

Ken Lawson, Secretary

Rick Scott, Governor

## LEGAL BULLETIN

TO: All Bureau of Enforcement Personnel  
FROM: Robert L. Ehrhardt, Senior Attorney *RLE*  
SUBJECT: Legal Bulletin 2015-001, Analysis of HB 641 – Amusement Games or Machines  
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### Analysis of HB 641 – Amusement Games or Machines

The bill creates section 546.10, F.S., to specify types of amusement games, methods for activating amusement games, the award of coupons, points, or prizes, limits upon prize values, and locations authorized for the operation of amusement games. The bill implements these changes to amusement games and also further defines what is considered gambling in this state. The changes are significant enough to warrant an in depth review to aid agents in enforcing the statutes once the bill becomes effective on July 1, 2015.

The bill provides important definitions that clarify permissible activities. The following may be of special concern in the field:

"Amusement game or machine" means a game or machine operated only for the bona fide entertainment of the general public which a person activates by inserting or using currency or a coin, card, coupon, slug, token, or similar device, and, by the application of skill, with no material element of chance inherent in the game or machine, the person playing or operating the game or machine controls the outcome of the game. **The term does not include:**

1. Any game or machine that uses mechanical slot reels, video depictions of slot machine reels or symbols, or video simulations or video representations of any other casino game, including, but not limited to, any banked or banking card game, poker, **bingo, pull tab, lotto**, roulette, or craps.
2. A game in which the **player does not control the outcome of the game through skill** or a game where the **outcome is determined by factors not visible, known, or predictable** to the player.
3. A **video poker game or any other game or machine that may be construed as a gambling device** under the laws of this state.

“Material element of chance inherent in the game or machine” means any of the following:

1. The possibility of the player succeeding at the game or accomplishing the player’s task is determined by the number or ratio of prior wins or prior losses of players playing the game.
2. An award of value is not based solely on the player achieving the object of the game or on the player’s score.
3. 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.
4. The ability of the player to succeed at the game 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.
5. The accomplishment of the player’s task requires the exercise of a skill that no player could exercise.
6. A computer based or mechanical random number generator or other factor that is not discernible, known, or predictable by the player determines the outcome or winner of the game.
7. The game is designed or adapted with a control device to allow manipulation of the game by the operator in order to prevent a player from winning or to predetermine which player will win.

“Merchandise” means noncash prizes maintained on the premises by the operator of the amusement game or machine, including toys and novelties. **The term does not include:**

1. A cash equivalent, such as a gift card or certificate;
2. An alcoholic beverage;
3. A tobacco product;
4. A card, coupon, point, slug, token, or similar device that can be used to activate an amusement game or machine;
5. A coupon or a point that has a redemption value greater than the maximum value determined under subsection (7); or
6. Any prize or other item, if the exchange or conversion to cash or a cash equivalent is facilitated or permitted by the owner or operator of the game or machine.

At the heart of the bill is the definition of the different types of amusement games which are divided into three different categories, types A, B, or C:

- Type A amusement games enable a player to receive free replays of the game without further activation or payment for a game (up to a maximum of 15 accumulated replays); no tickets or merchandise may be awarded to the player;
- Type B amusement games enable a player to receive a coupon or point that may be accumulated and used to redeem merchandise onsite;
- Type C amusement games allow a player to manipulate a claw or similar device within an enclosure and receive merchandise directly from the game.

A Type A amusement game or machine is an amusement game or machine that may entitle or enable a person to:

- Replay the game or device without the insertion or the use of any additional currency, coin, card, coupon, slug, token, or similar device, if:
  1. The amusement game or machine can accumulate and react to no more than 15 such replays;
  2. The amusement game or machine can be discharged of accumulated replays only by reactivating the game or device for one additional play for each accumulated replay;
  3. The amusement game or machine cannot make a permanent record, directly or indirectly, of any free replay;
  4. The amusement game or machine does not entitle the player to receive any merchandise or a coupon or a point that may be redeemed for merchandise;
  5. An unused free replay may not be exchanged for anything of value, including merchandise or a coupon or a point that may be redeemed for merchandise; and
  6. The amusement game or machine does not contain any device that awards a credit and contains a circuit, meter, or switch capable of removing and recording the removal of a credit if the award of a credit is dependent upon chance.

