HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 21-05 Requirements for Pari-mutuel Permitholders to Conduct Racing or Games
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

During the 2018 General Election, the electorate approved an initiative constitutional amendment, Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs. Amendment 13 states that, beginning on January 1, 2019, greyhound tracks may discontinue live greyhound racing while continuing to operate its other forms of gaming. Beginning on January 1, 2021, Amendment 13 completely prohibits wagering on live greyhound racing in Florida, requiring the closure of all greyhound racetracks in the state. Cardroom and slot machine facilities at the greyhound tracks may continue to operate after the closure of racing activities.

The bill:

- Codifies the prohibition of greyhound racing, updates certain provisions in Florida law that are inconsistent with the prohibition of live racing of greyhounds, and removes requirements for greyhound permitholders, jai alai permitholders, and harness horse permitholders to conduct live racing or games.
- Limits permits for the operation of a pari-mutuel facility, cardroom, or slot machine facility to facilities with permits on November 6, 2018.
- Provides that no pari-mutuel facility, cardroom, or slot machine facility may be relocated, and no pari-mutuel wagering permit may be converted to another class of permit.
- Revises the requirement for pari-mutuel permitholders to conduct live racing or games to provide:
  - A greyhound permitholder may not conduct live racing.
  - 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.
- 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 law;
  - 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;
  - Remains 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.
- Maintains current law requiring thoroughbred permitholders to continue live racing to maintain eligibility for a cardroom license or slot machine license.
- Authorizes permitholders (those without a live requirement and those in compliance with live requirements) to receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games.
- Modifies requirements for the locations of designated slot machine gaming areas.
- For Fiscal Year 2021-2022 only, the division may approve changes to a permitholder's operating dates if the request is received before July 1, 2021.

The bill may have an indeterminate impact on state government.

The effective date of the bill is July 1, 2021, but only if PCB COM 21-03 or similar legislation takes effect.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[5] wagering at licensed greyhound and horse tracks and jai alai frontons;[6]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[7] and
- Cardrooms[8] at certain pari-mutuel facilities.[9]

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.[10]

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[11] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[12]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[13] bingo,[14] charitable drawings,[15] game promotions (sweepstakes),[16] and bowling tournaments.[17] The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[18]

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[1] S. 849.08, F.S.
[2] S. 849.01, F.S.
[3] S. 849.09, F.S.
[4] S. 849.16, F.S.
[5] "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.
[6] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[7] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.
[8] 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."
[9] 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).
[10] *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." *See also, Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which 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).
[11] 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 revision was ratified by the electorate on November 5, 1968.
[12] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[13] S. 849.085, F.S.
[14] S. 849.0931, F.S.
[15] S. 849.0935, F.S.
[16] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[17] S. 849.141, F.S.
[18] 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."[19]

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.[20]

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. Section 15 of Article X of the State Constitution (adopted by the electors in 1986) 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.[21]

Indian Gaming and Regulatory Act

Gambling on Indian lands is subject to federal law, with limited state involvement. The Indian Gaming and Regulatory Act (IGRA), codified at 25 USCA §§ 2701-2721, was enacted in 1988 in response to the United State Supreme Court decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The act provides for "a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming."[22] In so doing, IGRA seeks to balance the competing interests of two sovereigns: the interests of the Tribe in engaging in economic activities for the benefit of its members and the interest of the state in either prohibiting or regulating gaming activities within its borders.[23]

IGRA separates gaming activities into three categories:

- Class I games are "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations."[24] Class I games are within the exclusive jurisdiction of the Indian tribes.[25]
- Class II games are bingo and card games that are explicitly authorized or are not explicitly prohibited by the laws of the State.[26] The tribes may offer Class II card games "only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games." Class II gaming does not include "any banking card games, including baccarat,

[19] 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.
[20] *Little River Theatre Corp v. State*, 185 So. 854, 868 (Fla. 1939).
[21] 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.
[22] United States Senate Report No. 100-446, Aug. 3, 1988.
[23] *Id*.
[24] 25 U.S.C. 2703(6).
[25] 25 U.S.C. 2710(a)(1).
[26] 25 U.S.C. 2703(7)(A).

chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind."[27] Class II games are also within the jurisdiction of the Indian tribes, but are also subject to the provisions of IGRA.[28]

- Class III games are defined as any games that are not Class I or Class II. Class III games include slot machines and banked card games such as blackjack, baccarat and chemin de fir.[29]

A tribe can qualify to offer Class III games in the following ways:

- If the state authorizes Class III games for any purpose to any person, organization, or entity, the tribe must:
  - Authorize the games by an ordinance or resolution adopted by the governing body of the Indian tribe, approved by the Chairman of the National Indian Gaming Commission, and in compliance with IGRA; and
  - Conduct the games in conformance with a Tribal-State compact entered into between the tribe and the State.[30]
- If the state does NOT authorize Class III gaming for any purpose by any person, organization, or entity, the tribe must request negotiations for a tribal-state compact governing gaming activities on tribal lands. Upon receiving such a request, the state may be obligated to negotiate with the Indian tribe in good faith.[31] Under IGRA, a tribe is not entitled to a compact.

