

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Regulated Industries Committee

BILL: CS/SB 234

SPONSOR: Regulated Industries Committee and Senator Constantine

SUBJECT: Gambling

DATE: March 29, 2005

REVISED: 3/29/05

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Imhof	RI	Fav/CS
2.		CM	
3.		CA	
4.			
5.			
6.			

## I. Summary:

The committee substitute amends s. 849.161(1)(a)1., F.S., to provide that tobacco products or coupons redeemable for cash, alcoholic beverages, or tobacco products are excluded from the type of merchandise a player is entitled to receive in exchange for the points or coupons the player receives after playing the amusement game at an arcade amusement center.

The committee substitute creates s. 849.161(1)(c)1., F.S., to provide that local governments maintain zoning authority with respect to arcade amusement centers.

The committee substitute creates s. 849.161(1)(c)2., F.S., to provide that the legislative and governing body of a county or municipality shall have the power and authority to limit the number of hours of operation of arcade amusement centers and may also limit the number of machines allowed in such centers.

This committee substitute substantially amends sections 849.161, of the Florida Statutes.

## II. Present Situation:

Arcade amusement centers having coin-operated amusement games or machines are exempted<sup>1</sup> from the prohibitions on gambling under ch. 849, F.S., as long as the games are games of skill.<sup>2</sup>

<sup>1</sup> Coin-operated games of chance (also known as slot machines) are not exempted. See s. 849.16, F.S.

<sup>2</sup> The Second District Court of Appeal has held that the legislature's use of only the term "coin" in arcade amusement center exception for machines which operate by means of insertion of a coin reflects that use of coin falls within the exception to the prohibition against gambling, and since defendants' machines did not accept quarters and were operated by cash bills, defendants' conduct was not protected by the exception to statutory gambling prohibitions. (*State v. Cyphers*, 873 So. 2d 471 (Fla. 2d DCA 2004). In 1995, the Attorney General opined that under s. 849.161, F.S., the playing of an amusement game or

An arcade amusement center as used in s. 849.161, F.S. means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.<sup>3</sup> The person playing or operating the game or machine is entitled to receive points or coupons which may be exchanged for merchandise only. Merchandise does not include cash and alcoholic beverages. The cost value of the merchandise or prize awarded in exchange for such points or coupons may not exceed 75 cents on any game played.<sup>4</sup>

In November 2003, law enforcement officials closed eight adult arcade establishments in Volusia and St. Johns counties and confiscated 400 machines as gambling devices.<sup>5</sup> The defendants in that case accepted a plea agreement to lesser charges after the circuit judge had ruled that the machines were games of chance; the skill level needed was “minimal” and other violations of ch. 849, F.S.<sup>6</sup>

One of the owners of the arcade re-opened the arcade again and was arrested again in June 2004 and pleaded no-contest to a third-degree felony for keeping a gambling house in December 2, 2004. Fifty machines were confiscated. She received one year probation with the promise not to open another arcade or work for one.<sup>7</sup>

Law enforcement agencies have closed down adult arcades in Pinellas County, Hillsborough County, Panama City, and Sarasota.<sup>8</sup> In Sarasota, the Circuit Court dismissed similar charges and held ss. 849.01 and 849.15, F.S., unconstitutionally vague when read in conjunction with s. 849.161(1)(a)1., F.S.<sup>9</sup>

Also excluded from this exemption are those coin operated amusement games or devices designed and manufactured only for amusement purposes which by application of skill entitle the player to replay the game or device at no additional cost, if the game or device:

- can accumulate and react to no more than 15 free replays;
- can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay;
- can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as a gambling device in 24 U.S.C. s. 1171, which requires identification of each device by permanently affixing seriatim numbering

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machine does not appear to require that the outcome of the game be dependent solely on skill, though skill must be a factor. Fla. AGO 95-27.

<sup>3</sup> Section 849.161(2), F.S.

<sup>4</sup> Section 849.161(1)(a) 1., F.S.

<sup>5</sup> Cindy F. Crawford, November 8, 2003, “Officials Swoop In, Close Adult Gaming Arcades, 400 Machines Carted Away for Inspection,” *Daytona Beach News-Journal*, 1A.

<sup>6</sup> Cindy F. Crawford, January 17, 2004, “Plea Deal Keeps Casino Arcades Shuttered for Now,” *Daytona Beach News-Journal*, 1A. *State of Florida v. Michel Delorne*, Case No. 2003-35783CFAES, Seventh Judicial Circuit.

<sup>7</sup> Staff Report, December 2, 2004, “Arcade owner accepts deal, get probation,” *Daytona Beach News-Journal*, 3C.

<sup>8</sup> See *supra*, note 2.

<sup>9</sup> *State v. Cyphers*, No. 2002 CF 5480 (Fla. 12<sup>th</sup> Cir. Ct. Feb. 18, 2004). The circuit court held that the statutes do not provide adequate notice of the conduct it prohibits when measured by common understanding and practice and that s.

849.161(1)(a)1., F.S., does not adequately inform the defendant how much skill a game must have to qualify for the exemption provided in the section. The Second District Court of Appeal upheld the statute. *Supra* at n. 2.

and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under s. 1178.

Section 849.161(1)(a)2., F.S., also provides an exemption for retail dealers who operate truck stops as defined in ch. 336, F.S., and operate a minimum of six functional diesel fuel pumps. The truck stops can have amusement games or machines that operate by inserting a coin or other currency and, by application of skill, entitle a person to win points or coupons. The points or coupons can be redeemed for merchandise limited to noncash prizes, toys, novelties, and Florida Lottery products. Alcoholic beverages are excluded and the value of the points or coupons may not exceed 75 cents per game. The same exceptions for gambling devices and video poker games noted above also apply to this exemption.

Many adult arcade establishments have opened around the state. These establishments have machines that resemble the traditional slot machines, but allow the players to stop the circling slots at a certain time and win. The players win gift certificates that can be redeemed at local stores and supermarkets. In many cases the certificates can be redeemed for both merchandise and cash.<sup>10</sup>

### **III. Effect of Proposed Changes:**

The committee substitute amends s. 849.161(1)(a)1., F.S., to provide that tobacco products or coupons redeemable for cash, alcoholic beverages, or tobacco products are excluded from the type of merchandise a player is entitled to receive in exchange for the points or coupons the player receives after playing the amusement game at an arcade amusement center.

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Nonsubstantive conforming changes are made to correct a federal statutory citation from 24 U.S.C. s. 1171 to 15 U.S.C. 1171.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>10</sup> Brief of Appellant, *State v. Cyphers*, 873 So. 2d 471 (Fla. 2d DCA 2004).

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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