

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7A Gaming

SPONSOR(S): Select Subcommittee on Authorized Gaming Activity, Latvala and Robinson, W.

TIED BILLS: CS/HB 1A **IDEN./SIM. BILLS:** CS/SB 8-A

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Subcommittee on Authorized Gaming Activity	13 Y, 5 N, As CS	Thompson	Anstead
2) Select Committee on Gaming		Thompson	Hamon

SUMMARY ANALYSIS

The bill amends Florida's pari-mutuel wagering, slot machines, and gambling laws, as follows:

- Codifies the prohibition of greyhound racing, and updates certain provisions in Florida law that are inconsistent with such prohibition.
- Removes requirements for greyhound permitholders, jai alai permitholders, and harness horse permitholders to conduct live racing or games.
- Retains live racing requirements for thoroughbred permitholders, limited thoroughbred permitholders, and limited intertrack wagering license permitholders.
- Provides a pari-mutuel permitholder may not be issued an operating license for the conduct of pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020-2021. However, a limited thoroughbred permitholder may obtain an operating license and a cardroom license under certain circumstances.
- Provides that in order to renew a cardroom license, a thoroughbred permitholders must conduct the minimum number of live racing performances required under current law (known as the "90 percent rule").
- Permits held on January 1, 2021 are deemed valid, for permit issuance purposes, if the permitholder held an operating license for fiscal year 2020-2021, or if the permitholder held a limited thoroughbred permit.
- Provides that slot machine gaming areas must be located at the address specified in the permitholder's slot machine license issued for Fiscal Year 2020-2021.
- Prohibits the conversion of certain permits.
- Provides that a greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games retains its permit, is a pari-mutuel facility and eligible for a cardroom license, and if such permitholder has been issued a slot machine license, that facility continues to be eligible for a slot machine license.
- Removes the ability of permitholders to obtain a summer jai alai permit, while allowing such permitholders to maintain their permits and to conduct pari-mutuel wagering throughout the year.
- Authorizes slot machine gaming areas and cardrooms to be open 24 hours per day throughout the year, and relaxes restrictions related to providing free alcoholic beverages to slot machine patrons.
- Removes the prohibition on thoroughbred permitholders from allowing racing after 7 p.m.
- Clarifies and strengthens provisions prohibiting illegal gambling.
- Allows municipalities to prohibit pari-mutuel wagering and the establishment and operation of a cardroom within their jurisdiction.

The bill may have an indeterminate fiscal impact on state government.

The effective date of the bill is the same date that CS/HB 1A or similar legislation takes effect.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

General Overview of Gaming in Florida

Gambling is generally prohibited in Florida, unless specifically authorized. Section 7, Art. X, of the Florida Constitution prohibits lotteries, other than pari-mutuel pools, from being conducted in Florida. Chapter 849, F.S., includes prohibitions against slot machines, keeping a gambling house and running a lottery. However, a constitutional amendment approved by voters in 1986 authorized state-operated lotteries.

The following gaming activities are also authorized by law and regulated by the state:

- Pari-mutuel¹ wagering at licensed greyhound and horse tracks and jai alai frontons;²
- Gaming on tribal reservations in accordance with the Indian Gaming and Regulatory Act and the 2010 Gaming Compact with the Seminole Tribe of Florida;
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;³ and
- Cardrooms⁴ at certain pari-mutuel facilities.⁵

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,⁶ bingo,⁷ charitable drawings,⁸ game promotions (sweepstakes),⁹ bowling tournaments,¹⁰ and skill-based amusement games and machines at specified locations.¹¹

In 2013, the legislature clarified that Internet café style gambling machines were illegal in the state. The legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prize are prohibited slot machines.¹²

In 2015, the legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida's limitations on gambling and prevent the expansion of casino-style gambling. The legislature clarified the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.¹³

¹ "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.

² *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

³ *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.

⁴ S. 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."

⁵ The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 Operating Licenses to operate 27 cardrooms. *See* <http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/> (last visited Apr. 7, 2021).

⁶ S. 849.085, F.S.

⁷ S. 849.0931, F.S.

⁸ S. 849.0935, F.S.

⁹ S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

¹⁰ S. 849.141, F.S.

¹¹ S. 546.10, F.S.

¹² Florida House of Representatives Select Committee on Gaming, Final Bill Analysis of 2013 CS/HB 155, p. 1 (Apr. 19, 2013).

¹³ s. 546.10, F.S.

Lotteries

Section 7 of Article X of the 1968 State Constitution provides, “Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state.”¹⁴

In order to allow activities that would otherwise be illegal lotteries, the Legislature has carved out several narrow exceptions to the statutory lottery prohibition. Statutory exceptions are provided for charitable bingo, charitable drawings, and game promotions. Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries, and randomly select an entry to win a prize.

Under s. 849.0935, F.S., qualified organizations may conduct drawings by chance, provided the organization has complied with all applicable provisions of Chapter 496, F.S. Game promotions, often called sweepstakes, are advertising tools by which businesses promote their goods or services. As they contain the three elements of a lottery: consideration, chance, and prize, they are generally prohibited by Florida law unless they meet a statutory exception.¹⁵

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. The Florida Lottery—known formally as the Florida Education Lotteries—benefits education by funding the State Education Lotteries Trust Fund.¹⁶ Section 15 of Article X of the State Constitution provides as follows:

“Lotteries may be operated by the state.... On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.”¹⁷

Amendment to Florida Constitution Related to Expansion of Gambling – “Voter Control of Gambling in Florida”

During the 2018 General Election, the electorate approved an initiative constitutional amendment, Amendment 3, “Voter Control of Gambling in Florida”. The amendment is codified in the State Constitution as article X, section 30,¹⁸ which states:

“This amendment ensures that Florida voters shall have the exclusive right to decide whether to authorize casino gambling in the State of Florida. This amendment **requires a vote by citizens’ initiative** pursuant to Article XI, section 3, **in order for casino gambling to be authorized** [emphasis added] under Florida law.

This section amends this Article; and also affects Article XI, by making citizens’ initiatives the exclusive method of authorizing casino gambling.

As used in this section, “casino gambling” means any of the types of games typically found in casinos and that are within the definition of Class III gaming in the Federal Indian Gaming

¹⁴ The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The new state constitution was ratified by the electorate on November 5, 1968.

¹⁵ *Little River Theatre Corp v. State*, 185 So. 854, 868 (Fla. 1939).

¹⁶ The Department of the Lottery is authorized by Article X, Section 15 of the Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., creates the Department of the Lottery and states the Legislature’s intent that it be self-supporting and revenue-producing and function as an entrepreneurial business enterprise.

¹⁷ The Department of the Lottery is authorized by Article X, Section 15 of the Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., creates the Department of the Lottery and states the Legislature’s intent that it be self-supporting and revenue-producing and function as an entrepreneurial business enterprise.

¹⁸ See the text of Amendment 3, now codified as art. X, s. 30, at

<http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes&CFID=44933245&CFTOKEN=f39b1ca7cab71561-BE329BC7-5056-B837-1A6123F335C4849F#A10S30> (last visited Apr. 7, 2021).