When the negotiations fail to produce a compact, a tribe may file suit against the state in federal court and seek a determination of whether the state negotiated in good faith. If the court finds the state negotiated in good faith, the tribe's proposal fails. On a finding of lack of good faith by the state, however, the court may order negotiation, followed by mandatory mediation. If the state ultimately rejects a court-appointed mediator's proposal, the Secretary "shall prescribe, in consultation with the Indian tribe, procedures... under which class III gaming may be conducted."[32]

Generally, in accordance with IGRA, a compact may include the following provisions:

- The application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of gaming;
- The allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of laws and regulations;
- An assessment in an amount necessary to defray the costs of regulation;
- Revenue sharing by the Indian tribe for permitted activities;
- Remedies for breach of contract;
- Standards for the operation of gaming and gaming facilities, including licensing; and
- Any other subjects that are directly related to the operation of gaming activities.[33]

Any compact that is entered into by a tribe and a state will take effect when approval by the Secretary of the Interior is published in the Federal Register.[34] Upon receipt of a proposed compact, the Secretary has 45 days to approve or disapprove the compact.[35] A compact will be considered approved if the Secretary fails to act within the 45-day period. A compact that has not been validly "entered into" by a state and a tribe (e.g., execution of a compact by a state officer who lacks the authority to bind the state) cannot be put "into effect", even if the Secretary of the Interior publishes the compact in the Federal Register.[36]

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[27] 25 U.S.C. 2703(7)(B).
[28] 25 U.S.C. 2710(a)(2) and (b).
[29] 25 U.S.C. 2703; 25 C.F.R. § 502.4.
[30] 25 U.S.C. 2710(d)(1).
[31] 25 U.S.C. 2710 (d)(3)(A).
[32] 25 U.S.C. 2710(d)(7). This option is addressed in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), which brought into question whether a tribe has the ability to judicially enforce the provisions of IGRA against a state. The Department of the Interior adopted rules to provide a remedy for the tribes. The validity of the rules were brought into question in *Texas v. United States*, 497 F.3d 491, (5th Cir. 2007).
[33] 25 U.S.C. 2710 (d)(3)(C).
[34] 25 U.S.C. 2710(d)(3)(B).
[35] 25 U.S.C. 2710(d)(8)(C).
[36] *See Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997).

There is no explicit provision under IGRA that authorizes revenue sharing. IGRA specifically states:

> [N]othing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3) (A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.[37]

Notwithstanding this restriction, revenue sharing is permissible so long as the tribe receives a valuable economic benefit in return. Typically, such benefit is in the form of substantial exclusivity in game offerings, geographic monopoly and/or a right to conduct such offerings on more favorable terms than non-Indians.[38]

The 2010 Compact

The Tribe and the State executed the 2010 Compact on April 7, 2010, which was ratified through Chapter 285, F.S. The 2010 Compact took effect when published in the Federal Register on July 6, 2010 and all but the banked card game authorization has a term of 20 years, expiring July 31, 2030, unless renewed.

The 2010 Compact provides for revenue sharing from the Tribe to the State. For the exclusive authority to offer banked card games on tribal lands at five locations for five years and to offer slot machine gaming outside Miami-Dade and Broward Counties, the Tribe pays the State a share of "net win." Revenue sharing payments were approximately $240 million per year. The 2010 Compact required the Tribe to share revenue with the State in the amount of $1 billion over the first five years.

Section 285.710(1)(f), F.S., designates the Division within DBPR as the "state compliance agency" responsible for carrying out the state's oversight responsibilities under the 2010 Compact.

The State of Florida retains the right to authorize or prohibit gaming in the state. However, the 2010 Compact provides consequences for the expansion of gaming:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuel facilities located in Miami-Dade and Broward counties (which may not relocate) and the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.
- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.[39]

Revenue sharing payments cease if:

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location outside of Miami-Dade and Broward counties that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

Starting in July 2015, DBPR and the Seminole Tribe engaged in litigation over the conduct of "designated player" card games at pari-mutuel facilities.

