.10, Florida Statutes, to specify methods for activating amusement games and machines, the award of coupons, points, or prizes, limits upon prize values, and locations authorized for the operation of amusement games and machines. The bill:

- Includes a statement of legislative intent to ensure that amusement games or machines are not subject to abuse or interpreted in any manner as creating an exception to Florida’s general prohibitions against gambling.
- Provides that in addition to the use of a coin, an amusement game may be activated by currency, card, coupon, point, slug, token, or similar device played by application of skill.
- Increases the maximum redemption value of coupons or points a player may receive for a single play of a skill-based game from 75 cents to \$5.25, with a maximum value of 100 times that amount (\$525) for an item of merchandise that may be obtained onsite using accumulated coupons or points won by a player;
- Increases the maximum wholesale value of merchandise that may be dispensed directly to a player (e.g., “claw” machine) to 10 times that amount (\$52.50). The maximum values will be adjusted annually, based on changes in the consumer price index, beginning January 1, 2018.
- Provides that amusement machines may be placed not only in arcades or truck stops (as currently authorized), but also in certain bowling centers, hotels, restaurants, on the premises of certain retailers, and on the premises of certain veterans’ service organizations.

## II. Present Situation:

In general, gambling is illegal in Florida.<sup>1</sup> Chapter 849, F.S., prohibits keeping a gambling house,<sup>2</sup> running a lottery,<sup>3</sup> or the manufacture, sale, lease, play, or possession of slot machines.<sup>4</sup> Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,<sup>5</sup> bingo,<sup>6</sup> cardrooms,<sup>7</sup> charitable drawings,<sup>8</sup> game promotions (sweepstakes),<sup>9</sup> bowling tournaments,<sup>10</sup> and amusement games and machines.<sup>11</sup>

Section 849.161, F.S., 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 coupons or points—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 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 from the exemption for authorized 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.);<sup>12</sup>
- Games in which the player does not control the outcome through skill (s. 849.161(1)(a), F.S.);

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<sup>1</sup> Section 849.08, F.S.

<sup>2</sup> Section 849.01, F.S.

<sup>3</sup> Section 849.09, F.S.

<sup>4</sup> 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.

<sup>5</sup> Section 849.085, F.S. Section 849.085(2)(a), F.S., provides that “[p]enny-ante game” means 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 do not exceed \$10 in value.”

<sup>6</sup> Section 849.0931, F.S.

<sup>7</sup> Section 849.086, F.S.

<sup>8</sup> Section 849.0935, F.S.

<sup>9</sup> Section 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>10</sup> Section 849.141, F.S.

<sup>11</sup> Section 849.161, F.S.

<sup>12</sup> In *Deeb v. Stoutamire*, 53 So.2d 873, 874 (Fla. 1951), in a challenge that a miniature bowling alley game was a slot machine, the Florida Supreme Court distinguished the characteristics “which we think differentiate an innocent machine, vending amusement or entertainment, from a guilty one affording a means of gambling,” and held that the element of unpredictability “must be inherent in the machine.” Slot machines were defined 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 “is not supplied because a player 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-armedbanditry,” the Court stated “[w]e all know full well the vicious devices the cited statute [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.” *Id.* at 875. The Court reversed the trial court’s decision, as the amusement device at issue was not a prohibited slot machine. *Id.*

- 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.);<sup>13</sup> 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.).

Section 212.02(24), F.S., defines coin-operated amusement games as those operated by coin, slug, token, coupon, or similar device “for the purposes of entertainment or amusement.” Accordingly, operators<sup>14</sup> 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.<sup>15</sup>

A four percent tax is imposed on charges for the use of coin-operated amusement machines.<sup>16</sup> 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.<sup>17</sup>

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 machines or device” outside of eligible facilities.<sup>18</sup> 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

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<sup>13</sup> 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, 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, as the result of the application of chance, any money or property, or entitle a person to receive any money or property as the result of the application of chance, 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.

<sup>14</sup> For purposes of the payment of taxes on the use of amusement machines, “operator” means “any person who possesses a machine to generate sales through it and is responsible for removing receipts from it. *See* s. 212.05(1)(h)2., F.S.

<sup>15</sup> *See* s. 212.05(1)(h)3.a. and b., F.S. Each certificate is non-transferrable and specifies the maximum number of machines authorized to be operated for each location. 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.