Regulatory Act, 25 U.S.C. ss. 2701 et seq. (“IGRA”), and in 25 C.F.R. s. 502.4, upon adoption of this amendment, and any that are added to such definition of Class III gaming in the future. This includes, but is not limited to, any house banking game, including but not limited to card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games); any player-banked game that simulates a house banking game, such as California black jack; casino games such as roulette, craps, and keno; any slot machines as defined in 15 U.S.C. s. 1171(a)(1); and any other game not authorized by Article X, section 15, whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing. As used herein, “casino gambling” includes any electronic gambling devices, simulated gambling devices, video lottery devices, internet sweepstakes devices, and any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under IGRA. As used herein, “casino gambling” does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. For purposes of this section, “gambling” and “gaming” are synonymous.

Nothing herein shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities. In addition, nothing herein shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA.”

Section 30, Article X, of the Florida Constitution requires a vote proposed by citizen’s initiative to amend the State Constitution to authorize “casino gambling” in Florida.

“Casino gambling” is defined as any of the “types of games typically found in casinos” and that are within the definition of Class III gaming in:

- The Federal Indian Gaming Regulatory Act (IGRA)¹⁹, and
- 25 C.F.R. § 502.4.

“Casino gambling” includes, but is not limited to the following:

- Any house banking game, including but not limited to card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);
- Any player-banked game that simulates a house banking game, such as California blackjack;
- Casino games such as roulette, craps, and keno;
- Any slot machines as defined in 15 U.S.C. 1171(a)(1); and
- Any other game not authorized by Article X, section 15 of the State Constitution, relating to state operated lotteries, whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing.

“Casino gambling” is defined to include the following devices:

- Any electronic gambling devices;
- Simulated gambling devices;
- Video lottery devices;
- Internet sweepstakes devices; and
- Any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under IGRA.

“Casino gambling” does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions.

The constitutional amendment does not limit the ability of the state to negotiate tribal compacts:

¹⁹ 25 U.S.C. 2701 et seq;
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In addition, nothing herein shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA.

The amendment became effective on November 6, 2018, was self-executing, and required no legislative implementation.

Amendment to Florida Constitution Prohibiting Racing of and Wagering on Greyhounds or Other Dogs

During the 2018 General Election, the voters approved an initiative constitutional amendment, Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs, which has been codified in the State Constitution as Article X, Section 32.²⁰

Article X, Section 32 states:

Prohibition on racing of and wagering on greyhounds or other dogs.—The humane treatment of animals is a fundamental value of the people of the State of Florida. After December 31, 2020, a person authorized to conduct gaming or pari-mutuel operations may not race greyhounds or any member of the *Canis Familiaris* subspecies in connection with any wager for money or any other thing of value in this state, and persons in this state may not wager money or any other thing of value on the outcome of a live dog race occurring in this state. The failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming licenses held by a person who is a licensed greyhound permitholder on January 1, 2018, and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law. By general law, the legislature shall specify civil or criminal penalties for violations of this section and for activities that aid or abet violations of this section.

Thus, on January 1, 2019, greyhound tracks were permitted to discontinue live greyhound racing but could continue to operate other forms of gaming. As of January 1, 2021, wagering on live greyhound racing in Florida is completely prohibited. However, cardroom and slot machine facilities at the greyhound tracks may continue to operate after the closure of racing activities.

Article X, Section 32, specifically requires the legislature to provide in general law “civil or criminal penalties for violations” of the dogracing and wagering prohibitions and for any activities that aid or abet violations of such prohibited conduct. The legislature has not yet adopted such provisions.

²⁰ See the text of Amendment 13, now codified as art. X, s. 32, at

<http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32> (last visited Apr. 11, 2021).

Regulation of Pari-mutuel Wagering²¹

Since approximately 1931, pari-mutuel wagering has been authorized in Florida for jai alai, greyhound racing, and horseracing. These activities are overseen and regulated by the Division of Pari-Mutuel Wagering (Division) with the Department of Business and Professional Regulation (DBPR).²² The Division's purpose is to ensure the health, safety, and welfare of the public, racing animals, and licensees through efficient, and fair regulation of the pari-mutuel industry in Florida.²³

A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.²⁴

Chapter 550, F.S., provides specific permitting and licensing requirements, taxation provisions, and regulations for the conduct of the pari-mutuel industry. Pari-mutuel wagering activities are limited to operators who have received a permit from the Division, which is then subject to ratification by county referendum.

Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities.²⁵ Certain permitholders are also authorized to operate cardrooms²⁶ and slot machines at their facility, as discussed further below.²⁷

According to DBPR's Division of Pari-mutuel Wagering Annual Report, in the 2019-2020 Fiscal Year there were 50 pari-mutuel wagering permits, and five non-wagering permits. There were 38 pari-mutuel permitholders licensed to operate during Fiscal Year 2019-2020, in addition to one thoroughbred sales facility that holds a limited license to conduct intertrack wagering. There are eight pari-mutuel facilities that have been licensed to operate slot machines. Several locations have multiple permits that operate at a single facility.

Chapter 550, F.S., specifies circumstances under which certain pari-mutuel permits may be revoked, relocated, or converted.

According to DBPR's Division of Pari-mutuel Wagering Annual Report, in the 2019-2020 Fiscal Year the following types of permits were licensed to operate:

- Nineteen Greyhound Racing permits
- Five Thoroughbred Horse Racing permits
- One Harness Horse Racing permit
- Five Quarter Horse Racing permits
- Eight Jai-Alai permits

Patrons at a racetrack may also wager on races hosted at other tracks, which is called intertrack (when both tracks are in Florida) or simulcast (when one track is out of state) wagering. In-state 'host tracks' conduct live or receive broadcasts of simulcast races that are then broadcast to 'guest tracks,' which

²¹ s. 550.002(22), F.S. Pari-mutuel is defined as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes."

²² Department of Business and Professional Regulation, *Pari-mutuel Wagering – Permitholder Operating Licenses 2021-2022*, <http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/> (last visited Apr. 7, 2021).

²³ From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within the Department of Business Regulation, which, in 1993, became DBPR.

²⁴ *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936). See s. 550.1625(1), F.S., "...legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state."

²⁵ s. 550.0115, F.S.

²⁶ s. 849.086, F.S.

²⁷ s. 551.104, F.S.

accept wagers on behalf of the host. To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing and meet other requirements.²⁸

According to the Division, **ten permitholders were not issued operating licenses for Fiscal Year 2020-2021**: two greyhound permitholders,²⁹ two jai alai permitholders,³⁰ one limited thoroughbred permitholder,³¹ and five quarter horse permitholders.³² There were eight license suspensions, and \$19,075 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2019-2020.³³

Issuance of and Revocation of Pari-mutuel Permits and Annual Licenses

Section 550.054, F.S., provides that any person meeting the qualification requirements of ch. 550, F.S., may apply to the Division for a permit to conduct pari-mutuel wagering. Upon approval, a permit must be issued to the applicant that indicates:

- The name of the permitholder;
- The location of the pari-mutuel facility;
- The type of pari-mutuel activity to be conducted; and
- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

A permit does not authorize any pari-mutuel performances until **approved by a majority of voters in a ratification election in the county** in which the applicant proposes to conduct pari-mutuel wagering activities.

