

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Committee

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BILL: CS/SB 8

INTRODUCER: Appropriations Committee and Senator Galvano

SUBJECT: Gaming

DATE: February 27, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Fournier</u>	<u>Hansen</u>	<u>AP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 8 makes the following significant changes to Florida law concerning gaming. The bill:

- Ratifies the 2015 Indian Gaming Compact, subject to approval of amendments to conform the Compact to provisions in the bill and other actions to be taken by the State of Florida and the Seminole Tribe.
- Authorizes “point-of-sale terminals” for the sale of Florida Lottery tickets or games.
- Creates the Fantasy Contest Amusement Act, which regulates fantasy contests and provides that these contests involve the skill of contest participants.
- Allows a greyhound racing permitholder, harness racing permitholder, jai alai permitholder, quarter horse permitholder, and certain thoroughbred horse racing permitholders to stop conducting live performances but continue to operate its slot machine facilities or card rooms (decoupling).
- Revises conditions relating to the issuance, revocation, and relocation of pari-mutuel permits. The transfer of a limited thoroughbred racing permit is prohibited, but such a permit may be relocated under specified conditions.
- Reduces the tax on handle for greyhound racing, deletes tax exemptions specified in section 550.09514(1), Florida Statutes, and tax credits for greyhound racing permitholders, and deletes provisions allowing the transfer of tax exemptions or credits among greyhound permitholders.
- Creates a new a 3<sup>rd</sup> degree felony penalty for accepting wagers on horse races *other than* wagers made within the enclosure of a pari-mutuel facility in this state and through a facility’s ontrack totalisator system.

- Creates a permit reduction program for the state to purchase and cancel pari-mutuel permits, funded by up to \$20 million from revenue share payments made by the Seminole Tribe.
- Creates a thoroughbred purse supplement program of \$20 million annually, effective July 1, 2019, funded by revenue share payments made by the Seminole Tribe after that date.
- Updates and strengthens the anti-doping standards for racing animals, requires chain of custody and split sample procedures for testing, and requires adoption of recommended penalty guidelines for doping violations.
- Requires reporting of injuries to racing greyhounds.
- Expands the number of facilities where slot machines may be operated. In addition to the eight pari-mutuel facilities in Miami-Dade and Broward counties that currently have slot machines, slot machines will be authorized at:
  - A licensed pari-mutuel facility, if voters in the county approve them in a referendum and if the permitholder conducted a full schedule of live racing for two consecutive years immediately preceding its application for a slot machine license. Eight counties—Brevard, Duval, Gadsden, Hamilton, Lee, Palm Beach, St. Lucie, and Washington--have already approved slot machines by referenda.
  - Two additional slot machine facilities (one each in Miami-Dade and Broward counties) which will not require a pari-mutuel license.
- Requires a slot machine licensee not running a full schedule of live racing under its pari-mutuel permit to contribute the lesser of \$2 million or 3 percent of its prior year slots revenue to a thoroughbred purse pool.
- Reduces the tax rate on slot machines from 35 percent to 30 percent effective January 1, 2018, and to 25 percent effective July 1, 2019. Revenues from a licensee associated with a public-private partnership are distributed 90 percent to the EETF and 10 percent to the responsible public entity for the public-private partnership.
- Provides that if, in any year, the aggregate amount of tax paid to the state by slot machine licensees in Broward and Miami-Dade counties which were licensed before January 1, 2017, is less than the amount paid in the 2017-2018 state fiscal year, any of those licensees that paid less in that year than it paid in the 2017-2018 fiscal year must pay a surcharge equal to the difference between the amount of tax it paid in the 2017-18 fiscal year and the amount paid during the applicable state fiscal year.
- Provides that any pari-mutuel permitholder located in a county that has conducted a successful slot machine referendum after January 1, 2012, or a holder of a slot machine license awarded pursuant to s. 551.1043, F.S. (which allows one additional slot machine licensee in both Broward and Miami-Dade counties) must pay at least \$11 million in total slot machine taxes, license fees, or surcharge in Fiscal Year 2018-2019, and \$21 million in total slot machine taxes, license fees, or surcharge in Fiscal Year 2019-2020 and thereafter, regardless of whether the permitholder or licensee has operated slot machines.
- Authorizes blackjack tables at existing Miami-Dade and Broward county slot machine facilities and at the two additional slot machine facilities authorized in those counties, and imposes a tax of 25 percent of the gross receipts from blackjack operations.
- Allows slot machine facilities and cardrooms to operate 24 hours a day.
- Provides that a designated player game is not a banking game and sets certain requirements and limitations for a designated player game.

- Authorizes veterans' organizations to conduct instant bingo using electronic tickets in lieu of or together with instant bingo paper tickets at premises owned or leased by a veterans' organization.

Sections 4 and 56 of the bill, relating to the authorization of the 2015 Gaming Compact, duties of the Division of Law Revision and Information, and the general effective date of the bill, respectively, take effect upon the bill becoming a law. The rest of the bill takes effect only if the proposed 2015 Gaming Compact is amended as required by the bill and is approved by the U.S. Department of the Interior.

If the proposed 2015 Gaming Compact, as amended by this bill, is agreed to by the Seminole Tribe and approved by the U.S. Department of the Interior, the revenue generated by the Compact will exceed the current estimated revenue from the 2010 Gaming Compact by \$201.7 million in Fiscal Year 2017-2018, increasing to \$344.3 million in Fiscal Year 2021-2022. These additional revenues will be deposited into the General Revenue Fund. (See Section V.A. Tax/Fee issues.)

The Revenue Estimating Conference has not analyzed this bill, but staff estimates that the bill has an indeterminate fiscal impact on state funds.

The Department of Business and Professional Regulation indicates that implementation of the bill will require additional staff at a cost of \$1,890,541 in Fiscal Year 2017-2018. (See Section V.C., Government Sector Impact, for details.)

## II. Present Situation:

### Background

In general, gambling is illegal in Florida.<sup>1</sup> Chapter 849, F.S., prohibits keeping a gambling house,<sup>2</sup> running a lottery,<sup>3</sup> or the manufacture, sale, lease, play, or possession of slot machines.<sup>4</sup>

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.<sup>5</sup> A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds are paid by the lottery to the Educational Enhancement Trust Fund (EETF) for uses pursuant to annual appropriations by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.<sup>6</sup>

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<sup>1</sup> See s. 849.08, F.S.

<sup>2</sup> See s. 849.01, F.S.

<sup>3</sup> See s. 849.09, F.S.

<sup>4</sup> Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S.

<sup>5</sup> 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.

<sup>6</sup> 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.

In 2004, voters approved an amendment to the State Constitution<sup>7</sup> allowing slot machines in certain pari-mutuel facilities in Miami-Dade and Broward counties, and in 2009 the Legislature authorized slot machines at an additional pari-mutuel facility in Miami-Dade County.<sup>8</sup> Funds generated by the 35 percent tax on slot machines' net revenue are distributed to the EETF. In 2010, a Gaming Compact (compact) between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida was ratified by the legislature. Pursuant to Chapter 285, F.S., it is not a crime for a person to participate in raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the compact.<sup>9</sup>

The 2010 Gaming Compact provides for revenue sharing in consideration for the exclusive authority granted to the Seminole Tribe to offer banked card games on tribal lands and to offer slot machine gaming outside Miami-Dade and Broward counties. The Division of Pari-mutuel Wagering (division) of the Department of Business and Professional Regulation (DBPR) carries out the state's oversight responsibilities under the compact.<sup>10</sup>

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

- Pari-mutuel<sup>11</sup> wagering at licensed greyhound and horse tracks and jai alai frontons;<sup>12</sup>
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;<sup>13</sup> and
- Cardrooms at certain pari-mutuel facilities.<sup>14</sup>

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.<sup>15</sup>

<sup>7</sup> Sec. 23, Art. X Florida Constitution.

<sup>8</sup> Chapter 2009-170, Laws of Fla., amended s. 551.102, F.S., expanding the definition of an "eligible facility" to include any licensed pari-mutuel facility located within a county as defined in s. 125.011, 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.

<sup>9</sup> See s. 285.710, F.S., especially subsections (3), (13), and (14). The seven tribal locations where gaming is authorized by the compact are: (1) Seminole Hard Rock Hotel & Casino—Hollywood (Broward); (2) Seminole Indian Casino—Coconut Creek (Broward); (3) Seminole Indian Casino—Hollywood (Broward); (4) Seminole Hard Rock Hotel & Casino—Tampa (Hillsborough); (5) Seminole Indian Casino—Immokalee (Collier); (6) Seminole Indian Casino—Brighton (Glades); and (7) Seminole Indian Casino—Big Cypress (Hendry). Banked card games are not authorized at the Brighton and Big Cypress casinos.

<sup>10</sup> See s. 285.710(1)(f), F.S.

<sup>11</sup> 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.

<sup>12</sup> See ch. 550, F.S., relating to the regulation of pari-mutuel activities.

<sup>13</sup> See ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.

<sup>14</sup> Section 849.086, F.S. Section 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 charges a fee for participation by the operator of such facility.

<sup>15</sup> 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

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,<sup>16</sup> bingo,<sup>17</sup> charitable drawings, game promotions (sweepstakes),<sup>18</sup> and bowling tournaments.<sup>19</sup>

The Family Amusement Games Act, enacted in 2015, similarly authorizes skill-based amusement games and machines at specified locations.<sup>20</sup>

Except for gaming facilities operating in accordance with the 2010 Gaming Compact with the Seminole Tribe, free-standing, commercial casinos are not authorized, and gaming activity, other than what is expressly authorized, is illegal.

### ***The Indian Gaming Regulatory Act (IGRA)***

In 1988, Congress enacted the Indian Gaming Regulatory Act or “IGRA.”<sup>21</sup> The Act divides gaming into three classes:

- “Class I gaming” means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations.<sup>22</sup>
- “Class II gaming” includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.<sup>23</sup> Class II gaming may also include certain non-banked card games if permitted by state law or not explicitly prohibited by the laws of the state but the card games must be played in conformity with the laws of the state.<sup>24</sup> A tribe may conduct Class II gaming if:
  - The state in which the tribe is located permits such gaming for any purpose by any person, organization, or entity; and
  - The governing body of the tribe adopts a gaming ordinance, which is approved by the Chairman of the National Indian Gaming Commission.<sup>25</sup>
- “Class III gaming” includes all forms of gaming that are not Class I or Class II, such as house banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, and pari-mutuel wagering.<sup>26</sup>

Regulation under IGRA is dependent upon the type of gaming involved. Class I gaming is left to the tribes.<sup>27</sup> Class II gaming is regulated by the tribe with oversight by the National Indian

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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).

<sup>16</sup> See s. 849.085, F.S.

<sup>17</sup> See s. 849.0931, F.S.

<sup>18</sup> See s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>19</sup> See s. 849.141, F.S.

<sup>20</sup> See s. 546.10, F.S.

<sup>21</sup> Indian Gaming Regulatory Act of 1988, Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*

<sup>22</sup> 25 U.S.C. s. 2703(6).

<sup>23</sup> 25 U.S.C. s. 2703(7).