<sup>16</sup> *See* s. 212.05(1)(h)1, F.S. for the method of calculation.

<sup>17</sup> *Id.*

<sup>18</sup> *See* ss. 849.15 to 849.23, F.S.; however, such activities respecting slot machines located in or destined for 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.

the arrest of 57 people.<sup>19</sup> Charges included racketeering and money laundering.<sup>20</sup> Recently, the Manatee County Sheriff's seized 500 illegal gambling devices at multiple locations.<sup>21</sup>

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 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" . . . .<sup>22</sup>

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!). Two cases remain pending.<sup>23</sup>

### III. Effect of Proposed Changes:

The bill states legislative intent respecting regulation of the operation of skill-based amusement games or machines at limited locations, in order to prevent expansion of casino-style gambling. The bill states the compelling state interest for clarifying the operation and use of amusement games or machines, to ensure that amusement games or machines are not subject to abuse or interpreted in any manner as creating an exception to Florida's general prohibitions against gambling.

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:

- Updates activation methods for amusement machines; in addition to coins, a prefunded card (excluding a credit card or debit card) may activate amusement machines if the prefunded value is diminished upon each activation by the cost of play;
- Describes the factors indicating the existence of a "material element of chance inherent in a game or machine" that is prohibited in an amusement machine;
- Distinguishes between Type 1 amusement machines that issue coupons or points to winning players that may be accumulated or redeemed by players in exchange for merchandise obtained onsite, or that grant the right to limited replays of the game without additional payment by the player,, and Type 2 amusement machines that allow a player to manipulate a

<sup>19</sup> Mary Ellen Klas, *Bill Banning Internet Cafes Becomes Law in Florida*, Governing, (April 11, 2013), available at <http://www.governing.com/news/state/mct-bill-banning-internet-cafes-becomes-law-in-florida.html> (last visited Mar. 17, 2015).

<sup>20</sup> Arrests From The Allied Veterans of the World Investigation, available at <http://jacksonville.com/content/arrests-allied-veterans-world-investigation#slide-1> (last visited Mar. 17, 2015).

<sup>21</sup> See [http://www.bradenton.com/2015/03/16/5694034\\_sheriff-thousands-of-dollars-hundreds.html?rh=1](http://www.bradenton.com/2015/03/16/5694034_sheriff-thousands-of-dollars-hundreds.html?rh=1) (last visited Mar. 17, 2015).

<sup>22</sup> See Section 4, ch. 2013-2, L.O.F.

<sup>23</sup> The two pending cases are *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 case styled *Forst v. Festival Fun Parks, LLC*, Case No. 2013 CA 010200 AB, Palm Beach County Circuit Court, was directed to be administratively closed by the Court on January 20, 2015.

- claw or similar device within a closed space (claw/crane game) to receive merchandise directly from the amusement machine (Type 2).
- Authorizes the following entities in addition to the arcade amusement centers and truck stops already authorized in existing law, to have Type 1 and Type 2 amusement machines on their premises under certain conditions:
    - Bowling centers with a minimum of 12 bowling lanes;<sup>24</sup> and
    - Public food and lodging establishments licensed by the Department of Business and Professional Regulation.<sup>25</sup>
  - Authorizes retailers, and qualified veterans' service organizations that have been issued an alcoholic beverage license, to have Type 2 amusement machines (claw/crane machines) on their premises.<sup>26</sup>
  - Clarifies authorized methods for the redemption of coupons and points and the dispensation of prizes to players;
  - Updates the maximum value for coupons and points 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 coupons and points.

The bill creates s. 546.10, F.S. to expand the definition of "amusement game or machine," to include not only coin-operated machines, but also machines activated by insertion of currency, cards, coupons, points, slugs, tokens, or similar devices. The definition includes the current law provision that the amusement machine be operated for the entertainment of the general public.

The bill includes the current law provisions that amusement games or machines do not include casino-style games that depict or use symbols of casino games, slot machines, blackjack (21), poker, bingo, lotto, roulette, or craps (dice) 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 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
- Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under s. 1178.<sup>27</sup>

The bill includes the current law definition in s. 849.161(1)(b), F.S., for "arcade amusement center."

The bill defines "card" to mean a card other than a credit card or debit card which:

- Is used to activate an amusement game or machine;

<sup>24</sup> See s. 849.141, F.S., for other requirements.