An application **may not be considered**, nor may a permit be issued by the Division or be voted upon in any county, for the conduct of:

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within **100 miles of an existing pari-mutuel facility**; or
- Jai alai games within **50 miles of an existing pari-mutuel facility**.³⁴

After issuance of the permit and a ratification election, the Division may issue an annual operating license for wagering at the specified location in a county, indicating the time, place, and number of days during which pari-mutuel operations may be conducted at the specified location.³⁵

Revocation

The Division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the Division, and may impose a civil penalty against the permitholder or licensee up to \$1,000 for each offense.³⁶

²⁸ See s. 550.615, F.S.

²⁹ Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).

³⁰ Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.

³¹ Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), which was licensed to operate in 2019-2020, and Ocala Thoroughbred Racing (Marion County), which was not licensed to operate.

³² ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County). See http://www.myfloridalicense.com/dbpr/pmw/documents/PermitholdersList_2020-2021.pdf (last visited Apr. 7, 2021).

³³ Department of Business and Professional Regulation Division of Pari-mutuel Wagering, *89th Annual Report for Fiscal Year 2019-2020*, [AnnualReport-2019-2020--89th--20210224.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReport-2019-2020--89th--20210224.pdf) pg. 5, (last visited Apr. 7, 2021).

³⁴ S. 550.054(2), F.S. (Distances are measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.)

³⁵ S. 550.054(9)(a), F.S.

³⁶ S. 550.054(9)(b), F.S.

Under certain circumstances in statute, a permitholder may lose his or her permit to conduct pari-mutuel wagering. If a permitholder has failed to complete construction of at least 50 percent of the facilities necessary to conduct pari-mutuel wagering within 12 months after approval by the voters of the permit, the DPMW shall revoke the permit after giving adequate notice to the permitholder.³⁷ The Division may grant one extension of 12 months upon a showing of good cause by the permitholder.

If a permitholder fails to pay tax on handle for live thoroughbred horse performances for a full schedule of live races for two consecutive years, his or her permit is void and escheats back to the state, unless the failure of payment was due to events beyond the control of the permitholder.³⁸ Financial hardship to the permitholder does not, in and of itself, constitute just cause for the failure to pay taxes in this section. There is a similar requirement for harness racing permitholders in s. 550.9512(3)(a), F.S. In the case of failure to pay taxes, the permit escheats to the state and may be reissued.

Relocation

Certain permitholders may relocate the location listed in their permit to **a new location within 30 miles**. Various provisions throughout the chapter relate to relocation. For example: Greyhound and jai alai permitholders operating in counties where they are the only permitholder of that class may relocate under s. 550.0555, F.S.; Greyhound permitholders that converted their permit from a jai alai permit under s. 550.054, F.S., may relocate; and a greyhound permitholder in a county where it is the only permitholder who operates at a leased facility may also relocate under s. 550.054, F.S.

In each of these cases, **the relocation must not cross county boundaries and must be approved under the local zoning regulations**. In relocation under s. 550.054, F.S., the Division is required to grant the application for relocation once the permitholder fulfills the requirements of the statute. Approval by the Division is required for relocations under s. 550.0555, F.S.

Conversion

Certain permitholders may convert their permits. For instance, a permit for pari-mutuel wagering on jai alai may be converted to greyhound racing if the permitholder meets certain criteria.³⁹ In the past, quarter horse permits have been converted to limited thoroughbred permits,⁴⁰ jai alai permits to greyhound racing permits,⁴¹ etc.

Permitholders may also convert to conduct **summer jai alai**, in certain circumstances.⁴² This provision, enacted in 1980, has been subject to competing interpretations, and has been involved in recent litigation.⁴³

The bill enacting the provision included in a whereas clause a finding that "it would be to the best interests of the state to permit summer jai alai *so long as there is no increase in the number of permittees authorized to operate* within any specified county." It allows:

The owner or operator of a pari-mutuel permit who is authorized by the division to conduct pari-mutuel pools on exhibition sports in any county having five or more such pari-mutuel permits and whose mutuel play from the operation of such pari-mutuel pools for the 2 consecutive years

³⁷ s. 550.054(10), F.S.

³⁸ s. 550.09515(3)(a), F.S.

³⁹ s. 550.054(14), F.S., ruled an unconstitutional act by *Debary Real Estate Holdings, LLC v. State, Dept. of Business and Professional Regulation, Div. of Pari-Mutuel Wagering*, 112 So.3d 157, 168 (Fla. 1st DCA 2013).

⁴⁰ See s. 550.3345, F.S.

⁴¹ ch. 89-219, Laws of Fla.

⁴² s. 550.0745, F.S.

⁴³ See *Florida Thoroughbred Breeders' Association, Inc. v. Calder Race Course, Inc.*, 283 So. 3d 843 (Fla. 1st DCA 2019) (Horse racing facility would still be considered an eligible facility under slot machine statute and could continue its slot machine operation even if it ceased horse racing and operated jai alai instead; statute did not require facility to continue same form of racing or games that originally qualified it for slot machine license, and term facility was not limited to only portion of property upon which racing activity was conducted.)

next prior to filing an application under this section has had the smallest play or total pool within the county may apply to the division to convert its permit to a permit to conduct a summer jai alai fronton in such county during the summer season commencing on May 1 and ending on November 30 of each year If a permittee who is eligible under this section to convert a permit declines to convert, a new permit is hereby made available in that permittee's county to conduct summer jai alai games as provided by this section, notwithstanding mileage and permit ratification requirements. If a permitholder converts a quarter horse racing permit pursuant to this section, this section does not prohibit the permitholder from obtaining another quarter horse racing permit.⁴⁴

The issuance of limited thoroughbred racing permits (through conversion from a quarter horse permit) is authorized in s. 550.3345, F.S. A limited thoroughbred racing permit authorizes the conduct of live thoroughbred horseracing, with net revenues dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under ch. 550, F.S., promotion of the thoroughbred horse breeding industry, and the care of retired thoroughbred horses in Florida.

Intertrack and Simulcast Wagering

Wagering on races hosted at remote tracks is called intertrack (when both tracks are in Florida) or simulcast (when one track is out of state) wagering. In-state 'host tracks' conduct live or receive broadcasts of simulcast races that are then broadcast to 'guest tracks,' which accept wagers on behalf of the host. To conduct intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing and meet other requirements.⁴⁵

A limited amount of intertrack wagering is also authorized by statute for one permanent thoroughbred sales facility.⁴⁶ In order to qualify for a license, the facility must have at least 15 days of thoroughbred horse sales at a permanent sales facility in this state for at least three consecutive years. Additionally, the facility must have conducted at least 1 day of nonwagering thoroughbred racing in this state, with a purse structure of at least \$250,000 per year for 2 consecutive years before application for a license.

A limited intertrack wagering licensee is limited to conducting intertrack wagering during:

- The 21 days in connection with thoroughbred sales;
- Between November 1 and May 8;
- Between May 9 and October 31, if:
 - No permitholder within the county is conducting live events.
 - Permitholders operating live events within the county consent.
 - For the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet.

The licensee is further limited to intertrack wagering on thoroughbred racing, unless all permitholders in the same county consent. The licensee must pay 2.5 percent of total wagers on jai alai or greyhound racing to thoroughbred permitholders operating live races for purses.