<sup>24</sup> 25 U.S.C. s. 2703(7)(A)(ii).

<sup>25</sup> 25 U.S.C. s. 2710(b)(1).

<sup>26</sup> 25 U.S.C. s. 2703(8).

<sup>27</sup> 25 U.S.C. s. 2710(a)(1).

Gaming Commission.<sup>28</sup> Class III gaming permits a regulatory role for the state by providing for a tribal-state compact.<sup>29</sup>

IGRA provides that certain conditions must be met before an Indian tribe may lawfully conduct Class III gaming. First, the particular form of Class III gaming that the tribe wishes to conduct must be permitted in the state in which the tribe is located. Second, the tribe must have adopted a tribal gaming ordinance that has been approved by the Indian Gaming Commission or its chairman. Third, the tribe and the state must have negotiated a compact that has been approved by the Secretary of the United States Department of the Interior and is in effect.<sup>30</sup>

### ***Gaming Compact Authorization***

Section 285.712, F.S., authorizes the Governor to enter into an Indian Gaming compact with the federally recognized Indian tribes within the State of Florida for the purpose of authorizing Class III gaming on the Indian lands.

Section 285.710(3), F.S., ratifies and approves the Gaming Compact between the Seminole Indian Tribe of Florida (Seminole Tribe) and the State of Florida that was executed by the Governor and the Seminole Tribe on April 7, 2010.

Section 285.710(7), F.S., designates the division as the agency with the authority to monitor the Seminole Tribe's compliance with the compact.

Section 285.710, F.S., provides that money received by the state from the compact is to be deposited into the General Revenue Fund and provides for the distribution of 3 percent of the amount paid by the Seminole Tribe to the specified local governments. The percentage of the local share distributed to the specified counties and municipalities is based on the net win per facility in each county and municipality.

### **III. Effect of Proposed Changes:**

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described, followed immediately by an associated section detailing the Effect of Proposed Changes.

#### **The Seminole Gaming Compact**

##### ***Present Situation:***

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Seminole Tribe) executed a compact governing gambling (2010 Gaming Compact) at the Seminole Tribe's seven tribal facilities in Florida.<sup>31</sup> The 2010 Gaming Compact authorizes the Seminole Tribe to conduct

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<sup>28</sup> 25 U.S.C. s. 2710(a)(2).

<sup>29</sup> 25 U.S.C. s. 2710(d).

<sup>30</sup> 25 U.S.C. s. 2710(d).

<sup>31</sup> The Seminole Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big

Class III gaming.<sup>32</sup> It was ratified by the Legislature, with an effective date of July 6, 2010.<sup>33</sup> The Gaming Compact has a 20-year term.

The 2010 Gaming Compact provides that, in exchange for the its exclusive right to offer slot machine gaming outside of Miami-Dade and Broward counties and banked card games at five of its seven<sup>34</sup> casinos, the Seminole Tribe will make revenue sharing payments to the state. The state's share increases incrementally from 12 percent of the first \$2 billion in annual net win, to 25 percent of annual net win greater than \$4.5 billion. In Fiscal Year 2015-2016, the Seminole Tribe paid the state \$215.4 million.<sup>35</sup>

The 2010 Gaming Compact provides that any expanded gaming (beyond what is specifically acknowledged) relieves the Seminole Tribe of its obligations to make substantial revenue sharing payments.<sup>36</sup>

While the exclusive authorization to conduct banked card games expired July 31, 2015, and has not been renewed, according to the Legislature's Office of Economic and Demographic Research, the Seminole Tribe has continued to transmit monthly payments to the state that include estimated table games revenue.<sup>37</sup>

#### Federal Litigation Concerning the 2010 Gaming Compact

The State of Florida (State) and the Seminole Tribe are parties to litigation in federal court relating to the offering of table games by the Seminole Tribe after July 31, 2015. Separate

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Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida* (2010 Gaming Compact) was approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. The executed 2010 Gaming Compact is available at [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last visited Jan. 23, 2017). Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701, *et seq.*

<sup>32</sup> The Indian Gaming Regulatory Act of 1988 divides gaming into three classes: **Class I** means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations. **Class II** includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law. **Class III** includes all forms of gaming that are not Class I or Class II, such as house banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

<sup>33</sup> See Ch. 2010-29, Laws of Fla.

<sup>34</sup> See the executed 2010 Gaming Compact available at [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last visited Jan. 23, 2017). The 2010 Gaming Compact provides that banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the Gaming Compact, at page 4. In addition, in paragraph B of Part XVI, at page 49, the period of authorization to conduct table games is five years. The State of Florida (State) and the Seminole Tribe are parties to litigation ongoing in federal court concerning the offering of table games by the Seminole Tribe after July 31, 2015; the State has appealed the decision of the district (trial) court to the federal appellate court.

<sup>35</sup> See the Executive Summary and Conference Results from the Revenue Estimating Conference (December 7, 2016) available at <http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf> and <http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf> (last visited Jan. 23, 2017).

<sup>36</sup> See last sentence in paragraph B of Part XII of 2010 Gaming Compact at page 43.

<sup>37</sup> See *Seminole Compact: Revenue Overview (January 2017)*, page 6, available at <http://www.edr.state.fl.us/Content/presentations/gaming/GamingCompactRevenueOverview2017.pdf> (last visited Jan. 23, 2017).

lawsuits were filed by each party against the other, and the cases were consolidated. The Seminole Tribe alleged in its complaint that:

- It had authority to conduct banked card games for the 2010 Gaming Compact's full 20-year term; and
- The State breached its duty to negotiate with the Seminole Tribe in good faith.

The State alleged that the Seminole Tribe's:

- Conduct of banked card games violates the 2010 Gaming Compact; and
- Conducting the games violated the Indian Gaming Regulatory Act (IGRA) though this claim was later dropped by the State.

On November 9, 2016, U.S. District Court Judge Robert L. Hinkle issued an Opinion on the Merits,<sup>38</sup> which held:

- The Seminole Tribe may operate banked card games at all seven of its facilities (rather than the five facilities at which banked card games had been allowed since 2010) through the entire 20-year term of the 2010 Gaming Compact (i.e., until 2030) because the State permitted others to offer banked card games (i.e., pari-mutuel cardrooms);
- Sovereign immunity barred the court from considering whether the State had failed to negotiate in good faith as to: 1) authorizing roulette and craps; and 2) extending the Compact beyond its 20-year term; and
- A ruling on the issue of whether electronic forms of blackjack are also a banked card game is unnecessary, as the issue was too close to resolve when a ruling is not essential to the outcome of the case.

On January 19, 2017, the DBPR filed a notice of its appeal of Judge Hinkle's decision to the U.S. Court of Appeals for the Eleventh Circuit.<sup>39</sup>

#### Banked Card Games Issue

Under the 2010 Gaming Compact, the Seminole Tribe was authorized to conduct banked card games for five years. The period expired July 31, 2015. An exception in the 2010 Gaming Compact allows the Seminole Tribe to continue to conduct banked card games if "the State permits any other person [except another Indian tribe] to conduct such games."<sup>40</sup>

The court found:

- The 2010 Gaming Compact defines 'Covered Games' to include 'banking or banked card games, including baccarat, chemin de fer, and blackjack (21);'<sup>41</sup>

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<sup>38</sup> See *Seminole Tribe of Florida v. State of Florida*, 2016 U.S. Dist. LEXIS 155708 (N.D. Fla. Nov. 9, 2016), Case No.: 4:15-cv-516-RH/CAS, Document 103.

<sup>39</sup> See *Seminole Tribe of Florida v. State of Florida*, 2017 U.S. Dist. LEXIS \_\_\_\_\_ (N.D. Fla. Jan. 19, 2017), Case No.: 4:15-cv-516-RH/CAS, Document 120.

<sup>40</sup> See *Seminole Tribe of Florida v. State of Florida*, 2016 U.S. Dist. LEXIS 155708 (N.D. Fla. Nov. 9, 2016) Case No.: 4:15-cv-516-RH/CAS, Document 103, at p. 1.

<sup>41</sup> *Id.* at pp. 4-5.

- Under s. 849.086, F.S., licensed pari-mutuel facilities may operate cardrooms, but the statute explicitly forbids “banking” card games;<sup>42</sup>
- Baccarat, chemin de fer, and blackjack are all games in which there is no common pot, and the players do not compete against one another;
- A bank pays the winners and collects from the losers;
- In baccarat and blackjack, the bank is most often a dealer employed by the facility – in effect, the facility itself, commonly denominated the ‘house;’
- In chemin de fer, the bank is always one of the players; and
- Under the 2010 Gaming Compact and IGRA, banked games include both house banked games and player-banked games.<sup>43</sup>

Section 849.086(2)(b), F.S., defines a ‘banking game’ as a game in which:

- [1] the house is a participant in the game, taking on players, paying winners, and collecting from losers; or
- [2] the cardroom establishes a bank against which participants play.

The court found that:

- The first part of the definition in [1] describes a house banked game, one played in the manner that is typical for blackjack and baccarat;
- The second part of the definition in [2] describes a game banked by anyone else, including a player; that is, a game played in the manner of chemin de fer;<sup>44</sup>
- When the cardroom devises and runs the game and sets the rules, including the requirement that a player act as the bank, the cardroom ‘establishes’ a bank;
- Florida law does not state that a game is not ‘banked’ when the bank is a player rather than the house;
- There were no player-banked card games at pari-mutuel cardrooms when the parties entered into the 2010 Gaming Compact;
- The parties did not expect the Seminole Tribe to have to compete against such games; and
- The DBPR permitted cardrooms to conduct banked games as early as 2011, formally approved the practice by adopting a rule in 2014, continues to permit the games, and asserts the rule is currently valid.

Because of the finding that others had been allowed to conduct banked card games, the court found that the 2010 Gaming Compact allows the Seminole Tribe to conduct banked card games

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<sup>42</sup> *Id.* at p. 5, and *see* s. 849.086(12)(a), F.S. The court further held “[b]ecause of this statute, the Tribe’s authority under the Compact to conduct banked card games afforded the Tribe the right to conduct bank card games without competition from cardrooms. This was perhaps the most important benefit the Tribe obtained under the Compact. **The most important benefit to the State was more than a billion dollars.** Because IGRA prohibits a state from receiving a share of a tribe’s gaming revenue except to defray expenses or in exchange for a benefit conferred on the tribe, **the Tribe’s billion-dollars-plus payments to the State under the Compact were justified in large part as compensation for the exclusive right to conduct banked card games** – exclusive, that is, except for any competition from other tribes or other types of games.” *Id.* at pp. 5-6. (Emphasis added.)

<sup>43</sup> *See Seminole Tribe of Florida v. State of Florida*, Case No.: 4:15-cv-516-RH/CAS (U.S.D.C. N.D. Fla.), Document 103, filed Nov. 9, 2016, at p. 9.