<sup>25</sup> At the end of FY 2013-2014, there were 87,083 licensed public food service establishments, and 38,472 licensed public lodging establishments, See Annual Report, Fiscal Year 2013-2014, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at:

[http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr\\_annual\\_reports.html](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr_annual_reports.html) (last visited Mar. 17, 2015).

<sup>26</sup> See s. 212.02, F.S. for the complete definition of "retailer."

<sup>27</sup> See *supra* note 13.

- Contains a microprocessor chip, magnetic stripe, or other means for storing, retrieving, and transferring information, including information regarding coupons or points that are won and may be redeemed for merchandise;
- Is prefunded; and
- Is diminished upon each activation by the cost of play, to reduce the prefunded value.

**Prohibition against material element of chance inherent in amusement games**—The bill enumerates indicators of the existence of a prohibited “material element of chance” inherent in an amusement game. The phrase “material element of chance inherent in the game or machine” means any of the following:

- The possibility that a player will win the game is determined by prior wins or prior losses of players (outside influence that affects the win);
- The outcome of a game is not based solely on the player achieving the object of the game or on how much the player scores (outside influence that varies the result);
- The number of the coupons or points awarded, or the value of the prize awarded, for successfully playing the game can be controlled by a source other than the player or players playing the game (outside influence that varies the result);
- The ability of the player to win is determined by a game feature or design that changes the effect of the player’s actions and that is not discernible or known by the player (outside influence that varies the result);
- The accomplishment of the player’s task requires the exercise of a skill that no player could exercise (outside influence that varies the result);
- A computer-based random number generator or other factor that is not discernible, known, or predictable by the player determines the outcome or winner of the game (outside influence varies the result);
- The game is designed or adapted with a control device to allow manipulation of the game by the operator, to prevent a player from winning or to predetermine which player will win (outside influence that varies the result).

The bill addresses the requirements for Type 1 amusement machines respecting the award to a player of free replays, redeemable coupons or points, accumulation and redemption of coupons and points for onsite merchandise. The bill sets out the requirements for Type 2 amusement machines (claw/crane machines), and the prizes that may be dispensed directly from that type of amusement machine.

**Free replays**—Subsection (3) provides the requirements for a Type 1 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. Winning a free replay may not entitle the player to receive any merchandise or a coupon or point that may be exchanged for merchandise, and a free replay may not be exchanged for anything of value. There are no replays in claw/crane machine games; a prize is either won or not.

**Authorized locations of Type 1 amusement machines that dispense coupons or points to players to redeem for onsite merchandise**— Subsection (3) provides the requirements for a Type 1 amusement to allow a player (by application of skill), to receive coupons or points that can be redeemed onsite for merchandise, subject to the following conditions:

- The amusement machine is located at an arcade amusement center or truck stop, as authorized under current law, or at a bowling center, hotel, restaurant, or on the premises of a retailer as defined in s. 212.02, F.S.;<sup>28</sup>
- Coupons or points have no value other than for redemption onsite for merchandise;
- The redemption value<sup>29</sup> of coupons or points a person receives for a single game played does not exceed the maximum value specified in subsection (8), which is set at \$5.25 initially and adjusted for inflation annually; and
- The redemption value of coupons or points a person receives for playing multiple games simultaneously or competing against others in a multi-player game, does not exceed the maximum value specified in subsection (8).

**Authorized locations of Type 2 amusement machines that dispense direct merchandise from the machine to players**— Subsection (6) describes the requirements for an amusement machine to allow a player (by application of skill), to receive merchandise directly,<sup>30</sup> 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.; and
  - The wholesale cost of the merchandise does not exceed 10 times the maximum value specified in subsection (8).
- **Merchandise and Maximum Value**—Subsection (1)(f) of the bill amends the definition of “merchandise” to specifically exclude not only (1) cash equivalents (gift cards and certificates)<sup>31</sup> and (2) alcoholic beverages, but also (3) coins, cards, coupons, points, slugs, tokens, or similar devices that can be used to activate a skill-based game, and (4) coupons or points with a redemption value higher than the maximum legal value. The maximum value is currently 75 cents, but is proposed to be adjusted for inflation to \$5.25 with annual adjustments by the Department of Revenue,<sup>32</sup> beginning January 1, 2018.

<sup>28</sup> 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., or at locations where retail sales, distribution, use, consumption, or storage is to be used or consumed in Florida.

<sup>29</sup> 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.