Pari-Mutuel Wagering, Slot Machine and Cardroom State Revenue

License fees and taxes collected by pari-mutuel wagering permitholders, including slot machine and cardroom permitholders, are deposited with the Chief Financial Officer, to the credit of the Pari-mutuel

⁴⁴ See *West Flagler Associates, Ltd. v. Florida Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering*, 216 So. 3d 692 (Fla. 1st DCA 2017) (Statute allowing the owner or operator of a pari-mutuel permit with the "smallest play or total pool" within the county for the two most recent fiscal years to apply to convert their permit to a permit to conduct a summer jai alai fronton, and making a new jai alai permit available in the county if the eligible permittee declines to convert, did not require an applicant for such new permit to base its application on the two most recent fiscal years; time limitation applied only to conversion of a permit, and not to the new permit made available if the permittee eligible to convert chose not to do so.)

⁴⁵ See s. 550.615, F.S.

⁴⁶ s. 550.6308, F.S.

Wagering Trust Fund. Slot machine tax revenue is transferred from the Pari-mutuel Wagering Trust Fund to the Educational Enhancement Trust Fund to supplement public education funding statewide. Taxes collected by cardrooms are split between the Pari-mutuel Wagering Trust Fund and the General Revenue Fund.

Slot Machine Gaming Locations and Operations

Slot machines were authorized for a brief period in the early 1930s, but prohibited again in Florida in 1937.⁴⁷ Slot machines remained illegal until 2004, when voters approved a state constitutional amendment authorizing slot machines at specified pari-mutuel facilities in two counties, subject to local approval.

Generally, it is unlawful to manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person or under the person's management or control, any slot machine or device or any part thereof.⁴⁸

Furthermore, it is unlawful to make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.⁴⁹

However, section 23 of Article X of the State Constitution, adopted by the electors in 2004, provides an exception by allowing slot machines in Miami-Dade and Broward Counties, as follows:

After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines **within existing, licensed pari-mutuel facilities** (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such pari-mutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

Pursuant to this constitutional authorization and subsequently enacted statutes, slot machines are now **authorized at eight pari-mutuel facilities** in Broward and Miami-Dade Counties and are regulated under Chapter 551, F.S.⁵⁰ These facilities are often referred to as “Racinos” (i.e., race track + casino).

Under s. 551.102(4), F.S., slot machine-eligible facilities are defined as follows:

⁴⁷s. 849.15, F.S., originally enacted by s. 1, ch. 18143, L.O.F. (1937).

⁴⁸ s. 849.15(1)(a), F.S. See *Gator Coin II, Inc. v. Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco*, 254 So. 3d 1113 (Fla. 1st DCA 2018) (Video gaming device, with mandatory preview feature that accurately displayed outcome of game selected before insertion of money was required or option to play was available, was slot machine subject to regulation under gambling statute, where element of chance was inherent due to devices preset win/loss ratio, game outcomes were determined by machine by chance, nothing user could do affected game outcomes, and inherent feature of device was that outcome of play was unpredictable by user. See also s. 551.102(8), and s. 849.16(1).

⁴⁹ 16B Fla. Jur 2d Criminal Law § 1560 (Whoever violates any of these provisions is guilty of a second degree misdemeanor upon his first conviction therefor, a first degree misdemeanor upon his second conviction, and a third degree felony upon a third or subsequent violation.)

⁵⁰ See Article X, Section 23, Florida Constitution; ch. 2010-29, L.O.F. and chapter 551, F.S.

- Any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county;
- Any licensed pari-mutuel facility located within a county as defined in s. 125.011, F.S., provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or
- Any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter.

Slot machine licensees are required to pay an annual license fee of \$2 million and an annual regulatory fee of \$250,000.⁵¹ The tax rate on slot machine revenues at each facility, originally 50 percent, is currently 35 percent. In order to remain eligible for slot machines, permitholders must conduct a full schedule of live racing or games, among other requirements.⁵²

Seven pari-mutuel facilities obtained eligibility for slot machines through constitutional approval - the first clause above. An eighth pari-mutuel facility, Hialeah Park, was ineligible under the first clause because it had not conducted live racing or games in 2002 and 2003. However, it obtained eligibility in 2010 with the enactment of Chapter 2009-170, which added the second and third clauses above to s. 551.102(4), F.S. Notably, the 2010 Compact was ratified by the same legislation that effectuated the second and third clauses.

To date, no facilities have obtained eligibility through the third clause. However, several pari-mutuels have relied upon that clause in applying for a slot machine license.⁵³ Certain permitholders seeking to add slot machines have argued that the phrase "after the effective date of this section" in the third clause applies to "a countywide referendum held." Based on this reading of the statute, some permitholders contend that any county can hold a referendum on slot machines by virtue of its general authority to hold referenda or, alternatively, that the necessary legislative authorization to hold such a referendum is conferred by the current statute. Many have held countywide referendums: Duval, St. Lucie, Brevard, Gadsden, Lee, Palm Beach, Hamilton and Washington. In each case, a majority of voters indicated their support for slot machines at the pari-mutuel facility in that county.

After the Division began receiving applications for slot machine licenses from pari-mutuel permitholders in these counties, it requested an opinion from Florida's Attorney General (AGO) regarding whether the Division was authorized by statute to issue slot machine licenses to facilities outside of Miami-Dade and Broward Counties. In January 2012, the AGO stated that it did not, concluding that the phrase "after the effective date of this section" modified the phrase "a statutory or constitutional authorization" and not "countywide referendum."⁵⁴ The AGO determined that counties could not rely on their general authority to hold referenda but instead must have specific statutory authorization enacted after July 1, 2010, to hold referenda on the question of slot machines. Relying on the AGO, the Division has denied all new slot machine license applications since 2012.⁵⁵ A few applicants challenged the denials, including Gretna Racing in Gadsden County. In May 2017, the Florida Supreme Court ruled in favor of the Division, holding that Gadsden County lacked the authority to conduct a referendum on slot machine gaming without further legislative authorization.⁵⁶

⁵¹ ss. 551.106 and 551.118, F.S.

⁵² s. 551.104(1)(c), F.S.

⁵³ *Gretna Racing, LLC v. Fla. Dep't of Bus. & Prof. Reg.*, No. SC15-1929, 2015 WL 8212827 (Fla. May 18, 2017).

⁵⁴ 2012-01 Fla. Op. Att'y Gen. (2012).

⁵⁵ See Mary Ellen Klas, *Attorney General Opinion Puts Reins on Slots at Gretna Barrel Racing Track*, Miami Herald (Jan. 12, 2012), <http://www.miamiherald.typepad.com/nakedpolitics/2012/01/attorney-general-opinion-puts-reins-on-gretna-barrel-racing-.html>.

⁵⁶ *Gretna Racing*, 2015 WL 8212827 (Fla. May 18, 2017).