<sup>44</sup> *Id.* at p. 10

by the Seminole Tribe at all seven of its gaming facilities, for the Compact's full 20-year term (through July 31, 2030).<sup>45</sup>

#### The Proposed 2015 Gaming Compact

In 2015, Governor Scott and the Seminole Tribe negotiated and executed a proposed gaming compact dated December 7, 2015 (the proposed 2015 Gaming Compact),<sup>46</sup> The proposed 2015 Gaming Compact is subject to ratification by the legislature.<sup>47</sup>

The proposed 2015 Gaming Compact:

- Authorizes the Seminole Tribe to conduct slot machine gaming at its seven gaming facilities;
- Permits the Seminole Tribe to offer live table games, such as craps and roulette, at its seven gaming facilities;
- Authorizes banked card games, including blackjack, chemin de fer, and baccarat, at its seven facilities;
- Authorizes exceptions to the Seminole Tribe's exclusivity to allow pari-mutuel cardrooms in Broward and Miami-Dade county to offer house banked blackjack under certain circumstances, to allow point-of-sale lottery machines, to allow one additional slot machine gaming facility (one each) in Palm Beach and Miami-Dade Counties at a pari-mutuel facility, and to allow designated player games of poker at cardrooms at facilities that are not authorized to offer slot machine gaming;
- Is for a term of 20 years, through June 30, 2036; and
- Includes a \$3 billion guarantee of revenue sharing payments to the State for the first seven-years (Guarantee Period), with specific payment amounts (Guaranteed Payments) during each year of the Guarantee Period. After the Guarantee Period, payments will be based on varying percentage rates that depend on the amount of the Seminole Tribe's net win (Revenue Share Payments).<sup>48</sup>

After ratification by the Legislature, the proposed 2015 Gaming Compact is subject to approval by the United States Department of the Interior, as required under the Indian Gaming Regulatory Act of 1988. Notice of the approval by the Department of the Interior is published in the Federal Register.<sup>49</sup>

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<sup>45</sup> *Id.* at p. 19, and see Judgment issued in *Seminole Tribe of Florida v. State of Florida*, Case No.: 4:15-cv-516-RH/CAS (U.S.D.C. N.D. Fla.), Document 104, filed Nov. 16, 2016, at p. 1.

<sup>46</sup> See the proposed 2015 Gaming Compact, Comparison Chart and transmittal letter from Governor Scott, available at [http://www.flsenate.gov/PublishedContent/Committees/2014-2016/RI/Links/2015\\_Gaming\\_Compact\\_Chart\\_and\\_Letter\\_from\\_Governor\\_Scott.pdf](http://www.flsenate.gov/PublishedContent/Committees/2014-2016/RI/Links/2015_Gaming_Compact_Chart_and_Letter_from_Governor_Scott.pdf) (last visited Jan. 23, 2017).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> 25 U.S.C. s. 2710(d)(8)

Compact Comparison

The following table sent by the Governor to the President of the Senate and the Speaker of the House of Representatives<sup>50</sup> compares the terms of the current 2010 Gaming Compact and the proposed 2015 Gaming Compact:<sup>51</sup>

	<b>PROPOSED 2015 COMPACT</b>	<b>2010 COMPACT</b>
Guarantee Money to State	7-year guarantee worth \$3 billion (Starts 7/1/2017) 1- \$325 million 2- \$350 million 3- \$375 million 4- \$425 million 5- \$475 million 6- \$500 million <u>7- \$550 million</u> Total: \$3 Billion guaranteed (true-up at end of year 7) → 7-year 3 billion dollar minimum guarantee is largest guarantee ever by an Indian Tribe. 2010 Compact revenue share percentages for year 1	5-year guarantee worth \$1 billion 1- \$150 million 2- \$150 million 3- \$233 million 4- \$233 million <u>5- \$234 million</u> Total: \$1 Billion guaranteed
Term	20 years; 7-year minimum guarantee. → Creates long-term revenue certainty and stability	20 years; 5-year minimum guarantee; Banked Card Games exclusivity expires after 5 years.
Jobs/Capital Investment	4,800 new direct and indirect jobs, 14,500 direct and indirect construction jobs, and \$1.8 billion in capital investment	N/A
Revenue Share to State	<u>Revenue Share to State from Tribe's Gaming Revenue</u> \$0-2B: 13% (1% increase) \$2-3B: 17.5% (2.5% increase) \$3-3.5B: 17.5% \$3.5-4B: 20% \$4-4.5B: 22.5% \$4.5B+: 25% → Revenue Share increased	<u>Revenue Share to State from Tribe's Gaming Revenue</u> \$0-2B: 12% \$2-3B: 15% \$3-3.5B: 17.5% \$3.5-4B: 20% \$4-4.5B: 22.5% \$4.5B+: 25%
Recession	Because of the significant Guarantee if there is a recession during the Guarantee Period the Tribe may pay based on percentages vs Guarantee plus 50% of difference between the percentage payment and Guarantee. The other 50% would be due the next year in addition to the payment owed during that year. (May only use once during guarantee period)	N/A
Games	1. Slot Machines	1. Slot Machines (all Facilities) 2. Banked Card Games (all Facilities)

<sup>50</sup> See note 46.

<sup>51</sup> The proposed 2015 Gaming Compact includes an Initial Payment Period which begins on the effective date of the Compact and continues through June 30, 2017. This period is referred to in the table as “year 1.”

	PROPOSED 2015 COMPACT	2010 COMPACT
	<ol style="list-style-type: none"> <li>2. Banked Card Games</li> <li>3. Raffles and Drawings</li> <li>4. Any new game authorized for any person except Banked Card Games authorized for another Indian Tribe</li> <li>5. Live Table Games</li> </ol>	<p>except Big Cypress &amp; Brighton)</p> <ol style="list-style-type: none"> <li>3. Raffles and Drawings</li> <li>4. Any new game authorized for any person except Banked Card Games authorized for another Indian Tribe</li> </ol>
Exclusivity Received for Payments	<p><u>Statewide</u>: Banked &amp; Banking Card Games; Live Table Games</p> <p><u>Outside Miami-Dade/Broward</u>: Slot Machines</p>	<p><u>Statewide</u>: Banked Card Games</p> <p><u>Outside Miami-Dade/Broward</u>: Slot Machines</p>
Facilities	<ol style="list-style-type: none"> <li>1. Seminole Indian Casino-Brighton</li> <li>2. Seminole Indian Casino-Coconut Creek</li> <li>3. Seminole Indian Casino-Hollywood</li> <li>4. Seminole Indian Casino-Immokalee</li> <li>5. Seminole Indian Casino-Big Cypress</li> <li>6. Seminole Hard Rock Hotel &amp; Casino-Hollywood</li> <li>7. Seminole Hard Rock Hotel &amp; Casino-Tampa</li> </ol>	<ol style="list-style-type: none"> <li>1. Seminole Indian Casino-Brighton</li> <li>2. Seminole Indian Casino-Coconut Creek</li> <li>3. Seminole Indian Casino-Hollywood</li> <li>4. Seminole Indian Casino-Immokalee</li> <li>5. Seminole Indian Casino-Big Cypress</li> <li>6. Seminole Hard Rock Hotel &amp; Casino-Hollywood</li> <li>7. Seminole Hard Rock Hotel &amp; Casino-Tampa</li> </ol>
Change in Facilities	<ul style="list-style-type: none"> <li>• Tribe may expand or replace existing Facilities;</li> <li>• Express limits on additional gaming positions at Tribe's Facilities on its Reservations → Hard caps on gaming in Florida</li> </ul>	<ul style="list-style-type: none"> <li>• Tribe may expand or replace existing Facilities;</li> <li>• No limit on additional gaming positions at Tribe's Facilities on its Reservations</li> </ul>
State Oversight	<p>State Compliance Agency allowed 16 hours of inspection over course of two days per facility, per month, capped at 1,600 hours annually. Tribe pays annual oversight payment of \$400,000, increased for inflation.</p> <p>→ Increased funding and hours for oversight</p>	<p>State Compliance Agency allowed 10 hours of inspection over course of two days per facility, per month, capped at 1,200 hours annually. Tribe pays annual oversight payment of \$250,000, increased for inflation.</p>
Exclusivity (Banked & Banking Card Games authorized at existing Miami-Dade/Broward pari-mutuels)	<p>If Banked &amp; Banking Card Games authorized:</p> <ul style="list-style-type: none"> <li>• Revenue Share Payments Cease until gaming activities are no longer authorized; except</li> <li>• Legislature can exercise its power to add blackjack at the Pari-mutuels in Miami-Dade and Broward subject to some limitations without an impact on the compact.</li> </ul> <p>If the market shifts to slot machines with banked card game themes instead of traditional tables the Tribe has the option to waive its exclusivity in Broward and Miami-Dade Counties after fiscal year 2024 if the Tribe's Net Win from all table games in Broward County is less than its Net Win from Banked Card Games in Broward County during this fiscal year. If the Tribe waives its exclusivity the Legislature could exercise its power and limitlessly expand gaming in Broward and Miami-Dade Counties with no effect on the Compact. Revenue Share Payments calculated by excluding Net Win from</p>	<p>If Banked Card Games offered; AND Tribe's annual Net Win from Broward Facilities for next 12 mos. is less than Net Win from preceding 12 mos.; THEN</p> <ul style="list-style-type: none"> <li>• Guaranteed Minimum Payments cease; and</li> <li>• Revenue Share Payments calculated by reducing Net Win from Broward Facilities by 50% of the Net Win reduction.</li> <li>• If Net Win increases later above point of offering Banked Card Games, then Revenue Share Payments calculated without any reduction.</li> </ul>

	<b>PROPOSED 2015 COMPACT</b>	<b>2010 COMPACT</b>
	Broward Facilities.	
Exclusivity Violation (Class III Gaming authorization at locations in Miami-Dade/Broward other than existing pari-mutuels)	<p>If Class III Gaming at non-PMW locations in Miami-Dade/Broward authorized THEN:</p> <ul style="list-style-type: none"> <li>• Guaranteed Minimum Payments cease; and</li> <li>• All Revenue Share Payments cease; except</li> <li>• Legislature may add 1 location in Miami-Dade with 750 Slot machines and 750 Instant Racing Terminals at a \$5 bet limit over three year period with no effect on the Compact.</li> </ul>	<p>If Class III Gaming at non-PMW locations in Miami-Dade/Broward offered THEN:</p> <ul style="list-style-type: none"> <li>• Guaranteed Minimum Payments cease; and</li> <li>• Revenue Share Payments calculated by excluding Net Win from Broward Facilities.</li> </ul>
Violation Exclusivity (Class III Gaming authorized outside of Miami-Dade/Broward)	<p>If Class III Gaming authorized outside of Miami-Dade/Broward THEN:</p> <ul style="list-style-type: none"> <li>• All exclusivity payments under the Compact cease; except</li> <li>• Legislature may add 1 location in Palm Beach with 750 Slot machines and 750 Instant Racing Terminals at a \$5 bet limit over a three year period with no effect on the Compact.</li> </ul>	<p>If Class III Gaming offered outside of Miami-Dade/Broward THEN:</p> <ul style="list-style-type: none"> <li>• All exclusivity payments under the Compact cease.</li> </ul>
Pari-Mutuel Policy Choices for Legislature	<p>Explicitly states that the following do not violate exclusivity:</p> <ul style="list-style-type: none"> <li>• Lower taxes for pari-mutuels as low as 25% on Slot Machine Revenue</li> <li>• Decoupling for pari-mutuels</li> <li>• Additional Slot Licenses in Miami Dade and Palm Beach Counties.</li> <li>• Blackjack for Pari-mutuels in Broward and Miami Dade with some limitations</li> <li>• Expansion of hours</li> <li>• Placement of ATMs on slot floor</li> <li>• Non-slot operating Pari-mutuels offering Designated Player Games with some restrictions → Maintains Legislature's prerogatives on gaming in the State of Florida</li> </ul>	
Internet Gaming	<p>Tribe recognizes that internet gaming is illegal in Florida. If State authorizes internet gaming, THEN→</p> <ul style="list-style-type: none"> <li>• Guaranteed Minimum Payments cease; but</li> <li>• Revenue Share Payments continue.</li> </ul> <p>If Tribe offers internet gaming to players in Florida then Guaranteed Minimum Payments continue. Affirmative recognition by Tribe that internet gaming is illegal in Florida.</p>	<p>If State authorizes internet gaming and Tribe's Net Win from all Facilities drops more than 5% below Net Win from previous year THEN →</p> <ul style="list-style-type: none"> <li>• Guaranteed Minimum Payments cease; but</li> <li>• Revenue Share Payments continue</li> </ul> <p>If Tribe offers internet gaming then Guaranteed Minimum Payments continue.</p>
Florida Lottery	<p>Maintains consumer and employee protections.</p> <p>→ New point-of sale system for Florida Lottery for sales at gas pumps</p>	
Smoking	Tribe will make efforts to promote smoke free	Tribe will make efforts to promote smoke