<sup>30</sup> An amusement machine that dispenses merchandise with “an unpredictable outcome or chance which is inherent in the machine” qualifies as a slot machine. *See* Fla. AGO 1989-05 (January 27, 1989), in which s. 849.161, F.S., “makes Ch. 849, F.S., inapplicable to “arcade amusement centers” with amusement machines “which by application of skill entitle the person playing to receive coupons or points which may be exchanged for merchandise only . . . .” *Id.* at footnote 4.

<sup>31</sup> 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 or manufacturer or retailer discounts and coupons.

<sup>32</sup> *See* s. 546.10(8) in Section 1 of the bill.

- For Type 1 amusement machines, the maximum value of coupons or points a player may receive for a single play of a skill-based game is increased from 75 cents to \$5.25, with a maximum value of 100 times that amount (\$525) for an item of merchandise that may be obtained onsite using accumulated coupons or points won by a player;
- For Type 2 amusement machines, the maximum wholesale value of merchandise that may be dispensed directly to a player (from a claw/crane machine) to 10 times that amount (\$52.50).

Subsection (8) provides that the maximum value on the redemption value of coupons or points is set at \$5.25 initially and adjusted for inflation annually. The bill provides that the Department of Revenue will annually adjust the maximum value based on the change in the Consumer Price Index for All Urban Consumers, U.S. City Average. The maximum value will remain at \$5.25 until the initial adjustment to the maximum value is effective January 1, 2018. The adjusted maximum value will be published in a brochure accessible from the Department of Revenue's website relating to sales and use tax on amusement machines.<sup>33</sup>

Notwithstanding any other provision of law, the filing of actions to enjoin the operation of any game or machine for an alleged violation of s. 546.10, F.S., or of ch. 849, F.S., respecting gambling, may be brought only by the following parties:

- 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;
- Any substantially affected person<sup>34</sup> who is a resident of the county where the place of business operating the game is located; or
- Any substantially affected person who has a business or residence within 5 miles of the place of business operating the game or machine.

The penalties for violation of the requirements for the operation of amusement games or machines are as follows:

- A conviction on a first offense is a second degree misdemeanor (jail time not more than 60 days; up to \$500 fine);
- A second conviction is a first degree misdemeanor (jail time not more than 1 year; up to \$1,000 fine);
- After 2 convictions, the third conviction is a third degree felony (jail time not more than 5 years; up to \$5,000 fine), but an enhancement in sentencing is possible (jail time up to 10 years) but only if the court finds the violator is an habitual felony offender after a second felony conviction, and the court finds it is necessary to do so for the protection of the public.

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<sup>33</sup> 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> (last visited Mar. 17, 2015).

<sup>34</sup> Substantially affected persons must have a substantial interest in the outcome of the proceeding, must show that an injury in fact has or will occur, and that the injury is of a type that the proceeding is designed to protect. *See Agrico Chemical Co. v. Dep't of Env. Reg.*, 406 So.2d 478, 483 (Fla 2d DCA 1981).



The bill includes editorial revisions and technical changes to conform to bill drafting conventions. A cross reference to s. 849.161, F.S., in existing s. 551.102, F.S., defining slot machines, has been updated to reference s. 546.10, F.S., created in the bill.

**Section 4** of the bill provides for an effective date of July 1, 2015.

#### **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.

**B. Private Sector Impact:**

The law currently requires registration with the Department of Revenue of (a) all amusement machine operators as defined in s. 212.05(1)(h)2., F.S., and (b) registration of all amusement machines by location. The bill retains the requirement that amusement game or machine operators must comply with those registration requirements and pay the associated fees for such registration.

**C. Government Sector Impact:**

According to the Department of Revenue (department), the total state revenue from amusement machines for Fiscal Year 2013-2014 was approximately \$7.1 million, and the total certificate fees paid (\$30 per machine) during that time was approximately \$1.2 million.<sup>35</sup> The bill requires the department to annually recalculate the maximum value for the redemption of a coupon or a point received by a player and to publish the maximum value, as adjusted, in a brochure accessible on its website relating to sales and use tax on amusement games or machines.

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<sup>35</sup> Email from Lynne Moeller, of the Legislative Affairs Office of the Florida Department of Revenue, to Mary Kraemer (February 3, 2015) (on file with the Senate Committee on Regulated Industries).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 551.102 of the Florida Statutes.

This bill creates section 546.10 of the Florida Statutes.

This bill repeals 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.