In sum, Florida courts have held that slot machine legislation does not authorize local referenda to expand slot machines to pari-mutuel facilities in counties other than the two counties specified in the statute, without additional statutory or constitutional authorization.⁵⁷

Other slot machine gaming operation restrictions include:

- The issuance of slot machine licenses to licensed pari-mutuel permitholders may only be issued at the facility where pari-mutuel wagering is authorized to be conducted by the permitholder;⁵⁸
- Slot machine gaming is limited to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays;⁵⁹ and
- Complimentary or reduced-cost alcoholic beverages are prohibited from being offered to persons playing a slot machine.⁶⁰

Cardrooms

The Legislature authorized cardrooms at pari-mutuel facilities in 1996 subject to local approval.⁶¹ Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.⁶² Cardrooms can only be offered at a location where the permitholder is authorized to conduct pari-mutuel activities. To remain eligible for a cardroom license, a permitholder must conduct at least 90% of the performances conducted the year it applied for its initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.⁶³

Cardrooms must be approved by an ordinance of the county commission where the pari-mutuel facility is located.

A pari-mutuel facility that operates a cardroom may only offer authorized games within the cardroom. An "authorized game" is defined as "a game or series of games of poker or dominos which are played in a nonbanking manner."⁶⁴ The licensed cardrooms are prohibited from offering "banked" card games. Thus, games are limited to where the participants play against each other, instead of against the house (cardroom).

In Fiscal Year 2021-2022, 27 cardrooms are licensed to operate.⁶⁵ The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. No-limit poker games are permitted. Each cardroom operator must pay a tax of 10 percent of the cardroom operation's monthly gross receipts.

At least four percent of the gross cardroom receipts of greyhound racing permitholders and jai alai permitholders conducting live races or games must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.⁶⁶

Designated Player Games

⁵⁷ *Gretna Racing, LLC v. Department of Business and Professional Regulation*, 178 So. 3d 15 (Fla. 1st DCA 2015), review granted, 2015 WL 8212827 (Fla. 2015), referring to Broward and Miami-Dade Counties.

⁵⁸ S. 551.104(3), F.S.

⁵⁹ S. 551.116, F.S.

⁶⁰ S. 551.121, F.S.

⁶¹ s. 20, Ch. 96-364, Laws of Fla.

⁶² S. 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.

⁶³ s. 849.086(5)(b), F.S.

⁶⁴ s. 849.086(2)(a), F.S.

⁶⁵ Department of Business and Professional Regulation, *Pari-mutuel Wagering – Permitholder Operating Licenses 2021-2022*, <http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/> (last visited Apr. 7, 2021).

⁶⁶ S. 849.086(13)(d), F.S.

One category of card games are those in which players play against each other. These are referred to as “pool” games or “pari-mutuel style games.” An example of this is traditional poker, where the players fund a common pot, with the winning player getting paid from the pot. A pool game is a zero-sum game, with winnings equal to losses, subject only to any fees paid to the facility hosting the game.⁶⁷

Another category of card games is those in which players do not play against each other, instead they play against a “bank.” These are referred to as “banked” games. An example of a banked game is blackjack. In banked games, players do not bet against each other, instead they bet against the “bank.” There is no common pot, if a player’s hand is better than the bank’s hand, he or she wins regardless of the other players’ hands.⁶⁸

A banked game is not a zero-sum game. On any given hand, every player can win or lose, or there can be a combination of winners and losers. The essential feature is that the bank pays the winners and collects from the losers.⁶⁹

Section 849.086(2)(b), F.S., defines “**banking game**” as a game in which the **house is a participant** in the game, taking on players, paying winners, and collecting from losers or in which **the cardroom** establishes a bank against which participants play.⁷⁰

Current law authorizes cardrooms to conduct pari-mutuel style games such as traditional poker. However, current law **prohibits** cardrooms from conducting “banking games” as defined in s. 849.086(2)(b), F.S.⁷¹

In 2011, the Division began authorizing licensed pari-mutuels that operate cardrooms to conduct a particular type of card game called a “designated player game.” Designated player games are a type of banked game where players all play against a designated player. If the player’s hand is better than the designated player’s hand, then the designated player pays the player. If the designated player’s hand is better than the player’s hand, then the designated player collects the player’s wager. However, a **cardroom operator may not be the designated player** and the cardroom may not participate in the game.⁷²

In 2011, the Division also initiated rulemaking in order to establish parameters for designated player games and to ensure licensed pari-mutuels did not violate Florida statutes by offering a “banking game” as defined in s. 849.086(2)(b), F.S.⁷³

In July 2014, the Division adopted two new rules proposed by the cardrooms. Rule 61D-11.001(17), F.A.C., defined the term “designated player” to mean the player identified by the button as the player in the dealer position.⁷⁴

The second rule, Rule 61D-11.001(17), F.A.C., allowed licensed cardrooms to conduct designated player games as long as the cardroom established rules that:⁷⁵

- Establish uniform requirements to be a designated player;
- Ensure that the designated player is identified by a dealer button that rotates around the card table in a clockwise fashion on a hand by hand basis to provide each player desiring to be the designated player an equal opportunity to participate as the designated player; and
- Not require the designated player to cover all potential wagers.

⁶⁷ *Seminole Tribe of Florida v. Florida*, 219 F.Supp. 3d 1177, 1183 (N.D. Fla. 2017); s. 849.08(1), F.S.

⁶⁸ *Id.* at 1183; *Dania Entertainment Center, LLC v. Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering*, 2016 WL 4567194 (Fla. Division of Administrative Hearings 2016) (Final order in case no. 15-7010RP; August 26, 2016).

⁶⁹ *Id.*

⁷⁰ S. 849.086(2)(b), F.S. *Dania Entertainment Center, LLC at 4* (ALJ found that a designated player is not a cardroom operator.)

⁷¹ See s. 849.086, F.S.

⁷² *Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Dania Entertainment Center, LLC*, 229 So. 3d 1259, 1261 (Fla. 1st DCA 2017).

⁷³ *Id.* at 1261-62.

⁷⁴ *Id.*

⁷⁵ *Id.*

In October 2015, the Division proposed repealing the rules authorizing and regulating designated player games and proposing a new rule prohibiting designated player games. At a public hearing in 2015, the Division director stated that Florida statutes do not allow designated player games and the proposed changes were to conform with state law.⁷⁶

In response to the Division's proposed rule changes, industry members filed a rule challenge with the Division of Administrative Hearings (DOAH). The Division issued a Notice of Change and removed its proposal to add a rule prohibiting designated player games. However, the Division maintained their proposal to repeal the existing rules authorizing and regulating designated player games.⁷⁷

After a hearing at DOAH, an Administrative Law Judge (ALJ) ruled that the Division's proposal to repeal the designated player games rules was an invalid exercise of delegated legislative authority because the Division failed to follow the rulemaking process. The ALJ also ruled that the Division lacked authority to repeal the rules because the purpose of repealing the rules was to implement the Division's new policy that designated player games are not authorized under Florida statutes, and the Division did not have authority to establish what is an authorized game under Florida statutes.⁷⁸

The Division appealed the ALJ's ruling to the First District Court of Appeal (DCA). **The DCA affirmed the ALJ's ruling the Division failed to follow the rulemaking process.** However, the DCA declined to adopt the ALJ's finding that the Division lacked authority to either promulgate or to repeal rules on designate player games, noting that the Division "is to provide meaningful and understandable standards for cardrooms, particularly where a statute is ambiguous."⁷⁹

The DCA did not determine whether designated player games are considered "banking games" and thus illegal for cardrooms to operate.