A Type B amusement game or machine may entitle or enable a person to receive a coupon or a point that may only be redeemed onsite for merchandise; and:

- The coupon or point has no value other than for redemption onsite for merchandise;
- The redemption value of the coupon or point that a person receives for a single game played does not exceed the **maximum value** determined under subsection (7).
- However, a player may accumulate coupons or points to redeem onsite for a single item of merchandise that has a wholesale cost of not more than 100 times the **maximum value** determined under subsection (7), or for a prize consisting of more than one item, unit, or part, only if the aggregate wholesale cost of all items, units, or parts does not exceed 100 times the maximum value determined under subsection (7) and
- The redemption value of coupons or points that a person receives for playing multiple games simultaneously or competing against others in a multiplayer game does not exceed the **maximum value** determined under subsection (7).

A **Type C amusement game** or machine is an amusement game or machine that allows the player to **manipulate a claw or similar device** within an enclosure and entitles or enables a person to **receive merchandise directly from the game or machine**, if the wholesale cost of the merchandise does not **exceed** 10 times the **maximum value** determined under subsection (7).

For purposes of this section, the “**maximum value**” is **\$5.25**. For now, DOR will reassess the maximum value periodically

1. The coupon or point has no value other than for redemption for merchandise;
2. The redemption value of the coupon or point a person receives for a single game played does not exceed the maximum value determined under subsection (7) (**\$5.25**). However, a player may accumulate coupons or points to redeem for merchandise if there is no single item of merchandise which has a wholesale cost of more than 100 times the maximum value determined under subsection (7) (**equals \$525.00**), or for a prize consisting of more than one item, unit, or part, if the aggregate wholesale cost of all items, units, or parts does not exceed 100 times the maximum value determined under subsection (7); and
3. The redemption value of coupons or points that a person receives for playing multiple games simultaneously or competing against others in a multiplayer game does not exceed the maximum value determined under subsection (7)

#### **Who can have what type of machine?**

- A Type A amusement game or machine may be **operated anywhere**
- A Type B amusement game or machine may only be operated at:
  1. A Timeshare Facility;
  2. A public lodging establishment or public food service establishment licensed pursuant to chapter 509;
    - a. Hotels and short term apartments
    - b. “Public food service establishment” means any vehicle, place, or structure, where food is prepared, served, or sold for immediate consumption. There are exceptions like carnival food booths, etc.
  3. The following premises, if the owner or operator of the premises has a current license issued by the Department of Business and Professional Regulation pursuant to chapter 509, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, chapter 567, or chapter 568:
    - a. An arcade amusement center;
      - A place of business having at least 50 amusement games or machines on premises which is operated for the entertainment of the general public and tourists as a bona fide amusement facility
    - b. A bowling center; or
      - A place of business having at least 12 bowling lanes on the premises which are operated for the entertainment of the general public for the purpose of engaging in the sport of bowling
    - c. A truck stop.

- A dealer registered pursuant to ch. 212 who declares the sale of diesel fuel to be its primary fuel business; and
  - Operates at least six functional diesel fuel pumps
- A Type C amusement game or machine **may only be located at:**
  1. A timeshare facility
  2. An arcade amusement center;
    - A place of business having at least 50 amusement games or machines on premises which is operated for the entertainment of the general public and tourists as a bona fide amusement facility
  3. A bowling center;
    - A place of business having at least 12 bowling lanes on the premises which are operated for the entertainment of the general public for the purpose of engaging in the sport of bowling
  4. The premises of a retailer;
  5. A public lodging establishment or public food service establishment
    - Hotels and short term apartments
    - “Public food service establishment” means any vehicle, place, or structure, where food is prepared, served, or sold for immediate consumption. There are exceptions like carnival food booths, etc.
  6. A truck stop;
    - A dealer registered pursuant to ch. 212 who declares the sale of diesel fuel to be its primary fuel business; and
    - Operates at least six functional diesel fuel pumps
  7. The premises of a **veterans’ service organization** granted a federal charter under Title 36, United States Code, or a division, department, post, or chapter of such organization, for which an alcoholic beverage license has been issued