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BILL ANALYSIS

Senate Fiscal Agency

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**House Bill 5576** (Substitute S-1 as reported)

Sponsor: Representative Debbie Stabenow

House Committee: Judiciary

Senate Committee: Regulatory Affairs

Date Completed: 12-7-88

**RATIONALE**

In a 1982 Michigan Court of Appeals case, Michigan Ex Rel Commissioner of State Police v One Helix Game, the Court held that certain gambling devices had been legally seized by the State and were subject to forfeiture and destruction. The Court said, under the statutory provisions concerning the seizure and forfeiture of gambling devices and associated paraphernalia, "Any items used to promote gambling or a gambling place may be seized and ordered destroyed. It is unnecessary to determine whether the games under consideration are games of skill, chance, or a combination thereof... Even though a game may involve skill, when the eventual end is anything but certain the risking of money or property in its outcome subjects the game and related apparatus to seizure and forfeiture" (122 Mich App 148). One of the games seized by the State Police in the case was a crane machine, where money is deposited and the crane rotates and drops, and the player tries to grab a prize with the claw. Despite the ruling, crane amusement machines have become more popular and common than they were in 1982, and are often placed in amusement centers, bowling alleys, and bars.

Recently, the Liquor Control Commission (LCC), citing the Helix case and acting on an administrative rule that forbids licensees from having gambling devices on the premises, seized a crane amusement machine in a Kalamazoo County bar. Reportedly, the bar challenged the rule, and the Kalamazoo Circuit Court issued a temporary injunction preventing the LCC from seizing other crane machines pending outcome of the case. It has been suggested that, in order to prevent further litigation, crane amusement machines should be exempted from the Michigan Penal Code's prohibition against gaming devices (as are pinball games and video machines) and should instead be subject to regulation.

**CONTENT**

The bill would amend the Michigan Penal Code to provide that a "crane game" would not be subject to the Code's prohibition against gaming devices. The bill would require licensure for crane games and would establish license fees, place regulation of the machines under the Bureau of State Lottery, establish penalties for violations of the bill's provisions, and require the Lottery Commissioner to promulgate rules.

The bill would define a "crane game" as an amusement machine activated by insertion of a coin, where the player uses one or more means of control to position a mechanical or electromagnetic claw, or other retrieval device, over a prize in an attempt to retrieve the prize. The prize could

not have a wholesale value of more than \$3.75. A crane game would not include a slot machine.

The bill would require an owner of a crane game, and a person who operates a retail establishment, club, or other location, to obtain a crane game ownership license or a location license, respectively, from the Bureau. An ownership license would require a \$500 annual fee. A copy of the license would have to be prominently displayed adjacent to each location where a crane game was available. A location license would require a \$150 annual fee, except that the first license issued would be \$50. A copy of the license would have to be prominently displayed. A person who obtained an ownership license would not have to have a location license if he or she owned all the crane games at the location or locations where he or she operated. A person who obtained an ownership license also would be required to obtain an annual crane game certificate for each crane that would have to be affixed to the crane. Certificates would require a \$30 annual fee for each certificate.

All fees collected by the Bureau would be paid to the State Lottery Fund. All necessary expenses incurred by the Bureau in administering and enforcing provisions of the bill, and in the regulation of crane games, would be financed from the Fund. Expenses could not exceed the amount of fees collected. All money, including interest, that was attributable to fees collected but not expended would have to be deposited in the State's General Fund at the end of each fiscal year.

The bill would require the Lottery Commissioner to promulgate rules to implement all of the following:

- Licensing of persons regarding ownership or location licenses, including provisions for the revocation or suspension of licenses.
- Issuance of crane certificates.
- Standards for the manufacture and operation of crane games, that would have to be published and made available to the Bureau.
- Provision that a crane game could not contain a device that was used to alter the electrical closing strength of the game's claw, or a self-regulating claw that altered the closing strength between plays.
- Inspection of crane games by the Bureau or a law enforcement officer during reasonable hours.

The bill would make it a misdemeanor, punishable by imprisonment of up to one year, a fine up to \$1,000, or both, for a person to operate a location where a crane game was available without obtaining a location license; own a crane game that was available for play without

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obtaining an ownership license or a crane game certificate; or operate a location where a crane game did not conform to the requirements of the bill. A third violation for operating a location where there was an improper crane would be a felony, punishable by imprisonment for up to five years, a fine up to \$10,000, or both. These penalties also would apply to a person who knowingly altered a crane game so that the crane was not in compliance with the bill or rules promulgated under it.

The Bureau or a law enforcement officer could confiscate any crane game that was not in compliance with the bill or rules. A confiscated game and its contents could not be destroyed, altered, sold, or disposed of without a court order.

MCL 750.303

## SENATE COMMITTEE ACTION

The Senate Regulatory Affairs Committee adopted a substitute (S-1) to the bill that added the provisions for the licensure and regulation of crane machines. As passed by the House the bill only would have exempted the machines from the Penal Code's prohibition against gambling devices.

## FISCAL IMPACT

The bill would result in an estimated expenditure by the Bureau of the State Lottery of \$95,000 for increased staff for the purpose of regulating crane amusement machines. The bill also would result in an estimated \$290,000 in increased revenue to the State Lottery Fund, according to State Lottery estimates. All costs incurred by the regulation of crane machines would be paid from this Fund, an amount that could not exceed the amount of all fees collected. At the end of each fiscal year all money, including interest, in the State Lottery Fund from crane machine license fees that had not been expended for regulation purposes, would be deposited in the State General Fund, an amount estimated to be approximately \$195,000.

### Regulatory Costs

The Bureau of State Lottery estimates that the bill would require the hiring of two regulatory investigators and one clerical person to handle the regulation of crane machines.

2 regulatory investigators	\$66,000 (salary and benefits)
@ \$33,000 each.....	
Transportation costs for	\$ 5,000 (use of State autos)
investigators.....	
1 clerical worker.....	\$24,000 (salary and benefits)
Total.....	\$95,000

The bill also would establish certain penalties for illegal operation of a crane machine, and would require the Commissioner of the State Lottery to establish rules to implement the inspection of crane games by the Bureau or a law enforcement officer. The fiscal impact on local law enforcement agencies, which could be called upon to inspect, or respond to complaints about crane machines, cannot be determined at this time.

### License Fee Revenues

Revenues received by the State Lottery Fund collected from fees for crane game ownership licenses, crane game location licenses, and crane game certificates would

depend upon the number of crane games in operation within the State, a number which is difficult to estimate since such games are currently unregulated. However, according to the Bureau of State Lottery estimates, it could be expected that there would be 3,000 crane games subject to regulation, approximately 100 owners, and 3,000 locations. Based on these projections, revenues for the first year of crane game licensing would be as follows:

Crane game ownership license; 100 @ \$500 ...	\$ 50,000
Crane game location license; 3,000 @ \$50.....	\$150,000
Crane game certificate; 3,000 @ \$30 .....	\$ 90,000
Total.....	\$290,000

All of the above fees would be annual, with the fee for the crane game location license escalating to \$150 annually, after a person had held such a license for a year.

## ARGUMENTS

### Supporting Argument

Crane amusement machines have become popular items with the public and are often found in amusement centers, bars, and county fairs, despite a finding by the Court of Appeals that such games are gambling devices. While there have been instances in which crane machines have been seized, clearly enforcement has been random and ineffective. The bill provides that crane amusement machines would not be considered gaming devices but instead would be licensed and regulated, thus allowing for their continued operation in amusement centers throughout the State, regardless of whether those establishments are licensed by the LCC.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.