In January 2016, the Division issued administrative complaints against multiple pari-mutuel facilities, charging that the facilities were "operating a banking game or a game not specifically authorized" by state law.⁸⁰

One of the pari-mutuel facilities filed a petition with DOAH for an administrative hearing. After an evidentiary hearing at DOAH, **an ALJ ruled that the pari-mutuel facility violated the statutory prohibition of "banking games"** by conducting designated player games in a manner that **established the cardroom as a bank** against which participants play.⁸¹

However, the ALJ did not rule on whether designated player games as a whole are "banking games" as defined in s. 849.086(2)(b), F.S.⁸²

In the 2016 federal court case between the state and the Seminole Tribe (Seminole Tribe), the federal court determined that the term "banking games," as defined in s. 849.086(2)(b), F.S., includes all types of banked games including designated player games. The federal court also found that the Division's rules regulating and authorizing designated player games did not prevent such games from falling under the definition of "banking games," as identified in the 2010 Gaming Compact with the Seminole

⁷⁶ *Id.*

⁷⁷ *Id.* at 1262-63.

⁷⁸ *Id.*

⁷⁹ *Id.* at 1266.

⁸⁰ Dara Kam, *State targets pari-mutuels over card games*, Tampa Bay Business Journal (Jan. 27, 2016)

<https://www.bizjournals.com/tampabay/news/2016/01/27/state-targets-pari-mutuels-over-card-games.html> (last visited May 12, 2021).

⁸¹ *Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Jacksonville Kennel Club, Inc.*, 16-1009 (Fla. Division of Administrative Hearings 2016) (Final order August 1, 2016) ("Jacksonville's operation of designated player games is no more than a systematic banking of games in the cardroom. The corporate application requirements, combined with the dual-rake structure, are disincentives to the rotation of the button and participation in the game by truly interested designated players. The result is game play in which employees from an outside corporate designated player sit either idly at racks of chips, or, alternately, organize the chips for the convenience of the dealer in taking the rake and place chips into the racks according to denomination.")

⁸² *Id.*

Tribe.⁸³ This ruling eventually led to the ending of revenue sharing payments by the Seminole Tribe to the State.

Currently, the Division's rules authorizing and regulating designated player games are still in effect and according to the Division, the majority of cardrooms are currently offering designated player games.⁸⁴ However, Florida Statutes do not specifically state whether designated player games conducted at cardrooms are legal or not.

Live Performance Requirements

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.⁸⁵ Currently the State requires that:

- To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing as defined in ch. 550 and meet other requirements.⁸⁶
- To remain eligible for a cardroom license, permitholders must conduct at least 90 percent of the performances conducted the year they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.⁸⁷
- To remain eligible for a slot machine license, permitholders must conduct a full schedule of live racing as defined in ch. 550.⁸⁸

Effect of the Bill

The bill updates provisions in Florida law that are inconsistent with the prohibition of live racing of greyhounds as provided in Sec, 32 of Article X, of the Florida Constitution, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs.

The bill **removes live racing requirements** for greyhound permitholders, jai alai permitholders, and harness horse permitholders.

The bill **maintains the live racing requirement for thoroughbred permitholders**. The bill allows thoroughbred permitholders to conduct night racing after 7 p.m.

The bill revises the requirement for pari-mutuel permitholders to conduct live racing or games as follows:

- A greyhound permitholder **may not** conduct live racing, as such racing is prohibited in Florida after December 31, 2020.
- A jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder **may elect not to** conduct live racing or games.
- A thoroughbred permitholder **must conduct** live racing.

The bill provides that a greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games:

- Retains its permit;
- Is a pari-mutuel facility as defined in s. 550.002(23), F.S.
- Is eligible, but not required, to be a guest track, and if the permitholder is a harness horse racing permitholder, is eligible to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305, F.S.; and
- Remains eligible for a cardroom license.

⁸³ *Seminole Tribe of Florida*, 219 F.Supp. 3d 1177, 1188.

⁸⁴ Rules 61D-11.001(16), and 61D-11.002(4), F.A.C.; Florida House of Representatives, Gaming 102: Current Gaming Landscape (video), Legislator University <https://www.myfloridahouse.gov/legislaturu> (last visited May 13, 2021).

⁸⁵ See s. 550.1625(1), F.S., (legalized pari-mutuel betting at dog tracks “is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state”).

⁸⁶ S. 550.615, F.S.

⁸⁷ s. 849.086(5)(b), F.S.

⁸⁸ s. 551.104(4)(c), F.S.

The bill provides that for a greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games, but has been issued a slot machine license, the facility where such permit is located:

- Remains an eligible facility as defined in s. 551.102(4), F.S.;
- Continues to be eligible for a slot machine license pursuant to s. 551.104(3), F.S.; and
- Is exempt from s. 551.104(4)(c) and (10), F.S., and s. 551.114(2) and (4); F.S.

The bill prohibits a pari-mutuel permitholder from being issued an **operating license** for the conduct of pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold an **operating license** for the conduct of pari-mutuel wagering for **fiscal year 2020-2021**, but exempts converted thoroughbred permits under s. 550.3345, F.S. It also allows, for Fiscal Year 2021-2022 only, the Division to approve changes to a permitholder's **operating dates** if the request is received before October 1, 2021.

The bill provides that notwithstanding any other provision of law:

- A permit for the operation of a pari-mutuel facility, cardroom, or slot machine facility may only be held by **facilities with permits on January 1, 2021**.
- No pari-mutuel wagering permit may be **converted** to another class of permit.

The bill deletes greyhound racing provisions relating to charity racing days, hound dog derbies, and mutt derbies. It provides administrative **penalties for live greyhound racing** in connection with any wager and allows the Division to deny, suspend, or revoke any permit or license if a permitholder conducts live greyhound racing. It also authorizes a civil penalty of up to \$5,000 against the permitholder.

Effective October 1, 2021, the bill criminalizes dog racing, including wagering or accepting money or any other thing of value on the outcome of a live dog race occurring in this state. A first offense is a first degree misdemeanor, and a second offense or subsequent offense is a third degree felony. Any person convicted may not have adjudication of guilt suspended, deferred, or withheld.

The bill requires the Division to **revoke** the permit of any permitholder who did not hold an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021, making such permit void, prohibiting reissuance, while exempting a limited thoroughbred permitholder issued a permit pursuant to s. 550.3345, F.S.

The bill specifies that all permits issued under chapter 550, F.S., held by permitholders on January 1, 2021, are **deemed valid** for the sole and exclusive purpose of satisfying all conditions for the valid issuance of the permits if such permitholder held an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021 or if the permitholder held a limited thoroughbred permit under s. 550.3345, F.S.

The bill allows summer jai alai permitholders to conduct pari-mutuel wagering throughout the year.

The bill amends s. 550.3345, F.S., relating to conversion of quarter horse permits to a limited thoroughbred permit, to:

- Specify that the use of net revenues to support the thoroughbred industry derived by the not-for-profit corporation under the converted thoroughbred horse racing permit must also include net revenues from any cardroom license issued to the not-for-profit under chapter 849, F.S.
- Specify that after conversion of a permit, the thoroughbred permit and the not-for-profit corporation must be treated under the laws of this state as a thoroughbred permit and as a thoroughbred permitholder, except in limited circumstances

The bill amends s. 550.6308, F.S., relating to limited intertrack wagering, by:

- Reducing the required number of days of sales to eight days from fifteen days.
- Removing the requirement to conduct at least one day of nonwagering thoroughbred racing with a \$250,000 purse per year for two consecutive years.