	PROPOSED 2015 COMPACT	2010 COMPACT
	environment at Facilities	free environment at Facilities
Compulsive Gambling	Tribe will make annual \$1,750,000 donation to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list.  → Maintains support for compulsive gaming resources regardless of Tribe’s decisions to open or close facilities.	Tribe will make annual \$250,000 donation per Facility to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list.
Alcohol Abuse	Tribe will maintain proactive approaches to prevent improper alcohol sales, drunk driving, and underage drinking.	Tribe will maintain proactive approaches to prevent improper alcohol sales, drunk driving, and underage drinking.
Compact with another federally-recognized Indian Tribe in Florida	Florida may enter into a Compact with another federally-recognized Tribe that has land in trust in the State as of March 31, 2014.	Florida may enter into a Compact with another federally-recognized Tribe that has land in trust in the State as of February 1, 2010.

***Effect of Proposed Changes:***

Effective upon becoming a law, **Section 4** amends s. 285.710, F.S., and:

- Ratifies the Gaming Compact between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida executed by the Seminole Tribe and the Governor on December 7, 2015, contingent upon the Compact being amended to:
  - Become effective as a tribal compact after approval by the U.S. Department of the Interior;
  - Require that the current litigation between the State and the Seminole Tribe be dismissed with prejudice; and
  - Incorporate amendments to the exceptions from exclusivity related to:
    - Fantasy contests, slot machines, blackjack, designated player games and point-of sale terminals,<sup>52</sup> and all activities authorized and conducted pursuant to Florida law, as amended by the bill; and
    - Activities claimed to be violations of the 2010 Gaming Compact in the litigation with the Seminole Tribe.

Incorporation of these amendments must not impact or change the payments required to the State under the compact executed December 7, 2015, for the Guaranteed Payment Period (which begins July 1, 2017), the Regular Payment Period (the period which begins July 1, 2024), or the Guaranteed Minimum Compact Term Payment (the minimum \$3 billion in payments guaranteed in the first seven years of the compact).
- Provides that the ratified and approved Gaming Compact, if amended as required by the bill, supersedes the 2010 Gaming Compact.
- Requires the Secretary of the Department of Business and Professional Regulation to notify the Governor, President of the Senate, Speaker of the House of Representatives, and the Division of Law Revision and Information of the date of publication in the Federal Register of the approval (or deemed approval) of the Gaming Compact, as amended.

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<sup>52</sup> Discussion of the amendments to the exceptions from exclusivity required by the bill are described in the Effect of Proposed Changes section for the following topics: Point-of-sale terminals, fantasy contests, slot machines, blackjack, and designated player games.

**Section 5** amends s. 285.710(13), F.S., to remove the provision that limits the Seminole Tribe to conducting banked or banking card games only at its Broward, Collier, and Hillsborough County facilities and to permit the Seminole Tribe to conduct the following games at all of its facilities:

- Dice games, such as craps and sic-bo; and
- Wheel games, such as roulette and big six.

**Section 6** corrects an incorrect, federal statutory reference.

## The Florida Lottery

### *Present Situation:*

Section 15 of Article X of the State Constitution (1968) allows lotteries to be operated by the state. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The Department of the Lottery (department) shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens”<sup>53</sup> for the benefit of public education.<sup>54</sup> The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.<sup>55</sup> Retailers receive commissions of five percent of the ticket price, one percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.<sup>56</sup> Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.<sup>57</sup>

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.<sup>58</sup> Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. Contracting with a retailer with a felony criminal history is prohibited,<sup>59</sup> and the authority to act as a retailer may not be transferred.<sup>60</sup>

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<sup>53</sup> See s. 24.104, F.S.

<sup>54</sup> See s. 24.121(2), F.S.

<sup>55</sup> See s. 24.105(17), F.S.

<sup>56</sup> See *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2014), (hereinafter referred to as *OPPAGA Report 14-06*) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> page 2 (last visited Jan. 23, 2017).

<sup>57</sup> See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature (Jan. 2015), (hereinafter referred to as *OPPAGA Report 15-03*) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf>, page 1, (footnote 3) (last visited Jan. 23, 2017).

<sup>58</sup> See s. 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

<sup>59</sup> See s. 24.112(3)(c), F.S.

<sup>60</sup> See s. 24.112(4), F.S.

Retailers may not extend credit or lend money to a person to purchase a lottery ticket. The use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods) is allowed, if the lottery ticket purchase is part of a purchase transaction for other goods and services that cost \$20 or more.<sup>61</sup>

The department may establish by rule a system to verify and pay winning lottery tickets:<sup>62</sup>

- Any lottery retailer, as well as any department office, may redeem a winning ticket valued at less than \$600.<sup>63</sup> Payments less than \$50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.
- Only a department office may redeem a winning ticket valued at \$600 or more.<sup>64</sup> Winning tickets are paid at the claimant's option in a combination of cash, check, or lottery tickets (with a limitation of \$200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.<sup>65</sup> Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the drawing or the end of the lottery game in which the prize was won.

The department may adopt rules governing the types of lottery games to be conducted,<sup>66</sup> including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”<sup>67</sup>

In 2013, the department introduced full service vending machines (FSVMs) that allow both terminal and scratch-off tickets to be sold in retail stores across the state. The department's Financial Audit for Fiscal Years Ended June 30, 2015 and 2014 indicates that total FSVMs sales in Fiscal Year 2015 were \$257 million.<sup>68</sup>

<sup>61</sup> See s. 24.118(1), F.S.

<sup>62</sup> See s. 24.115, F.S., and Fla. Admin. Code R. 53ER15-31, (2015).

<sup>63</sup> The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

<sup>64</sup> Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

<sup>65</sup> See s. 24.115(1)(f), F.S.

<sup>66</sup> See s. 24.105(9)(a), F.S.

<sup>67</sup> Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, Laws of Fla., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

<sup>68</sup> See *Financial Audit of the Department of the Lottery, for the Fiscal Year Ended June 30, 2015, and 2014*, Report No. 2016-080, State of Florida Auditor General (January 2016), at page 8 (2015 Financial Audit) available at [http://www.myflorida.com/audgen/pages/pdf\\_files/2016-080.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2016-080.pdf) (last visited Jan. 19, 2017).

### The 2010 Gaming Compact and the Lottery

The 2010 Gaming Compact states that the exclusivity authorization granted to the Seminole Tribe is not impacted by the operation by the Florida Lottery of the types of lottery games authorized by Florida law on February 1, 2010; however, such authorized games do not include “(i) any player-activated or operated machine or device other than a lottery vending machine, or (ii) any banked or banking card or table game.”<sup>69</sup>

The 2010 Gaming Compact further states that:

- No more than 10 lottery vending machines may be installed at any facility or location; and
- No lottery vending machine that dispenses electronic instant tickets may be installed at any licensed pari-mutuel location.<sup>70</sup>

Under the 2010 Gaming Compact, three types of “lottery vending machines” may not allow a player to redeem a ticket, including machines that dispense:

- Pre-printed paper instant lottery tickets (e.g., scratch-off tickets);
- Pre-determined electronic instant lottery tickets and reveal the outcome; or
- Paper lottery tickets with numbers selected by the player or randomly by the machine, with the winning number selected in a drawing by the department.<sup>71</sup>

The 2010 Gaming Compact also includes language about not using a lottery vending machine to redeem winning tickets, which is consistent with similar language in s. 24.112(15)(c), F.S.<sup>72</sup>

### Proposed 2015 Gaming Compact and the Lottery

The proposed 2015 Gaming Compact provides that the exclusivity granted to the Seminole Tribe is not impacted by the operation by the Florida Lottery of the types of lottery games authorized by Florida law on July 1, 2015; however such authorized games do not include (i) any player-activated or operated machine or device other than a “lottery vending machine,” or (ii) any banked or banking card or table game.<sup>73</sup> No more than ten lottery vending machines may be installed at any facility or location; and no lottery vending machine that dispenses electronic instant tickets may be installed at any licensed pari-mutuel location.<sup>74</sup>

Pursuant to the terms of the proposed 2015 Gaming Compact, three types of lottery vending machines may not allow a player to redeem a ticket. These are machines that dispense:

- Pre-printed paper instant lottery tickets (e.g., scratch-off tickets);
- Pre-determined electronic instant lottery tickets and reveal the outcome; or
- Paper lottery tickets with numbers selected by the player or randomly by the machine, with the winning number selected in a drawing by the department.<sup>75</sup>

<sup>69</sup> See subparagraph 8 of paragraph B of Part XII of the 2010 Gaming Compact at page 42.

<sup>70</sup> *Id.*

<sup>71</sup> See paragraph R of Part III of the 2010 Gaming Compact at page 10.

<sup>72</sup> Section 24.112(15)(c), F.S., provides that a vending machine that dispenses a lottery ticket “may dispense change to a purchaser but may not be used to redeem any type of winning lottery ticket.”

<sup>73</sup> See subparagraph 8 of paragraph C of Part XII of page 49.

<sup>74</sup> *Id.* at pp. 49-50.

<sup>75</sup> See paragraph W of Part III of the proposed 2015 Gaming Compact at page 10.