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[37] 25 U.S.C. 2710(d)(4).

[38] *See generally In re Indian Gaming Related Cases*, 331 F.3d 1094 (9th Cir. 2003)(upholding revenue sharing where revenues were apportioned to non-gaming tribes); *see also* Letter From Gale A. Norton, Secretary of the Department of the Interior, to Cyrus Schindler, President of the Seneca Nation of Indians, November 12, 2002.

[39] The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

On November 9, 2016 a federal court ruled that the State had violated the terms of the Compact and the Tribe was entitled to continue offering banked card games beyond the initial 5-year blackjack authorization and may continue offering such games for the entire 20-year term of the Compact (expiring July 2030). The Tribe continued to make full revenue sharing payments to the State throughout the course of the litigation. The parties did not raise, and consequently the ruling did not address, the future revenue sharing obligations of the Tribe.

The parties subsequently executed a settlement agreement in July 2017, which was extended in April 2018. Under the settlement agreement, the Tribe agreed to continue revenue sharing payments provided that DBPR "aggressively enforced" the statutory ban on banking card games.

In April 2019 the Tribe stopped revenue sharing payments to the State because the Tribe believed that aggressive enforcement had not occurred.

Amendment 3 to the State Constitution (Voter Control of Gambling)

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).[40]

Amendment 3 requires a vote proposed by citizen's initiative to amend the State Constitution pursuant to Article XI, section 3 to authorize "casino gambling" in Florida. Casino gambling is defined in section (b) of Amendment 3 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, 25 U.S.C. 2701 et seq; and
    - In 25 [Code of Federal Regulations] (C.F.R.) § 502.4 upon the adoption of the amendment and any that are added to such definition of Class III gaming in the future.

Section (b) of Amendment 3 provides that 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.

Section (b) of Amendment 3 also further defines "casino gambling" as including 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 [the Indian Gaming Regulatory Act].

Under Amendment 3, the term casino "casino gambling" does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. For the purposes of [Amendment 3], "gambling" and "gaming" are synonymous.

[40] 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).

Additionally, Amendment 3 provides:

> Nothing in [Amendment 3] 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 in [Amendment 3] 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 [the Indian Gaming Regulatory Act].

By its terms, Amendment 3 became effective on November 6, 2018, is self-executing, and no legislative implementation is required. If any part of Amendment 3 is held invalid for any reason, the remaining portion(s) must be severed from the invalid portion and given "the fullest possible force and effect."

Regulation of Pari-mutuel Wagering

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, 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.[41]

Ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,[42] two jai alai permitholders,[43] one limited thoroughbred permitholder,[44] and five quarter horse permitholders.[45]

Issuance 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

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[41] 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 pg. 5, (last visited Apr. 7, 2021).
[42] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).
[43] Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.
[44] 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.
[45] 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).

- Jai alai games within 50 miles of an existing pari-mutuel facility.[46]

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.[47]

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.[48]

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 license up to $1,000 for each offense.[49]

Slot Machine Gaming Locations and Operations

Section 32 of Art. X of the State Constitution, adopted pursuant to a 2004 initiative petition, authorized slot machines in licensed pari-mutuel facilities in Broward and Miami-Dade, if approved by county referendum. The voters in Broward and Miami-Dade counties approved slot machine gaming. Slot machine gaming in the state is limited to Broward and Miami-Dade counties, and as authorized by federal law, in the tribal gaming facilities of the Seminole Tribe.

Current law addresses slot machine gaming operations as follows:

- Restricts the issuance of slot machine licenses to licensed pari-mutuel permitholders, for slot machine gaming only at the facility where pari-mutuel wagering is authorized to be conducted by the permitholder;[50]
- Limits slot machine gaming to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays;[51] and
- Prohibits the service of complimentary or reduced-cost alcoholic beverages to persons playing a slot machine, among other prohibitions.[52]

Cardrooms

Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.[53]In Fiscal Year 2021-2022, 27 cardrooms are licensed to operate.[54] 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.[55] A cardroom may be open 18 hours per day on Monday through Friday, and 24 hours per day on Saturday and Sunday.[56]

Sections 849.086(5) and (6), F.S., provide that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of

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[46] S. 550.054(2), F.S.
[47] *Id.*
[48] S. 550.054(9)(a), F.S.
[49] S. 550.054(9)(b), F.S.
[50] S. 551.104(3), F.S.
[51] S. 551.116, F.S.
[52] S. 551.121, F.S.
[53] 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.
[54] 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).
[55] *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."
[56] S. 849.086(7)(b), F.S.