- Removing the following restrictions and requirements for intertrack wagering to be conducted:
 - For up to 21 days in connection with sales;
 - Between November 1 and May 8;
 - Only with the consent of other permitholders that run live racing in the county, between May 9 and October 31; and
 - During the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet conducted after May 8 and before November 1.
- Removing the restriction that intertrack wagering must be conducted by the limited intertrack license permitholder only on thoroughbred racing, unless the consent of all thoroughbred, jai alai, and greyhound racing permitholders in the same county is obtained; and
- Removing the purse pool requirement imposed on the limited intertrack license permitholder of 2.5 percent for its intertrack wagering on greyhound races or jai alai games, and other pro-rata allocations regarding intertrack wagering to thoroughbred permitholders.

Relating to slot machines, the bill removes the requirement that a permitholder conduct a full schedule of live racing or games as a condition for eligibility to obtain a license to conduct slot machine gaming, except thoroughbred permitholders.

The bill revises provisions relating to slot machine gaming areas, regarding the locations at which designated slot machine gaming areas may be located. The undefined term "live gaming facility" in current law is no longer applicable to greyhound permitholders prohibited from conducting live racing after December 31, 2020. The bill provides that **slot machine gaming areas** must be located at the address specified in the licensed permitholder's operating license issued for fiscal year 2020-2021. Provisions relating to the types of buildings and the connection of such buildings to the live gaming facility are deleted as obsolete.

The bill amends the **days and hours of operation of slot machine** permitholders to authorize slot machine gaming areas to be open 24 hours per day throughout the year, instead of 18 hours per day on Monday through Friday and 24 hours per day on weekends and holidays.

The bill removes the prohibition on complimentary or reduced-cost alcoholic beverages from being served to persons playing a slot machine.

Relating to cardrooms, the bill amends s. 849.086, F.S., to:

- **Prohibit a pari-mutuel permitholder from being issued an operating license for the operation of a cardroom** if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021, while exempting converted thoroughbred permits under s. 550.3345, F.S. Such thoroughbred permitholders are required to apply for, as part of its pari-mutuel annual license application, at least a full schedule of live racing.
- Revise provisions in current law that are no longer applicable to greyhound permitholders prohibited from conducting live racing after December 31, 2020.
- Revise provisions relating to required contributions to purse pools, and required horsemen's agreements, to clarify that such contributions and agreements are required only if a permitholder conducts live races or games.
- Provide that only thoroughbred permitholders must conduct a minimum of live racing performances (known as the "90 percent rule") to renew a cardroom license.
- Authorize cardrooms to be open 24 hours per day throughout the year, instead of 18 hours per day Monday through Friday and 24 hours per day on weekends and holidays.

Effective October 1, 2021, the bill amends s. 849.14, F.S., relating to illegal wagering and receiving wager violations to include those who influence results, and to increase the penalties and violations from a second degree misdemeanor to a third degree felony.

The bill creates s. 849.142, F.S., relating to exempted activities, to exempts gaming conducted under the 2021 Compact, amusement games, pari-mutuel games, slot machine games, cardroom games, and bingo, from violations and penalties under state gambling law.

The bill provides that if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

The bill provides that except as otherwise expressly provided in this act, this act shall take effect on the same date that CS/HB 1A or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The bill provides that a municipality may prohibit the:

- Establishment of a pari-mutuel facility and pari-mutuel wagering in its jurisdiction.
- Establishment and operation of a cardroom within its jurisdiction.

B. SECTION DIRECTORY:

- Section 1: Amends s. 550.002, F.S., relating to definitions.
- Section 2: Amends s. 550.0115, F.S., relating to permitholder operating license.
- Section 3: Amends s. 550.01215, F.S., relating to license application; periods of operation; license fees; bond.
- Section 4: Amends s. 550.0235, F.S., relating to limitation of civil liability.
- Section 5: Amends s. 550.0351, F.S., relating to charity racing days.
- Section 6: Amends s. 550.0425, F.S., relating to minors attendance at pari-mutuel performances; restrictions.
- Section 7: Amends s. 550.054, F.S., relating to application for permit to conduct pari-mutuel wagering.
- Section 8: Amends s. 550.0651, F.S., relating to municipal prohibitions.
- Section 9: Amends s. 550.0745, F.S., relating to conversion of pari-mutuel permit to summer jai alai permit.
- Section 10: Amends s. 550.09511, F.S., relating to jai alai taxes; abandoned interest in a permit for nonpayment of taxes.
- Section 11: Amends s. 550.09512, F.S., relating to harness horse taxes; abandoned interest in a permit for nonpayment of taxes.
- Section 12: Amends s. 550.105, F.S., relating to occupational licenses of racetrack employees; fees; denial, suspension, and revocation of license; penalties and fines.
- Section 13: Amends s. 550.1155, F.S., relating to authority of stewards, judges, panel of judges, or player's manager to impose penalties against occupational licensees; disposition of funds collected.
- Section 14: Amends s. 550.1647, F.S., relating to greyhound permitholders; unclaimed tickets; breaks.
- Section 15: Repeals s. 550.1648, F.S., relating to greyhound adoptions.
- Section 16: Amends s. 550.175, F.S., relating to petition for election to revoke permit.
- Section 17: Amends s. 550.1815, F.S., relating to certain persons prohibited from holding racing or jai alai permits; suspension and revocation.

- Section 18: Amends s. 550.24055, F.S., relating to use of controlled substances or alcohol prohibited; testing of certain occupational licensees; penalty; evidence of test or action taken and admissibility for criminal prosecution limited.
- Section 19: Amends s. 550.2415, F.S., relating to racing of animals under certain conditions prohibited; penalties; exceptions.
- Section 20: Amends s. 550.334, F.S., relating to quarter horse racing; substitutions.
- Section 21: Amends s. 550.3345, F.S., relating to conversion of quarter horse permit to a limited thoroughbred permit.
- Section 22: Amends s. 550.3551, F.S., relating to transmission of racing and jai alai information; commingling of pari-mutuel pools.
- Section 23: Amends s. 550.3615, F.S., relating to bookmaking on the grounds of a permit holder; penalties; reinstatement; duties of track employees; penalty; exceptions.
- Section 24: Creates s. 550.3616, F.S., relating to racing greyhounds or other dogs prohibited; penalty.
- Section 25: Amends s. 550.475, F.S., relating to lease of pari-mutuel facilities by pari-mutuel permit holders.
- Section 26: Amends s. 550.5251, F.S., relating to Florida thoroughbred racing; certain permits; operating days.
- Section 27: Amends s. 550.615, F.S., relating to intertrack wagering.
- Section 28: Amends s. 550.6305, F.S., relating to intertrack wagering; guest track payments; accounting rules.
- Section 29: Amends s. 550.6308, F.S., relating to limited intertrack wagering license.
- Section 30: Amends s. 551.104, F.S., relating to license to conduct slot machine gaming.
- Section 31: Amends s. 551.114, F.S., relating to slot machine gaming areas.
- Section 32: Amends s. 551.116, F.S., relating to days and hours of operation.
- Section 33: Amends s. 551.121, F.S., relating to prohibited activities and devices; exceptions.
- Section 34: Amends s. 565.02, F.S., relating to license fees; vendors; clubs; caterers; and others.
- Section 35: Amends s. 849.086, F.S., relating to cardrooms authorized.
- Section 36: Amends s. 849.14, F.S., relating to unlawful to bet on result of trial or contest of skill, etc.
- Section 37: Creating s. 849.142, F.S., relating to exempted activities.
- Section 38: Creating s. 849.251, F.S., relating to wagering, aiding, abetting, or conniving to race or wager on greyhounds or other dogs; penalty.
- Section 39: Reenacts s. 380.0651, F.S., relating to statewide guidelines, standards, and exemptions.
- Section 40: Reenacts s. 402.82, F.S., relating to electronic benefits transfer program.