The proposed 2015 Gaming Compact also includes language about not using a lottery vending machine to redeem winning tickets, which is consistent with similar language in s. 24.112(15)(c), F.S.<sup>76</sup>

In addition, the definition of “Lottery Vending Machine” is amended in the proposed 2015 Gaming Compact to include a point-of-sale system to sell tickets for draw lottery games at gasoline pumps at retail fuel stations (point-of-sale terminals), provided that the system must:

- Dispense a paper lottery receipt after the purchaser uses a credit card or debit card to purchase the ticket;
- Process transactions through a platform that is certified or otherwise approved by the Florida Lottery;
- Not directly dispense money or permit payment of winnings at the point-of-sale terminal; and
- Not include or make use of video reels or mechanical reels or other slot machine or casino game themes or titles.<sup>77</sup>

***Effect of Proposed Changes:***

**Section 1** amends s. 24.103, F.S., to define “point-of sale terminal” as another type of vending machine for the sale of lottery tickets at retail locations. Payments for lottery tickets at point-of-sale terminals may be made by credit card, debit card, or other similar charge cards.

**Section 2** amends s. 24.105, F.S., to authorize the department to allow the purchase of lottery tickets at point-of-sale terminals by persons at least 18 years old.

A point-of-sale terminal could have multiple uses (e.g., purchase of lottery tickets incidental to the purchase of other retail goods or services), while current lottery vending machines dispense lottery tickets only. Rules on point-of-sale devices must: a) limit the dollar amount of lottery tickets purchased; b) create a process to enable a customer to restrict or prevent his or her own access to lottery tickets or games; and c) ensure that the program does not breach the exclusivity provisions of any Indian gaming compact.

**Section 3** amends s. 24.112, F.S., to provide that point-of-sale terminals selling lottery tickets, consistent with the proposed 2015 Gaming Compact, must:

- Dispense a paper lottery ticket with numbers selected by the player or randomly by the machine;
- Not reveal the winning numbers;
- Not use of mechanical reels or video depictions of slot machine or casino game themes or titles; and
- Not redeem winning tickets.

Point of sale devices must use a valid driver license or other process to verify that the purchaser is at least 18 years of age.

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<sup>76</sup> Section 24.112(15)(c), F.S., provides that a vending machine that dispenses a lottery ticket “may dispense change to a purchaser but may not be used to redeem any type of winning lottery ticket.”

<sup>77</sup> See subparagraph 4 of paragraph W of Part III of the proposed 2015 Gaming Compact at pp. 10 - 11.

## Amusement Games and Fantasy Contests

### *Present Situation:*

#### Family Amusement Games Act

In 2015, the Legislature enacted the Family Amusement Games Act, to authorize skill-based amusement games and machines at specified locations;<sup>78</sup> prevent expansion of casino-style gambling; and clarify the law to ensure that the regulatory provisions for such devices are not subject to abuse or interpreted to create an exception to the state's general prohibitions against gambling.<sup>79</sup>

Section 546.10, F.S., specifies types of amusement games, methods for activating amusement games and for the award of coupons, points, or prizes; limits upon prize values; and locations authorized for the operation of amusement games. In addition to the use of a coin, an amusement game may be activated by currency, card (not a credit or debit card), coupon, point, slug, token, or similar device, and is played by application of skill.

Amusement games are classified as Types A, B, or C:

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

The maximum redemption value of coupons or points a player may receive for a single play of a Type B amusement game is \$5.25, with a maximum value of 100 times that amount (\$525) for an item of merchandise that may be obtained onsite using accumulated coupons or points won by a player. The maximum wholesale cost of merchandise dispensed directly to a player by a Type C amusement game is \$52.50. Maximum values are adjusted annually, based on changes in the consumer price index, beginning January 1, 2018.

The authorized locations for amusement games to be operated are restricted. Type A amusement games may be operated at any location.

Type B amusement games may be operated at:

- Certain timeshare facilities<sup>80</sup> under the control of a timeshare plan;
- A public lodging establishment or public food service establishment licensed by the Division of Hotels and Restaurants of the DBPR pursuant to ch. 509, F.S.;

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<sup>78</sup> See s. 546.10, F.S.

<sup>79</sup> See s. 546.10(2), F.S.

<sup>80</sup> "Facility" is defined in s. 72105(17), F.S., as "any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan."

- The following premises, if the owner or operator of the premises has a current license issued by the DBPR:<sup>81</sup>
  - An arcade amusement center;
  - A bowling center, as defined in s. 849.141, F.S.; or
  - A truck stop.

Type C amusement games may be operated at:

- Certain timeshare facilities<sup>82</sup> under the control of a timeshare plan;
- An arcade amusement center;
- A bowling center, as defined in s. 849.141, F.S.;
- The premises of a retailer, as defined in s. 212.02, F.S.;
- A public lodging establishment or public food service establishment licensed by the Division of Hotels and Restaurants of the DBPR pursuant to ch. 509, F.S.;
- A truck stop; or
- The premises of a veterans' service organization granted a federal charter under Title 36, U.S.C., or a division, department, post, or chapter of such organization, for which an alcoholic beverage license has been issued.

The Family Amusement Games Act limits who may bring actions to enjoin the operation of an amusement game for an alleged violation of s. 546.10, F.S., or chapter 849, F.S., to the Florida Attorney General, state attorneys, certain sovereign tribes, the Florida Department of Agriculture and Consumer Services, the DBPR, and certain substantially affected persons. Sanctions for violation of s. 546.10, F.S., are provided that are in addition to other existing civil, administrative, and criminal sanctions.

In addition to other civil, administrative, and criminal sanctions, s. 546.10, F.S., provides penalties for violations that mirror the penalties for violations of ch. 849, F.S., on gambling, as follows:

- A conviction on a first offense is a second degree misdemeanor (punishable pursuant to ss. 775.082 or 775.083, F.S., by not more than 60 days in jail and up to a \$500 fine);
- A second conviction is a first degree misdemeanor (punishable pursuant to ss. 775.082 or 775.083, F.S., by not more than one year in jail and up to a \$1,000 fine);
- After two convictions, the third conviction is a third degree felony (punishable pursuant to ss. 775.082 or 775.083, F.S., by not more than five years in jail and up to a \$5,000 fine); an enhancement in sentencing is possible (up to 10 years in jail), but only if the court finds the violator is an habitual felony offender after a second felony conviction, and the court finds it is necessary to do so for the protection of the public.

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<sup>81</sup> Qualifying licenses are those issued pursuant to ch. 509, F.S., (Lodging and Food Service Establishments), ch. 61, F.S., (Beverage Law: Administration), ch. 562, F.S., (Beverage Law: Enforcement), ch. 563, F.S., (Beer), ch. 564, F.S., (Wine), ch. 565, F.S., (Liquor), ch. 567, F.S., (Local Option Elections), or ch. 568, F.S., (Intoxicating Liquors in Counties Where Prohibited).

<sup>82</sup> "Facility" is defined in s. 72105(17), F.S., as "any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan."

### Fantasy Sports Gaming

The operation of fantasy sports activities in Florida has recently received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the status of fantasy gaming activities in their jurisdictions,<sup>83</sup> as there are millions of participants.<sup>84</sup>

A fantasy game typically has multiple players who select and manage imaginary teams whose players are actual professional sports players. Fantasy game players compete against one another in various formats, including weekly leagues among friends and colleagues, season-long leagues, and on-line contests (daily and weekly) entered by using the Internet through personal computers or mobile telephones and other communications devices. There are various financial arrangements among players and game operators.

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,<sup>85</sup> provides that a person who wagers any “thing of value” upon the result of a contest of skill or endurance of human or beast, or who receives any money wagered, or who knowingly becomes the custodian of money or other thing of value that is wagered, is guilty of a second degree misdemeanor.<sup>86</sup>

In 2013, Spectrum Gaming Group, as part of a Gambling Impact Study prepared for the Florida Legislature, analyzed data related to participation by adults in selected activities.<sup>87</sup> Based on 2012 U.S. Census data, participation in fantasy sports leagues in the prior 12 months (nearly nine million adults), and those who participate two or more times weekly (nearly three million adults), was greater than attendance at horse races in the prior 12 months (6,654,000 adults) with 159,000 attending two or more times weekly.<sup>88</sup>

### The Professional and Amateur Sports Protection Act of 1992 (PASPA)

In 1992, the U.S. Congress enacted the Professional and Amateur Sports Protection Act, which provides that it is unlawful for a governmental entity<sup>89</sup> or any person to sponsor, operate, advertise, or promote:

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<sup>83</sup> See Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, *Journal of Sports & Entertainment Law*, Harvard Law School Vol. 3 (Jan. 2012) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1907272](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272) (last visited Jan. 23, 2017), and Jonathan Griffin, *The Legality of Fantasy Sports*, National Conference of State Legislatures Legisbrief (Sep. 2015) (on file with the Committee on Regulated Industries).

<sup>84</sup> According to the Fantasy Sports Trade Association, which states it represents the interests of 57 million fantasy sports players, fantasy sports leagues were originally referred to as “roisserie leagues” with the development of Rotisserie League Baseball in 1980, by magazine writer/editor Daniel Okrent, who met and played it with friends at a New York City restaurant La Rotisserie Francaise. See <http://fsta.org/about/history-of-fsta/> (last visited Jan. 23, 2017).

<sup>85</sup> See Fla. AGO 91-03 (Jan. 8, 1991) available at <http://myfloridalegal.com/. . . 91-03> (last visited Jan. 23, 2017))

<sup>86</sup> A conviction for a second degree misdemeanor may subject the violator to a definite term of imprisonment not exceeding 60 days, and a fine not exceeding \$500. See ss. 775.082 and 775.083, F.S.

<sup>87</sup> See Spectrum Gaming Group Gambling Impact Study (Gambling Impact Study) available at [http://www.leg.state.fl.us/gamingstudy/docs/FGIS\\_Spectrum\\_28Oct2013.pdf](http://www.leg.state.fl.us/gamingstudy/docs/FGIS_Spectrum_28Oct2013.pdf) (Oct. 28, 2013) (last visited Jan. 23, 2017).

<sup>88</sup> *Id.*, Figure 22 at p. 67.

<sup>89</sup> Governmental entities are also prohibited from licensing such activities or authorizing them by law or compact. See <https://www.gpo.gov/fdsys/pkg/USCODE-2008-title28/html/USCODE-2008-title28-partVI-chap178-sec3702.htm> (last visited Jan. 23, 2017).

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

The prohibited activity is generally known as “sports betting.” However, PASPA does not apply to pari-mutuel animal racing or jai alai games. It does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering conducted by a governmental entity between January 1, 1976, and August 31, 1990.

The prohibition against sporting betting also does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering lawfully conducted, where such activity was authorized by law on October 2, 1991, and was conducted in a state or other governmental entity at any time between September 1, 1989, and October 2, 1991.

#### Opinion of Florida Attorney General relating to Fantasy Sports League

In 1991, Florida Attorney General Robert A. Butterworth issued a formal opinion<sup>90</sup> evaluating the legality of groups of football fans (contestants) paying for the right to manage a team under certain specified conditions. The Attorney General stated:

You ask whether the formation of a fantasy football league by a group of football fans in which contestants pay \$100 for the right to "manage" one of eight teams violates the state's gambling laws. You state that these teams are created by contestants by "drafting" players from all current eligible National Football League (NFL) members. Thus, these fantasy teams consist of members of various NFL teams.

According to your letter, each week the performance statistics of the players in actual NFL games are evaluated and combined with the statistics of the other players on the fantasy team to determine the winner of the fantasy game and their ranking or standing in the fantasy league. No games are actually played by the fantasy teams; however, all results depend upon performance in actual NFL games. Following completion of the season, the proceeds are distributed according to the performance of the fantasy team.

