

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 849, F.S., generally prohibits gambling whether on a game of chance or on a trial or contest of skill, including a prohibition on the possession of gaming machines and a prohibition on the keeping of a gaming house. Sections 849.15 and 849.16, F.S., prohibit the use of any machine or device which by the insertion of any piece of money or other object may be operated and which the user, *by reason of any element of chance* may receive money, credit or other thing of value which may be exchanged for any thing of value or allow additional chances or rights to use such machine or device. Moreover, s. 849.09, F.S., prohibits any person in the state from setting up or conducting a lottery, which has generally been defined by the courts of this state as involving three elements: prize, chance, and consideration.

Section 849.161, F.S., contains two exceptions to the game and machine prohibitions in chapter 849: one for truck stops meeting specified criteria and one for arcade amusement centers.

Truck stops, as defined by chapter 336 and which operate a minimum of six functional diesel fuel pumps, are authorized to operate amusement games or machines which operate by means of the insertion of a coin and which by application of skill the player may win points or coupons which may be exchanged for merchandise limited to noncash prizes, toys, novelties, and Florida lottery products provided the cost value of the merchandise or prize does not exceed 75 cents on any game played. In addition, players may not redeem their points or coupons for alcoholic beverages.

Arcade amusement centers are defined as a place of business having at least 50 coin-operated amusement games or machines which are operated for the entertainment of the general public and tourists as bona fide amusement centers. Arcade amusement centers are authorized to operate games or machines which operate by means of the insertion of a coin and which by application of skill the player may win points or coupons which may be exchanged for merchandise only, excluding cash and alcoholic beverages, provided the cost value of the merchandise or prize does not exceed 75 cents on any game played. This section also authorizes coin-operated games or devices which by operation of skill may entitle the player to win free replays of the game up to a maximum of 15 free replays [pin ball machines].

The statute specifies that the cost value of the merchandise or prizes awarded in exchange for points or coupons does not exceed 75 cents on any game played; however, the statute does not address the issue of the value of merchandise or prizes which may be exchanged for accumulated or multiple points or coupons.

Section 849.161, F.S., specifies that the authorization for arcade amusement games, whether at qualifying truck stops or at arcade amusement centers, is not to be construed as authorizing video poker games or other games that may be construed as a gambling device. Section 849.01, F.S., provides a third degree felony for a person who keeps, exercises, or maintains a gambling house.

Section 212.05(h)1, F.S., imposes 4 percent tax on the fee charged for playing coin-operated arcade amusement machines or if the machine is activated by a slug, token, coupon or similar device which has been purchased, the tax is on the price paid by the user for the device. Operators of coin-operated amusement machines must obtain a separate sales and use tax certificate of registration for each county in which such machines are located. The Department of Revenue [department] collected \$6.4 million from the tax on arcade amusement machines during the last fiscal year. In addition, the operators of a coin-operated arcade amusement machines must register with the department and obtain an identifying certificate from the department prior to operation in the state. The certificate is renewed annually, must list the number of machines operated, and the operator must pay a fee of \$30 per machine. For FY 2002-2003 the department issued 1,187 certificates covering 43,005 machines. Since multiple certificates could be issued for one location, the number of certificates is not an indication of the actual number of physical locations in the state.

Summary

This legislation amends s. 849.161, F.S., which authorizes arcade amusement machines to be played at arcade amusement centers.

Specifically, the bill:

- o limits the authorization to machines that are operated solely by application of skill;
- o adds tobacco products to the list of prohibited items for which points or coupons may be exchanged;
- o prohibits the redemption of coupons for cash, alcoholic beverages, or tobacco products;
- o limits the redemption of points or coupons to the business location where the game or machine is physically located and only for the specific product listed;
- o prohibits the redemption of points or coupons for gift certificates, mail order certificates or similar conveyance or that is deliverable from a location other than where the arcade is located; and
- o prohibits games or machines that may be construed as a gambling device including video poker games and other games or machines prohibited by s. 849.15, F.S.

The bill grants authority to the legislative and governing body of a county or municipality to limit the hours of operation and the number of machines allowed in an arcade amusement center. Further, the bill specifies that a local government's authority to establish or amend the zoning map designation or list of permitted, conditional, or prohibited uses within a zoning category is not abrogated by the provisions of this legislation.

Finally, the bill corrects a reference to the U. S. Code relating to transportation of gambling devices.

C. SECTION DIRECTORY:

Section 1. Amends s. 849.161, F.S., relating to arcade amusement machines.

Section 2. Provides that the bill will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
Indeterminate.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. These provisions will prohibit arcade amusement centers from issuing coupons or gift certificates that are redeemable for merchandise at another location, such as a gift certificate to a grocery store or similar retail location.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or cities to spend funds or take an action requiring the expenditure of funds; does not reduce the authority that cities or counties have to raise revenues in the aggregate; and does not reduce the percentage of a state tax shared with cities or counties.

- #### 2. Other:
- None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to recent news accounts some communities have enacted or are considering enacting local ordinances limiting the locations at which arcade amusement centers may be located. Additionally, law enforcement officials in Volusia, St. Johns and Sarasota counties have reportedly attempted to close

some of these facilities alleging that their operation is unlawful.¹ At a January 16, 2004 hearing a Circuit Court Judge in the Seventh Judicial Circuit ruled [open court] the machines confiscated from several arcade amusement machines violated several elements of Florida's gambling laws.² The Court has subsequently denied the defendant's motion to dismiss and a Notice of Appeal by the defendant's attorney has been filed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2004, the Committee on Business Regulation, considered this legislation and adopted one amendment by Representative Greenstein. The committee then voted the bill favorably with committee substitute, 35 Yeas and 0 Nays.

HB 1531 with committee substitute further limits arcade amusement center operations to machines that operate solely by application of skill and prohibits games or machines that may be construed as a gambling device under state law, including video poker games or any game or machine that resembles a gambling device. The bill further prohibits redemption of points for tobacco products or coupons that are redeemable for cash, alcoholic beverages, or tobacco products and coupons that are deliverable from a location other than where the arcade is located or mail order certificates.

¹ *Playing for Prizes*, by Leon Fooksman, Sun-Sentinel, December 31, 2003; *Judge rules seized slot machines can be kept [by law enforcement agency]*, by Cindy F. Crawford, Daytona Beach News-Journal, January 17, 2004; *Shores adopts arcade ordinance*, by John Wisniewski, January 19, 2004, Daytona Beach News-Journal.

² *State of Florida v. Michel Delorne*, Case No. 2003-35783CFAES, Seventh Judicial Circuit