- Section 41: Reenacts s. 480.0475, F.S., relating to massage establishments; prohibited practices.
- Section 42: Provides for severability.
- Section 43: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has not estimated the potential impacts of the bill on state government revenues. However, the REC estimated that the provisions in HB 7055 and SB 7080 (2021) authorizing jai alai, harness horse and quarter horse racing permitholders to elect not to continue conducting live racing or games would have a recurring negative impact on state trust fund revenues of \$0.5 million beginning in FY 2021-22.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC has not estimated the potential impacts of the bill on local government revenues.

2. Expenditures:

The REC has not estimated the potential impacts of the bill on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and businesses associated with jai alai, harness horse, and quarter horse racing will experience an indeterminate impact associated with the election by permitholders to conduct or not conduct live racing or games.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

State agencies associated with the provisions in the bill may need to revise their rules to the extent the rules are inconsistent with the prohibition of live racing of greyhounds, and the removal of the

requirements for greyhound permitholders, jai alai permitholders, and harness horse permitholders to conduct live racing or games.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Retroactive Legislation

The bill directs the Division to revoke the permit of any permitholder, other than a permitholder issued a permit pursuant to s. 550.3345, F.S., who did not hold an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021. The bill provides that a revoked permit is void and may not be reissued.

Such permitholders may claim that this provision violates the Contract Clause of art. I, s. 10, U.S. Constitution, which prohibits states from passing laws which impair contract rights. However, the U.S. Supreme Court has found that "a lottery grant is not in any sense a contract, within the meaning of the constitution of the United States, but is simply a gratuity and license, which the state, under its police powers, and for the protection of the public morals, may at any time revoke, and forbid the further conduct of the lottery."

Compensation Claims

The bill directs the Division to revoke permits under specific situations. One of the provisions provides for the revocation of permits issued before January 1, 2021, that have not been used for the conduct of pari-mutuel wagering. Such permitholders may claim that such revocation constitutes a taking warranting compensation.

The Fifth Amendment of the U.S. Constitution provides that private property shall not be taken for public use without just compensation. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."⁸⁹ Thus, Florida courts have found no unconstitutional taking in the retroactive application of statutes requiring revocation of certain occupational licenses and licenses to carry concealed firearms if the licensee was a convicted felon because such licensure is a privilege, not a vested right.⁹⁰

As to pari-mutuel wagering, "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right."⁹¹ Likewise, the Florida Supreme Court has found that "[a]uthorized gambling is a matter over which the state may exercise greater control and exercise its police power in a more arbitrary manner"⁹² Thus, the Florida Supreme Court found that, unlike permits to construct a building, "[i]t is doubtful if we can agree with counsel in concluding that a racing permit is a vested interest or right and after once granted cannot be changed."⁹³

Furthermore, compensation may not be warranted if the Legislature is deemed to have exercised its police powers, rather than powers of eminent domain.⁹⁴ "[T]he Government as condemnor may not be required to compensate a condemnee for elements of value that the Government has created, or that it

⁸⁹ *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

⁹⁰ *See, e.g., Crane v. Department of State, Div. of Licensing*, 547 So.2d 266, 267 (Fla. 3rd DCA 1989), citing *Mayo v. Market Fruit Co. of Sanford*, 40 So.2d 555, 559 (Fla. 1949).

⁹¹ *Solimena v. State, Dept. of Business Regulation, Division of Pari-Mutuel Wagering*, 402 So.2d 1240 (Fla. 3rd DCA 1981).

⁹² *Hialeah Race Course v. Gulfstream Park Racing Ass'n*, 37 So.2d 692, 694 (Fla. 1948).

⁹³ *State ex rel. Biscayne Kennel Club v. Stein*, 130 Fla. 517, 520 (Fla. 1938).

⁹⁴ *City of Miami Springs v. J.J.T.*, 437 So.2d 200 (Fla. 3rd DCA 1983)("even the complete prohibition of a previously lawful and existing business does not constitute a taking where the owner is not deprived of all reasonable use of his property, as long as the prohibition promotes the health, safety and welfare of the community and is thus a valid exercise of the police power.").

might have destroyed under the exercise of governmental authority other than the power of eminent domain."⁹⁵ Thus, the loss of licenses to sell alcoholic beverages, for example, is not compensable.⁹⁶

Similar arguments have been made in states where pari-mutuel wagering has been prohibited after being licensed for many years. When Massachusetts banned greyhound racing by constitutional amendment in 2008, a licensed and operating dog track challenged the ban as a taking. The Supreme Judicial Court of Massachusetts rejected the argument, finding "[T]he plaintiffs here have no compensable property interest in their racing licenses."⁹⁷

If revoked permits are found to be a taking warranting compensation, just compensation equals the fair market value of the permit at the time of revocation. The fair market value of non-operating permits is uncertain. Such permits are a prerequisite to licensure for pari-mutuel wagering and, by themselves, do not appear to vest the holder with any rights. There are no application fees to receive a permit for pari-mutuel wagering and no fees to retain such a permit. Permits may not be transferred without state approval. While a pari-mutuel wagering permit is one pre-requisite to licensure to conduct cardrooms and slot machines, it is not the only pre-requisite. Not all permit holders may be able to obtain a license to conduct pari-mutuel wagering events, which would require adequate zoning and facilities.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On May 17, 2021, the Select Subcommittee on the Seminole Gaming Compact adopted three amendments and passed the bill favorably as a committee substitute. The amendments:

- Revise the description of valid permits to include those held by limited thoroughbred permit holders.
- Allow municipalities to prohibit pari-mutuel wagering and the establishment and operation of a cardroom in their jurisdiction.

This analysis is drafted to the committee substitute as passed by the Select Subcommittee on the Seminole Gaming Compact.

⁹⁵ *U. S. v. Fuller*, 409 U.S. 488, 491-492, 93 S.Ct. 801, 804 (U.S. Ariz.1973).

⁹⁶ *See, e.g., Yates v. Mulrooney*, 281 N.Y.S. 216, 219 (N.Y. App. Div. 1935); *Mugler v. Kansas*, 123 U.S. 623, 668-70 (1887).

⁹⁷ *Carney v. Attorney General*, 451 Mass. 803 (2008).