Florida case law addresses the distinction between a "purse, prize or premium" and a "stake, bet or wager."<sup>91</sup> As each contestant paid \$100 to participate by managing one of eight teams, and the

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<sup>90</sup> See Fla. AGO 91-03 (Jan. 8, 1991), available at <http://myfloridalegal.com/. . . 91-03> (last visited Jan. 23, 2017).

<sup>91</sup> The distinction was reaffirmed in *Creash v. State*, 179 So. 149, 152 (Fla. 1938) as follows: "In gamblers' lingo, 'stake, bet or wager' are synonymous and refer to the money or other thing of value put up by the parties thereto with the understanding that one or the other gets the whole for nothing but on the turn of a card, the result of a race, or some trick of magic. A 'purse, prize, or premium' has a broader significance. If offered by one (who in no way competes for it) to the successful contestant in a [feat] of mental or physical skill, it is not generally condemned as gambling, while if contested for in a game of. . . . chance, it is so considered. . . . It is also banned as gambling if created . . . by . . . contributing to a fund from which the 'purse, prize, or premium' contested for is paid, and wherein the winner gains, and the other contestants lose all."

resulting \$800 in proceeds were used for prizes, Attorney General Butterworth determined the proceeds qualified as a "stake, bet or wager" on the result of a contest of skill. Specifically, the prizes were paid based upon the performance of the individual professional football players in actual games. Based on the language in s. 849.14, F.S., above, the operation of fantasy sports leagues as described would violate Florida law, in the opinion of Attorney General Butterworth.

***Effect of Proposed Changes:***

**Section 7** creates s. 546.16, F.S., the "Fantasy Contest Amusement Act" (Act) consisting of ss. 546.11 - 546.19, F.S.

**Section 8** creates s. 546.12, F.S., and provides legislative intent that fantasy contests operated pursuant to the requirements in the act (qualified fantasy contests) involve the skill of the contest participants.

**Section 9** creates s. 546.13, F.S., and provides definitions.

"Contest operator" means a person or entity that offers fantasy contests for a cash prize to members of the public.

A "contest participant" is a person who pays an entry fee for the ability to participate in a fantasy contest offered by a contest operator.

A "fantasy contest" is a fantasy or simulation sports game or contest offered by a contest operator or a noncommercial contest operator in which a contest participant manages a fantasy or simulation sports team composed of athletes from a professional sports organization in which:

- The value of all prizes and awards must be established and disclosed in advance of the fantasy game;
- The value of all prizes and awards is not determined by the number of participants or the amount of entry fees;
- All winning outcomes reflect the relative knowledge and skill of game participants and are determined predominantly by accumulated statistical results of the performance of the athletes who perform in multiple sporting or other events; and
- A winning outcome is not based on the score, point spread, or performance of a single team or any combination of teams, on any single performance of an athlete or player in a single sporting or other event, on a live pari-mutuel event, or on the performance of athletes participating in an amateur sporting event.

A "noncommercial contest operator" means a person who organizes and conducts a fantasy contest in which contest participants are charged entry fees for the right to participate; entry fees are collected, maintained, and distributed by the same person; and all entry fees are returned to the contest participants in the form of prizes.

**Section 10** creates s. 546.14, F.S., and creates the Office of Contest Amusements in the DBPR.

**Section 11** creates s. 546.15, F.S., and requires licensure of all operators of qualified fantasy or simulation sports games or contests which offer fantasy contests for play by participants in the state, through the Office of Contest Amusements (Office).

The initial license application fee is \$500,000, and the annual license renewal fee is \$100,000. However, those fees may not exceed 10 percent of the difference between the total entry fees collected (related to the operation of fantasy contests in Florida) and the amounts paid to participants. The bill provides methods to establish appropriate fees payable by a contest operator for both initial licensure and renewal of a license. (Under this fee schedule, a noncommercial contest operator will not pay a fee.)

The Office's duties include administering and enforcing the act and any rules adopted to enforce the Act. A completed licensee application must be granted or denied within 120 days after receipt or is otherwise deemed approved. Requirements for license applications are specified.

A person or entity is not eligible for licensure as a contest operator or licensure renewal if he or she or an officer or director of the entity is determined by the Office, after investigation, not to be of good moral character, or if found to have been convicted of a felony.

**Sections 12 and 13** create s. 546.16 and 546.17, F.S., and require game operators to implement procedures intended to protect consumers; prohibit game operators from specified activities; require contest operators offering fantasy contests annually to contract with a third party to perform an independent audit and submit the audit results to the Office; and maintain specified books and records. These requirements apply to contest operators and noncommercial contest operators.

**Section 14** creates s. 546.1018, F.S., and authorizes penalties for violation of the act. A contest operator, or an employee or agent thereof, who violates the act is subject to a civil penalty not to exceed \$5,000 for each violation, not to exceed \$100,000 in the aggregate, which shall accrue to the state. The penalty provisions do not apply to contest operators who apply for a license within 90 days after the effective date and receive a license within 240 days after the effective date for violations which occurred before the license is issued. Fantasy contests conducted by a contest operator or noncommercial contest operator in accordance with the act are not subject to ss. 849.01, 849.08, 849.09, 849.11, 849.14, or 849.25, F.S., relating to gambling, lotteries, games of chance, contests of skill, or bookmaking.

**Section 15** directs the Division of Law Revision and Information to replace references to the effective date of **Section 14** in that section with the actual date the section becomes effective.

## Regulation of Pari-Mutuel Wagering

### *Present Situation:*

#### Background

Pari-mutuel wagering is regulated by the Division of Pari-mutuel Wagering in the DBPR. 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 10 license suspensions, and \$107,655 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2015-2016.<sup>92</sup>

In January 2017, there were 39 pari-mutuel permitholders with operating licenses<sup>93</sup> in Florida, operating at 12 greyhound tracks, six jai alai frontons, five quarter horse tracks, three thoroughbred tracks, and one harness track.<sup>94</sup> One jai alai permitholder voluntarily relinquished its permit in 2016.<sup>95</sup>

Of the 19 greyhound racing permitholders with operating licenses during Fiscal Year 2016-2017, six permitholders conducted races at leased facilities.<sup>96</sup> Five pari-mutuel facilities have two permits operating at those locations.<sup>97</sup> One greyhound racing permitholder's operating license was suspended late in 2014.<sup>98</sup>

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<sup>92</sup> See the 85th Annual Report for Fiscal Year 2015-2016 issued by the division *available at* <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf> (last visited Feb. 7, 2017).at page 5 (equivalent to page 3 of the printed Annual Report).

<sup>93</sup> See Pari-Mutuel Wagering Permitholders With 2016-2017 Operating Licenses map dated January 25, 2017, *available at* <http://www.myfloridalicense.com/dbpr/pmw/documents/MAP-Permitholders--WITH--2016-2017-OperatingLicenses--2017-01-25.pdf> (last visited Feb. 7, 2017).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at page 8 (equivalent to page 6 of the printed Annual Report), and *see* the Stipulation and Consent Order, *available at* <http://www.floridagamingwatch.com/wp-content/uploads/Hamilton-Jai-Alai-Consent-Order.pdf> (last visited Jan. 23, 2017).

<sup>96</sup> According to information in the 2015-2016 Annual Report from the Division of Pari-Mutuel Wagering, *available at* <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf>, at pp. 29 - 33 of the online Annual Report (equivalent to pp. 25 - 29 the printed Annual Report),(last visited Feb. 7, 2017), both Jacksonville Kennel Club and Bayard Raceways (St. Johns Greyhound Park) conduct races at Orange Park Kennel Club; H&T Gaming conducts racing at Mardi Gras; Palm Beach Greyhound Racing conducts racing at Palm Beach Kennel Club; Tampa Greyhound conducts races at St. Petersburg Kennel Club (Derby Lane); West Volusia Racing conducts races at Daytona Beach Kennel Club; Dania Summer Ja Alai conducts games at Dania Jai Alai; Tropical Park conducts races at Gulfstream Park.

<sup>97</sup> The division indicated that H & T Gaming @ Mardi Gras and Mardi Gras operate at a facility in Hallandale Beach, Daytona Beach Kennel Club and West Volusia Racing-Daytona operate at a facility in Daytona Beach, Palm Beach Kennel Club and License Acquisitions-Palm Beach operate at a facility in West Palm Beach, Miami Jai Alai and Summer Jai Alai operate at a facility in Miami, and Sanford-Orlando Kennel Club and Penn Sanford at SOKC operate at a facility in Longwood.

<sup>98</sup> See <http://www.myfloridalicense.com/dbpr/pmw/documents/CurrentPermitholdersList.pdf> (last visited Jan. 23, 2017) for a list of current permitholders and their licensing status. For information about permitholders for Fiscal Years 2013-2014, 2014-2015, and 2015-2016, See <http://www.myfloridalicense.com/dbpr/pmw/track.html> (last visited Jan. 23, 2017).

There are 12 permitholders that do not have operating licenses for Fiscal Year 2016-2017: two greyhound,<sup>99</sup> three jai alai,<sup>100</sup> one limited thoroughbred,<sup>101</sup> and six quarter horse.<sup>102</sup>

#### 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
- Jai alai games within 50 miles of an existing pari-mutuel facility.

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.<sup>103</sup>

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.<sup>104</sup>

#### The Definition of a “Full Schedule of Live Racing or Games”

Current law provides complex requirements for what constitutes of a “full schedule of live racing or games:”

- For a greyhound or jai alai permitholder, at least 100 live evening or matinee performances during the preceding year;

<sup>99</sup> Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).

<sup>100</sup> Gadsden Jai-alai (Chattahoochee), Tampa Jai Alai, and West Flagler Associates (Miami).

<sup>101</sup> 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), and Ocala Thoroughbred Racing (Marion County).

<sup>102</sup> ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), St. Johns Racing (St. Johns County), and Tampa Bay Downs (Oldsmar).

<sup>103</sup> See s. 550.054(2), F.S.

<sup>104</sup> See s. 550.054(9)(a), F.S.

- For a permitholder who has a converted permit . . . at least 100 live evening and matinee wagering performances during either of the two preceding years;
- For a jai alai permitholder who does not operate slot machines . . ., who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games . . . has been less than \$4 million per state fiscal year for at least two consecutive years after June 30, 1992, . . . at least 40 live evening or matinee performances during the preceding year;
- For a jai alai permitholder who operates slot machines . . ., at least 150 performances during the preceding year;
- For a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year;
- For a quarter horse permitholder at its facility unless an alternative schedule of at least 20 live regular wagering performances is agreed upon by the permitholder and either the Florida Quarter Horse Racing Association or the horsemen’s association representing the majority of the quarter horse owners and trainers at the facility and filed with the division along with its annual date application, in the Fiscal Year 2010-2011, . . . at least 20 regular wagering performances, in Fiscal Year 2011-2012 and Fiscal Year 2012-2013, . . . at least 30 live regular wagering performances, and for every fiscal year after Fiscal Year 2012-2013, . . . at least 40 live regular wagering performances;
- For a quarter horse permitholder leasing another licensed racetrack, the conduct of 160 events at the leased facility;
- For a thoroughbred permitholder, the conduct of at least 40 live regular wagering performances during the preceding year; and
- For a permitholder restricted by statute to certain operating periods within the year when other similar permitholders are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games is calculated pro rata based on the authorized operating period and the full calendar year, and the resulting number of live performances is the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder.<sup>105</sup>

A “performance” is a minimum of eight consecutive live races.<sup>106</sup> At least three live performances must be held at a track each week.<sup>107</sup> When a permitholder conducts at least three live performances in a week,<sup>108</sup> it must pay purses (cash prizes to participants) on wagers accepted at the track on certain greyhound races run at other tracks (in Florida or elsewhere).<sup>109</sup> In order to receive an operating license, permitholders must have conducted a full schedule of live racing during the preceding year.<sup>110</sup>

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<sup>105</sup> See s. 550.002(11), F.S.