poker or dominoes.[57] Such games must be played in a non-banking manner,[58] where the participants play against each other, instead of against the house (cardroom). 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.[59]

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.[60] 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.[61]
- 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.[62]
- To remain eligible for a slot machine license, permitholders must conduct a full schedule of live racing as defined in ch. 550.[63]

Amendment 13 to the State Constitution (Prohibition on Racing of and Wagering on Greyhounds or Other Dogs)

During the 2018 General Election, the electorate approved an initiative constitutional amendment (Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs). The amendment is codified in the State Constitution as article X, section 32).[64]

Amendment 13 states that, beginning on January 1, 2019, greyhound tracks may discontinue live greyhound racing while continuing to operate its other forms of gaming. Beginning on January 1, 2021, Amendment 13 completely prohibits wagering on live greyhound racing in Florida, requiring the closure of all greyhound racetracks in the state. Cardroom and slot machine facilities at the greyhound tracks may continue to operate after the closure of racing activities.

Proposed Changes

The bill updates provisions in Florida law that are inconsistent with the prohibition of live racing of greyhounds as provided in Amendment 13 adopted in 2018. The bill removes requirements for greyhound permitholders, jai alai permitholders, and harness horse permitholders to conduct live racing or games. The bill maintains the requirement that thoroughbred permitholders continue to conduct live racing.

The bill amends s. 550.002, F.S., to revise live racing requirements at pari-mutuel permitholders affected by Amendment 13. Technical drafting changes, conforming changes, and elimination of obsolete language are also included.

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[57] S. 849.086(2)(a), F.S.
[58] *Id.*
[59] S. 849.086(13)(d), F.S.
[60] *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").
[61] S. 550.615, F.S.
[62] s. 849.086(5)(b), F.S.
[63] s. 551.104(4)(c), F.S.
[64] [64] 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).

The bill amends s. 550.01215, F.S., relating to operating license applications filed annually with the division for the conduct of pari-mutuel wagering, including intertrack and simulcast wagering. The application of each permitholder must indicate whether the permitholder intends to accept wagers on intertrack and simulcast events.

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.

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 ss. 551.104(4)(c) and (10), F.S., and s. 551.114(2) and (4); F.S.

The bill provides that a permitholder or licensee may not conduct live greyhound racing or dogracing in connection with any wager for money or any other thing of value in the state. The division may deny, suspend, or revoke any permit or license under ch. 550, F.S., if a permitholder or licensee conducts live greyhound racing or dogracing in violation of this provision. In addition to, or in lieu of, denial, suspension, or revocation, the division is authorized to impose a civil penalty of up to $5,000 against the permitholder or licensee for a violation of this provision. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

Notwithstanding any other provision of law, no pari-mutuel facility, cardroom, or slot machine facility may be issued an operating license if the permitholder did not hold an operating license on November 6, 2018.

The bill provides that for Fiscal Year 2021-2022 only, the division may approve changes to a permitholder's operating dates if the request is received before July 1, 2021.

The bill amends s. 550.0235, F.S., to substitute the term "a permitholder licensed to conduct pari-mutuel wagering," and delete the obsolete term "a permittee conducting a racing meet."

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 November 6, 2018.
- No pari-mutuel facility, cardroom, or slot machine facility may be relocated, and no pari-mutuel wagering permit may be converted to another class of permit.

The bill amends s. 550.09511(4), F.S., to delete a requirement for payment of daily license fees and tax on admissions and bets, if fewer than 100 live jai alai games are conducted in a calendar year.

The bill amends s. 550.09512, F.S., to clarify a provision relating to taxes payable by harness horse permitholders who conduct live harness horse performances, and adds “pandemic” to the list of exemptions for failure to operate and pay such tax.

The bill amends s. 550.1647, F.S., related to unclaimed pari-mutuel tickets, to delete references to greyhound racing.

The bill repeals s. 550.1648, F.S., related to obsolete provisions concerning greyhound adoption booths at pari-mutuel facilities and associated charity racing days.

The bill amends s. 550.3551, F.S., relating to broadcasting of racing and jai alai information, to conform references to permitholders and to delete a limitation on the number of broadcasts that may be received from outside the state by certain greyhound permitholders. The bill revises the requirement that all permitholders conduct at least eight live races or games on a race day, and meet certain minimum live racing or games requirements, to limit application of those requirements to permitholders who conduct live races or games. The bill deletes the requirement that a permitholder obtain authorization from the division for special racing events, and deletes the associated approval process and limits on such authorization.

The bill amends s. 550.475, F.S., relating to the leasing of pari-mutuel facilities by pari-mutuel permitholders, to conform references to permitholders and to ensure a lessee may conduct intertrack wagering.

