

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: SB 268

INTRODUCER: Senator Stargel

SUBJECT: Amusement Games or Machines

DATE: February 3, 2015

REVISED: _____

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

I. Summary:

SB 268 creates section 546.10, Florida Statutes, to specify methods for activating amusement games and machines, the award of points, coupons or prizes, limits upon 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, point, slug, token, or similar device played by application of skill.
- 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 currently authorized), but also in certain bowling centers, hotels, restaurants, 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 Certain exceptions have been authorized, with restrictions on permitted locations, operators, and

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.

prizes, including penny-ante games,⁵ bingo,⁶ cardrooms,⁷ charitable drawings,⁸ game promotions (sweepstakes),⁹ bowling tournaments,¹⁰ and amusement games and machines.¹¹

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 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 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.);¹²
- 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.);¹³ 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.).

⁵ 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.”

⁶ Section 849.0931, F.S.

⁷ Section 849.086, F.S.

⁸ Section 849.0935, F.S.

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

¹⁰ Section 849.141, F.S.

¹¹ Section 849.161, F.S.

¹² 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-armed banditry,” 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.*

¹³ 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 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.

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, operators¹⁴ 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.¹⁵

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

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.¹⁸ 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.¹⁹ Charges included racketeering and money laundering.²⁰

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~~”²¹

¹⁴ 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.

¹⁵ *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.

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

¹⁷ *Id.*

¹⁸ *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.

¹⁹ 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 Feb. 2, 2015).

²⁰ Arrests From The Allied Veterans of the World Investigation, available at <http://jacksonville.com/content/arrests-allied-veterans-world-investigation#slide-1> (last visited Feb. 2, 2015).

²¹ Section 4, ch. 2013-2, L.O.F.

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.²²

III. Effect of Proposed Changes:

Section 1 of 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;
- 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 revises s. 546.002, 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 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. 1178.²³

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

The bill moves prize restrictions out of the definition of “amusement games or machines” and into substantive provisions of law (specifically, subsections (2), (3), and (4) of Section 2 of the bill).

²² 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.

²³ See *supra* note 13.

The bill amends the definition of “merchandise” to specifically exclude not only (1) cash equivalents (specifically, gift cards and certificates)²⁴ and (2) alcoholic beverages, but also (3) coins, cards, tokens, or similar devices that can be used to activate a game, and (4) 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.²⁵

Section 2 of the bill creates s. 546.10, F.S., determining the requirements for the award to a player of free replays, redeemable points or coupons, and prizes dispensed directly from an amusement machine.

Free replays—Subsection (2) 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.

Redeemable points or coupons— Subsection (3) 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:

- 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.;²⁶
- Points or coupons have no value other than for redemption onsite for merchandise;
- The redemption value²⁷ of points or coupons a person receives for a single game played does not exceed the cap specified in subsection (5), 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 (5).

Direct merchandise— Subsection (4) describes the requirements for an amusement machine to allow a player (by application of skill), to receive merchandise directly,²⁸ provided:

²⁴ 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.

²⁵ See proposed s. 546.10(5) in Section 2 of the bill.

²⁶ 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 to be used or consumed in Florida.

²⁷ 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.

²⁸ 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 points or coupons which may be exchanged for merchandise only” *Id.* at footnote 4.

- 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 cap specified in subsection (5).

Subsection (5) 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.²⁹

The bill restricts the filing of actions to enjoin the operation of amusement machines located at any of the authorized locations (arcades, truck stops, bowling centers, hotels, restaurants, and retail premises) to 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 includes editorial revisions.

Section 3 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.

²⁹ 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 Feb. 2, 2015).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill does not have a significant 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.

C. Government Sector Impact:

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.

VI. Technical Deficiencies:

The provisions of s. 849.161, F.S., if not modified or repealed, will conflict with the provisions of the bill.

VII. Related Issues:

The bill states that retail locations are authorized locations not only for amusement machines that dispense merchandise directly to the player (“claw” machines), but also for amusement machines that allow a player to receive coupons or points for merchandise (similar to arcade amusement centers).

The cap on the redemption value of a point or coupon is stated as \$5.25, without any qualification for issuance of points or coupons to players. It appears the limit for the redemption value of points or coupons a player receives for a single game, or for multiple games in a multi-player game, should not exceed the cap of \$5.25.

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

The bill does not include the prohibition in current law that the following are not authorized in Florida (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. 1178.³⁰ This omission may be construed as evidence of a purposeful change in current law.

³⁰ See *supra* note 13.

VIII. Statutes Affected:

This bill substantially amends section 546.002 of the Florida Statutes.
This bill creates section 546.10 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