<sup>106</sup> Section 550.002(25), F.S.

<sup>107</sup> Section 550.002(11), F.S.

<sup>108</sup> The performances may be during the day or in the evenings, as set forth in the schedule that is part of the operating license issued by the division.

<sup>109</sup> Section 550.09514(2)(c), F.S.

<sup>110</sup> Section 550.002(11), F.S. In accordance with s. 550.002(38), F.S., a full schedule of live racing is calculated from July 1 to June 30, the state fiscal year.

If a permitholder does not conduct all of the performances specified in its operating license, the division may determine whether to fine the permitholder or suspend<sup>111</sup> the license, unless the failure is due to certain events beyond the permitholder's control. Financial hardship itself is not an acceptable basis to avoid a fine or suspension.<sup>112</sup>

The conduct of a full schedule of live racing or games is a condition of licensure for a slot machine licensee,<sup>113</sup> and the conduct of a minimum number of live races is a condition of renewal for a cardroom license.<sup>114</sup>

### ***Effect of Proposed Changes:***

#### The Definition of a "Full Schedule of Live Racing or Games"

**Section 16** amends s. 550.002, F.S., and revises the definition of the term "full schedule of live racing or games." to:

- Delete outdated references to converted greyhound permits and partial-year racing dates.
- Reduce the minimum number of required live performances from 100 to 58 for jai alai permitholders who do not operate slot machines or meet other financial requirements but retains the current law requirement that a jai alai permitholder that operates slot machines in its pari-mutuel facility must conduct at least 150 performances.

#### License Applications by Permitholders and Decoupling

**Section 17** amends s. 550.01215, F.S., and deals with operating license applications filed annually with the division by pari-mutuel permitholders for licenses for the next fiscal year (July 1 through June 30).

All permitholders, including those that do not conduct live performances, are required to file an application for a license to conduct pari-mutuel wagering, including intertrack wagering and simulcast wagering for greyhound racing permitholders, jai alai permitholders, harness racing permitholders, quarter horse racing permitholders, and thoroughbred horse racing permitholders. Permitholders accepting wagers on intertrack and simulcast events are required to disclose the dates of all those events in their license application and must make available for wagering all live races conducted by thoroughbred horse permitholders.

Certain greyhound racing permitholders,<sup>115</sup> harness horse racing and quarter horse permitholders,<sup>116</sup> and jai alai permitholders<sup>117</sup> are authorized to specify in their operating license applications that they will not conduct live racing or will conduct less than a full schedule of live

<sup>111</sup> After Jefferson County Kennel Club failed to conduct scheduled performances, its operating license was suspended September 22, 2014 under a consent order available at [http://www.myfloridalicense.com/dbpr/pmw/documents/Licenses/PMW--ConsentOrder--JEFFERSON\\_COUNTY\\_KENNEL\\_CLUB\\_INC--146--2014-09-23--20141023.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/Licenses/PMW--ConsentOrder--JEFFERSON_COUNTY_KENNEL_CLUB_INC--146--2014-09-23--20141023.pdf) (last visited Jan. 23, 2017).

<sup>112</sup> Section 550.01215(4), F.S.

<sup>113</sup> Section 551.104(4)(c), F.S.

<sup>114</sup> Section. 849.086(5)(b), F.S.

<sup>115</sup> Those that conducted a full schedule of live racing for a period of at least 10 consecutive state fiscal years after the state Fiscal Year 1996-1997, or that converted a permit to a permit to conduct greyhound racing after that state fiscal year.

<sup>116</sup> Those that have had an operating license for at least 5 years.

<sup>117</sup> Those that have had an operating license for at least 5 years.

racing or games (i.e., decouple), while they continue to operate their licensed slot machine facilities and/or cardrooms pursuant to ch. 551, F.S., and s. 849.086, F.S., as amended by the bill. Decoupled greyhound permitholders, harness horse racing and quarter horse permitholders, and jai alai permitholders with slot machine licenses remain eligible to operate a slot machine facility; to operate a cardroom, if any; and to be a guest track for intertrack and simulcasting and, if a harness horse racing permitholder, to be a host track for intertrack and simulcasting.

Thoroughbred horse racing permitholders that have conducted live racing for at least five years may discontinue live racing, if the permitholder elects to discontinue live racing during the 30-day period after the effective date of the bill (i.e., partial decoupling). A permitholder that makes the election may retain its permit, must specify in its future operating license applications that it does not intend to conduct live racing, and is a pari-mutuel facility as defined in s. 550.002(23), F.S. The bill specifies the circumstances under which a decoupled thoroughbred permitholder with a slot machine license may continue to operate its slot machine facility, if any, and cardroom, if any, pursuant to ch. 551, F.S., and s. 849.086, F.S., as amended by the bill.

Permitholders that discontinue live racing or games, (i.e., decouple), are required by the bill to make certain payments for the benefit of live thoroughbred horse racing purses. (*See Sections 43 and 52.*)

A greyhound racing permitholder is authorized to receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility pursuant to s. 550.475, F.S.; however, the permitholders must be located within 35 miles of each other.

The division may approve changes in racing dates for Fiscal Year 2017-2018, if the requests are received before August 31, 2017.

A summer jai alai permitholder is authorized to operate a jai alai fronton only for the summer season each year, on dates selected by the permitholder between May 1 and November 30. Summer jai alai permitholders are subject to all taxes, rules, and provisions of ch. 550, F.S., that apply to winter jai alai permitholders but are not eligible to operate a slot machine facility. Winter and summer jai alai permitholders are prohibited from operating on the same days or in competition with each other, but leasing of a winter jai alai facility for the operation of a summer meet is authorized.

Existing law authorizing the conversion of certain permits is repealed; this provision allowed a permit originally converted from a jai alai permit to a greyhound racing permit, to convert back to a jai alai permit if greyhound racing was never conducted or the permitholder had not conducted greyhound racing for 12 consecutive months.

Limited thoroughbred racing permitholders are authorized to apply for an obtain an operating license if:

- All thoroughbred racing permitholders with slot machine licenses have not collectively sought licenses for 160 performances and a minimum of 1,760 races in the next state fiscal year.

- All thoroughbred racing permitholders have not collectively sought pari-mutuel wagering licenses for at least 200 performances or a minimum of 1,760 races in the next state fiscal year.
- All thoroughbred racing permitholders did not collectively run at least 1,760 races in the previous state fiscal year.

### **Annual Report by Division**

#### ***Present Situation:***

An annual report to the Governor must be made by the division of its own actions, receipts from activities under ch. 550, F.S., and any suggestions to accomplish the purposes of the pari-mutuel wagering act.<sup>118</sup>

#### ***Effect of Proposed Changes:***

**Section 18** amends s. 550.0251, F.S., to expand the required content of the annual report from the division, and require that the report be provided to the President of the Senate and the Speaker of the House of Representatives, as well as to the Governor. The report must include, at a minimum:

- Recent events in the gaming industry, including pending litigation involving permitholders; pending permitholder, facility, cardroom, slot, or operating license applications; and new and pending rules;
- Actions of the DBPR relating to the implementation and administration of ch. 550, F.S., (Pari-Mutuel Wagering), ch. 551, F.S., (Slot Machines), and ch. 849, F.S., (Gambling);
- The state revenues and expenses associated with each form of authorized gaming; revenues and expenses associated with pari-mutuel wagering must be further delineated by the class of license;
- The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot machine licensee;
- A summary of disciplinary actions taken by the department; and
- Any suggestions to achieve more effectively the purposes of the Pari-Mutuel Wagering Act (ch. 550, F.S.).

### **Pari-Mutuel Permit Relocation and Conversion, and Violations by Permitholders**

#### ***Present Situation:***

The permit of a harness horse permitholder or thoroughbred horse permitholder who does not pay tax on handle for live performances for a full schedule of live races during any two consecutive state fiscal years is void and escheats to and becomes property of the state, unless the failure to operate and pay tax on handle is the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control.<sup>119</sup> Financial hardship of the permitholder does not constitute just cause for either failure.<sup>120</sup>

<sup>118</sup> See s. 550.0251(1), F.S.

<sup>119</sup> See s. 550.09512(3), F.S. and s. 550.09515(3), F.S.

<sup>120</sup> *Id.*

Pursuant to s. 550.054(9)(b), F.S., 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.

In lieu of suspending or revoking a permit or license, the division may impose a civil penalty against the permitholder or licensee for a violation of ch. 550, F.S., or any rule adopted by the division. An administrative fine may not exceed \$1,000 for each count or separate offense. All fines imposed and collected are deposited into the General Revenue Fund.

Section 550.0555, F.S., addresses relocation of a greyhound racing permit in a county in which there is only one greyhound permit and relocation of a jai alai permit in a county where there is only one jai alai permit under specified circumstances, in order to protect the revenue-producing ability of the permitholder and the associated state revenues without negatively impacting the financial strength of any other pari-mutuel permitholder within 50 miles.

Section 550.0475, F.S., concerns conversions of pari-mutuel wagering permits from one class to another, in limited circumstances. The prohibitions in other sections of ch. 550, F.S., preventing the location and operation of jai alai frontons within a specified distance from the location of another jai alai fronton or other permittee, or the issuance of any permit by the division at a location within a certain designated area, do not apply and do not prevent the issuance an operating license under s. 550.475, F.S.

***Effect of Proposed Changes:***

**Section 19** amends s. 550.054, F.S., relating to applications for pari-mutuel wagering permits, to:

- Require the division to revoke a permit if the permitholder: (a) has not obtained an operating license for a period of more than 24 consecutive months after June 30, 2012, or (b) fails to make payments for taxes due on handle for more than 24 months, unless the failure to obtain an operating license was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. Financial hardship of the permitholder does not constitute just cause for either failure. A revoked permit may not be reissued.
- Provide that a new pari-mutuel permit may not be approved or issued *30 days after the effective date of the act* (i.e., the publication of the proposed 2015 Gaming Compact, as amended as required by the bill, in the Federal Register), and a revoked permit is void and may not be reissued.
- Allow a permit to be placed in inactive status for 12 months for good cause and allows renewal of inactive status for up to 12 months; however, a permit may not be inactive for more than 24 consecutive months, and entities with inactive permits are not eligible for licensure for pari-mutuel wagering, slot machines, or cardrooms.
- Provide that a pari-mutuel license may not be transferred or reissued so as to change the location of a pari-mutuel facility, cardroom, or slot machine facility and deletes authority for the transfer of a thoroughbred permit to another racetrack and for conversion of a jai alai permit to a greyhound racing permit, except through the relocation of the pari-mutuel permit pursuant to s. 550.0555, F.S. (**see Section 20**).
- Repeal provisions authorizing conversion and relocation of pari-mutuel permits under specified conditions (**see Section 20**).