The bill amends s. 550.615, F.S., relating to intertrack wagering, to conform references to pari-mutuel facilities and live racing or games requirements, and to provide that a permitholder that has met the live racing or games requirement applicable to that permitholder under s. 550.01215(1)(b), F.S., is qualified to receive broadcasts of any class of pari-mutuel races or games and to accept wagers on such races or games. The bill provides any greyhound permitholder licensed under ch. 550, F.S., to conduct pari-mutuel wagering is qualified to, at any time, receive broadcasts and accept wagers on any class of pari-mutuel race or game.

The bill amends s. 551.104(4)(c), F.S., relating to 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. The bill applies the live racing requirements for such eligibility only to thoroughbred permitholders, as under the bill, greyhound permitholders may not conduct live racing, jai alai permitholders may elect not to conduct live games, and harness horse and quarter horse permitholders may elect not to conduct live racing.

The bill amends s. 551.114, F.S., 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 location specified in the licensed permitholder’s operating license. 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 s. 849.086, F.S., relating to cardrooms, to:

- Delete a requirement that pari-mutuel permitholders seeking renewal of a cardroom operating license must have conducted a certain number of live races or games in the previous year (the 90 percent rule);
- Revise provisions in current law that are no longer applicable to greyhound permitholders prohibited from conducting live racing after December 31, 2020;

The bill re-enacts s. 380.0651, F.S., relating to developments of regional impact, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. A pari-mutuel facility continues to be subject to certain statewide guidelines and standards for developments of regional impact, as set forth in s. 380.06, F.S.

The bill re-enacts s. 402.82, F.S., relating to the electronic benefits transfer program, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. The use of electronic benefits transfer cards continues to be prohibited at pari-mutuel facilities.

The bill re-enacts s. 480.0475, F.S., relating to certain overnight hours that massage establishments are prohibited from operating, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. Massage establishments at pari-mutuel facilities continue to be exempt from the prohibition, and may operate between the hours of midnight and 5 a.m.

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. 550.09511, F.S., relating to jai alai taxes; abandoned interest in a permit for nonpayment of taxes.

Section 9: Amends s. 550.09512, F.S., relating to harness horse taxes; abandoned interest in a permit for nonpayment of taxes.

Section 10: Amends s. 550.105, F.S., relating to occupational licenses of racetrack employees; fees; denial, suspension, and revocation of license; penalties and fines.

Section 11: 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 12: Amends s. 550.1647, F.S., relating to greyhound permitholders; unclaimed tickets; breaks.

Section 13: Repeals s. 550.1648, F.S., relating to greyhound adoptions.

Section 14: Amends s. 550.175, F.S., relating to petition for election to revoke permit.

Section 15: Amends s. 550.1815, F.S., relating to certain persons prohibited from holding racing or jai alai permits; suspension and revocation.

Section 16: 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 17: Amends s. 550.2415, F.S., relating to racing of animals under certain conditions prohibited; penalties; exceptions.

Section 18: Amends s. 550.3551, F.S., relating to transmission of racing and jai alai information; commingling of pari-mutuel pools.

Section 19: Amends s. 550.3615, F.S., relating to bookmaking on the grounds of a permitholder; penalties; reinstatement; duties of track employees; penalty; exceptions.

Section 20: Amends s. 550.475, F.S., relating to lease of pari-mutuel facilities by pari-mutuel permitholders.

Section 21: Amends s. 550.615, F.S., relating to intertrack wagering.

Section 22: Amends s. 550.6305, F.S., relating to intertrack wagering; guest track payments; accounting rules.

Section 23: Amends s. 551.104, F.S., relating to license to conduct slot machine gaming.

Section 24: Amends s. 551.114, F.S., relating to slot machine gaming areas.

Section 25: Amends s. 565.02, F.S., relating to license fees; vendors; clubs; caterers; and others.

Section 26: Amends s. 849.086, F.S., relating to cardrooms authorized.

Section 27: Reenacts s. 380.0651, F.S., relating to statewide guidelines, standards, and exemptions.

Section 28: Reenacts s. 402.82, F.S., relating to electronic benefits transfer program.

Section 29: Reenacts s. 480.0475, F.S., relating to massage establishments; prohibited practices.

Section 30: This act shall take effect July 1, 2021, but only if PCB COM 21-03 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

State funds associated with jai alai, harness horse, and quarter horse racing will experience and indeterminate impact associated with the election by permitholders to conduct or not conduct live racing or games. The Revenue Estimating Conference has not yet reviewed this bill.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.