



**House
Legislative
Analysis
Section**

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GAMING EXEMPTION

**House Bill 5176 as enrolled
Public Act 129 of 1996
Second Analysis (1-6-97)**

**Sponsor: Rep. Michael Griffin
House Committee: Regulatory Affairs
Senate Committee: Local, Urban and State
Affairs**

THE APPARENT PROBLEM:

The Michigan Penal Code exempts "crane games" (games where a player tries to grab a prize with a claw attached to a crane) from the code's prohibition against gaming devices. Owners of crane games must obtain ownership licenses (\$500 per year) plus annual certificates (costing \$50) for each crane game. In addition, the code contains provisions regulating the operation of crane games and penalties for violations, with enforcing authority granted to the Bureau of State Lottery (specifically, the Charitable Gaming Division). The primary focus of the division is to regulate charitable gaming, such as bingo; crane games are the only for-profit games of skill regulated by law. (For instance, "midway-type" games primarily seen at county fairs are completely unregulated and unmonitored.) There are approximately 150 owners of crane games in Michigan, with about 1,800 crane games at almost as many sites. Annual revenues for license and certificate fees are approximately \$160,000. Expenses incurred in administrative costs and on-site inspections are almost equal to the revenue generated by the annual fees.

Additionally, crane games that dispense candy or other edible items each time the game is operated have grown in popularity. The main industry group regulated by the act would like candy crane games to be included in the definition of crane games that are exempt from the prohibition against gaming devices. Also, in light of other similar games of skill being unregulated, legislation has been proposed to deregulate crane games.

THE CONTENT OF THE BILL:

Under the Michigan Penal Code, maintaining a gaming room or table, game of skill or chance, or game that combines skill and chance is prohibited. However, the law exempts "crane games" from this prohibition. A crane game is defined as "an amusement machine" that is operated through inserting a coin and then maneuvering a mechanical claw over a prize, toy, or novelty having a wholesale value of less than \$3.75. House Bill 5176

would add "edible item" to the items that a crane game could dispense and would specify that the prizes, toys, or edible items displayed in the crane game would have to be able to be retrieved by the claw. The bill would also eliminate licensing requirements and provisions pertaining to the promulgation of rules, penalties for non-compliance with the existing requirements of the code, and a prohibition against using crane games in connection with certain political fund raising events.

Currently, the code requires that a crane game owner obtain an annual crane game license and crane game certificates for each machine from the Bureau of State Lottery, with exemptions for certain older crane games or ones used for demonstration and display purposes only. An annual ownership license fee is \$500 and a crane game certificate, which must be affixed to the machine, is \$50. Revenue over and above the actual operating and enforcing costs incurred by the Bureau of State Lottery is deposited into the general fund at the end of the fiscal year. The bureau is granted the authority to promulgate rules to establish standards for the manufacture and operation of crane games, inspect crane games, and prohibit certain types of crane games, such as a machine containing a variable resistor to alter the electrical closing strength of the crane game's claw. Penalties for misdemeanor offenses are imprisonment for up to 30 days, a fine of up to \$5,000, or both; this applies to operating a crane game without a license or certificate, non-compliance with established rules and regulations under the code, and operating a crane game in connection with a fund raising event. A third or subsequent non-compliance violation is a felony, as is altering a crane game so that it is not in compliance with the code's requirements. A felony offense carries a jail sentence of up to two years, a fine of up to \$20,000, or both. Either the bureau or law enforcement officers may confiscate a crane game that does not comply with established regulations. The bill would eliminate all language establishing standards and regulations. Penalties pertaining to crane games would also be eliminated, except that it would still be a felony to knowingly alter a

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crane game so that it was not in compliance with the definition under the bill. Also, the bill would allow only law enforcement officers to confiscate an altered crane game. Further, a notice stating that crane games are not licensed or regulated by the State of Michigan would have to be posted on the front of each crane game.

MCL 750.303

FISCAL IMPLICATIONS:

According to the Bureau of State Lottery, there would be a loss of revenue derived from license and certificate fees. However, this would be offset by the savings from the reduction in on-site inspections and the cost involved in processing license and certificate applications and tracking the placement of the machines. (10-27-95)

ARGUMENTS:

For:

Though candy crane games are growing in popularity due to the player receiving an item with each play, other crane games have never reached the popularity level expected at the time that regulation of crane games was placed in statute. Through the years, enforcing and regulating the Penal Code's requirements relating to crane games has proved to detract from the Bureau of State Lottery, Charitable Game Division's primary focus, which is to regulate bingo and other charitable gaming, which last year was an \$8 million industry. With twelve inspectors and approximately 1,800 machines at almost as many sites state-wide, only about 150 crane games are inspected annually. The administrative costs associated with the code's enforcement are almost equal to the revenue generated by the license and certificate fees, so deregulation would not result in loss of revenue for the state. Instead, it would allow lottery employees to concentrate on their primary duty, which is to oversee charitable gaming in the state. In addition, supporters point out that deregulating crane games would result in the games being treated the same as similar games of skill found at county fairs and other places.

Against:

According to a provision in the Administrative Procedures Act (MCL 24.231), when a law directing an agency to promulgate rules is repealed and a new provision of law does not transfer the same rule-making authority to another agency, the existing applicable rules are automatically rescinded as of the effective date of the repeal. Therefore, by striking language in the Penal Code that grants authority to the Bureau of State Lottery to promulgate rules pertaining to the regulation of crane games, the current rules would be automatically rescinded upon the effective date of the bill. This would leave

crane games completely unregulated. Currently, the rules provide standards for the manufacture and operation of crane games, such as safety standards. The manufacturing standards in the rules ensure fair operation for the consumer. Without these standards, there is nothing to prevent operators from cheating consumers. Only if a machine was altered and no longer fit the elements of the definition of a crane game could it be confiscated or removed by law officers to prevent children or other players from losing their money. Perhaps the argument that similar games at carnivals and county fairs are unregulated and people just need to adopt a "buyer beware" attitude needs to be reexamined. Though some maintain that a player could file a complaint with the Consumer Fraud division of the Attorney General's Office, it is unlikely that an individual losing one, five, or even ten dollars on an unfair or altered machine would do so. Meanwhile, the operator could net quite a profit in the collective losses of hundreds of players a year.

Response:

Though deregulating crane games may result in the unfair operation of some games, industry members believe the industry is self-policing. In short, people will not play a game that rarely, if ever, delivers a prize. Therefore, it is in the operator's own interest that his or her crane games provide safe and fair play for consumers.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.