**Section 20** amends s. 550.0555, F.S., relating to the procedures for relocation by certain permitholders to another location within 30 miles under certain revised conditions. A permitholder eligible to seek approval to move its pari-mutuel operations include any holder of a valid and outstanding:

- Greyhound racing permit previously converted from a jai alai permit;
- Greyhound racing permit in a county with only one greyhound permit; or
- Jai alai permit in a county with only one jai alai permit.

The conditions for a new location include:

- The move does not cross county boundaries;
- The new location must be an existing pari-mutuel facility that has held an operating license for at least five consecutive years since 2010 or is at least 10 miles from any existing pari-mutuel facility, as determined by the division;
- The new location, if within a county with three or more pari-mutuel permits, must be at least 10 miles from the Atlantic Ocean; and
- The relocation is approved under the zoning regulations of the county or municipality in which the permit is to be relocated.

**Section 21** repeals s. 550.0745, F.S., relating to the procedure to convert a pari-mutuel permit to a summer jai alai permit.

### **Taxation of Pari-mutuel Wagering and Permit Revocation for Failure to Pay Taxes**

#### ***Present Situation:***

Section 550.002(13), F.S., defines “handle” as the aggregate contributions (bets or wagers) to pari-mutuel pools. There are four types of handle detailed in annual reports<sup>121</sup> of the division:

- Live ontrack, from live races or games at a track/fronton;
- Simulcast, from live races or games originating out-of-state and broadcast to a Florida track or fronton;
- Intertrack, from a Florida track or fronton (acting as host) broadcasting live races or games to other Florida tracks or frontons; and
- Intertrack simulcast, from rebroadcasting of simulcast signals received by a Florida track or fronton to other Florida tracks or frontons.

The stated tax rates on greyhound racing handle (i.e., on live ontrack, simulcast, intertrack, and intertrack simulcast handle as described above) vary considerably. Section 550.0951(3), F.S., specifies rates of 5.5 percent, 7.6 percent, 3.9 percent, and 0.5 percent of handle that depend on the type of wager (and the location of the tracks involved in any intertrack wagering).

Intertrack wagering is taxed at the rate of 7.1 percent if the host track is a jai alai fronton. The rate drops significantly to a rate of 0.5 percent (one-half of one percent) if: (1) both the host and guest tracks are thoroughbred permitholders, or (2) a guest track is located more than 25 miles

<sup>121</sup> See <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf>, at page 4 (equivalent to page 2 of the printed Annual Report) (last visited Feb 7, 2017).

away from the host track and within 25 miles of a thoroughbred permitholder currently conducting live racing.

Each permitholder receives a tax credit based on the number of live races conducted in the previous year multiplied by the daily license fee.<sup>122</sup> This works out to be a 100 percent refund of daily license fees for every live race conducted. The daily license credit may also be transferred for payment in full by a host track to a transferring permitholder.

As provided in s. 550.09514(1), F.S., all greyhound racing permitholders that conduct a full schedule of live racing in a year are eligible for tax exemptions in the form of a credit that directly reduces their state taxes, in the following amounts:

- \$500,000 annually to each permitholder that conducted a full schedule of live racing in 1995, and “are closest to another state that authorizes greyhound pari-mutuel wagering.” These requirements qualify three greyhound racing permitholders (Washington County Kennel Club (Ebro), Pensacola Greyhound, and Jefferson County Kennel Club (Monticello)); and
- \$360,000 annually to each of the other greyhound racing permitholders.

If a permitholder cannot use its full tax exemption amount, then it may transfer the unused portion of the exemption to another permitholder that has acted as a host track by accepting intertrack wagering.<sup>123</sup> The transfer may occur only once per state fiscal year, and there must be a dollar-for-dollar payment (no discount) by the host track.

Section 550.09512, F.S., imposes a 0.5 percent tax on the handle from harness horse racing. If a harness horse permitholder fails to pay taxes on a full schedule of live races during any two consecutive state fiscal years, the permit is void and escheats to (is forfeited) and becomes the property of the state, unless the failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to operate and pay tax on handle.

The permit of a thoroughbred horse racing permitholder who does not pay tax on handle for live thoroughbred horse performances for a full schedule of live races during any two consecutive state fiscal years is void and escheats to and becomes property of the state, unless the failure to operate and pay tax on handle is the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control.<sup>124</sup> Financial hardship of the permitholder does not constitute just cause for either failure.<sup>125</sup>

An escheated harness horse permit or thoroughbred horse permit must be reissued by the division to a qualified applicant, using the procedures mandated for issuance of an initial permit. The requirements for a referendum before issuance of a pari-mutuel permit do not apply to reissuance of an escheated harness horse or thoroughbred horse permit.<sup>126</sup>

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<sup>122</sup> Section 550.0951(1)(a), F.S.

<sup>123</sup> Section 550.0951(1)(b), F.S.

<sup>124</sup> See s. 550.09515(3), F.S.

<sup>125</sup> *Id.*

<sup>126</sup> See ss. 550.09512(3)(b) and 550.09515(3)(b), F.S.

Section 550.1645, F.S., provides that after one year, the winnings from all unclaimed pari-mutuel tickets become property of the state, and permitholders must pay the unclaimed (escheated) winnings to the state. The funds are deposited into the State School Fund and are used for the maintenance of public free schools. Section 550.1647, F.S., provides that permitholders who pay escheated winnings to the state are entitled to a 100 percent credit equal to the escheated winnings payment, to be credited in the next fiscal year against greyhound racing taxes; however, the permitholder must pay an amount equal to 10 percent of the escheat credit to qualified greyhound adoption programs.

***Effect of Proposed Changes:***

**Section 22** amends s. 550.0951, F.S., relating to the payment of daily license fee and taxes, to:

- Delete the tax exemption specified in s. 550.09514(1), F.S., of \$360,000 or \$500,000 for each greyhound racing permitholder, and deletes other tax credits.
- Delete current law allowing transfer of the tax exemption or other credits among greyhound racing permitholders.
- Reduce the tax on handle for greyhound racing to 1.28 percent from 5.5 percent.
- Impose a tax of 0.5 percent if the host and guest tracks are thoroughbred racing permitholders, or if the guest track is located outside the market area of a host track that is not a greyhound racing track and within the market of a thoroughbred racing permitholder currently conducting a live meet.

**Section 23** amends s. 550.09512, F.S., relating to harness horse racing, to:

- Require the division to revoke a harness horse racing permit that has not paid the tax due on the handle for a full live schedule of harness racing for more than 24 consecutive months, unless the failure to operate and pay tax was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. A revoked permit is void and may not be reissued.
- Repeal a provision allowing reissuance of a revoked harness horse permit that has been revoked for nonpayment of taxes.

**Section 24** amends s. 550.09514, F.S., relating to greyhound racing taxes and purse requirements, to:

- Remove available tax credits of \$360,000 and \$500,000.
- Require greyhound racing permitholders that conduct live racing during a fiscal year to pay an additional purse amount annually of \$60 for each live race conducted in the preceding fiscal year.
- Delete requirements for purses to equal 75 percent of the daily license fees.
- Require purses to be disbursed weekly during the permitholder's race meet.
- Clarify that the tax rate on handle for intertrack wagering is provided in ch. 2000-354, s. 6, Laws of Fla.

**Section 25** amends s. 550.09515, F.S., relating to thoroughbred racing taxes, to:

- Require the division to revoke a thoroughbred racing permit that has not paid the tax due on handle for a full live schedule of thoroughbred horse performances for more than 24 consecutive months, unless the failure to operate and pay tax was the direct result of fire,

strike, war, or other disaster or event beyond the permit holder's control. A revoked permit is void and may not be reissued.

- Repeal a provision that allows reissuance of a thoroughbred horse permit that has been revoked for nonpayment of taxes.

**Section 27** amends s. 550.1625, F.S., relating to greyhound racing taxes, to repeal a reference to a greyhound racing permit holder paying the breaks tax.

**Section 28** repeals s. 550.1647, F.S., relating to unclaimed, uncashed, or abandoned pari-mutuel tickets which have remained in the custody of a greyhound racing permit holder.

### **Criminal Penalties for Wagering on Horse Races Outside of Pari-Mutuel Facilities or Other Than Through Totalisator System**

#### *Present Situation:*

Section s. 550.155, F.S., authorizes pari-mutuel wagering, which is authorized only within track enclosures at licensed pari-mutuel wagering facilities and not elsewhere in the state. Such wagering must be supervised by the division. Purchase of pari-mutuel tickets or participation in a pari-mutuel pool for another for hire or gratuity is a second degree misdemeanor.

Under s. 849.25, the act of "bookmaking" is the "taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever." A person who engages in bookmaking is guilty of a third degree felony, and any person convicted of bookmaking may not have adjudication of guilt suspended, deferred, or withheld.<sup>127</sup>

Section 550.3551(1), F.S., makes it unlawful "for any person to transmit, by any means, racing information to any person or to relay the same to any person by word of mouth, by signal, or by use of telephone, telegraph, radio, or any other means when the information is knowingly used or intended to be used for illegal gambling purposes or in furtherance of illegal gambling." Violations are punishable as a third degree felony.

#### *Effect of Proposed Changes:*

**Section 26** amends s. 550.155, F.S., to provide a third-degree felony penalty for accepting wagers on horse races other than wagers made within the enclosure of a pari-mutuel facility in this state and through a facility's ontrack totalisator system.

### **Greyhound Adoption and Reporting of Injuries to Racing Greyhounds**

#### *Present Situation:*

Section 550.1648, F.S., requires each operating greyhound racing permit holder to provide for a greyhound adoption booth to be located at the track facility. The greyhound adoption booth must

<sup>127</sup> See s. 849.025, F.S.

be operated on weekends by personnel or volunteers from a bona fide organization that promotes or encourages the adoption of greyhounds as defined in s. 550.1647, F.S.

Information pamphlets and application forms shall be provided to the public upon request. In addition, the kennel operator or owner shall notify the permitholder that a greyhound is available for adoption, and the permitholder shall provide information concerning the adoption of a greyhound in each race program. Adoption information must be posted at conspicuous locations throughout the track facility. Any greyhound that is participating in a race and that will be available for future adoption must be noted in the race program. The permitholder shall allow greyhounds to be walked through the track facility to publicize the greyhound adoption program.

A greyhound racing permitholder may fund the greyhound adoption program by holding a charity racing day designated as "Greyhound Adopt-A-Pet Day." All profits derived from the operation of the charity day must be placed into a fund used to support activities at the track facility which promote the adoption of greyhounds. Proceeds from this authorized charity day may not be used to pay the amounts required to be paid to a bona fide organization pursuant to s. 550.1647, F.S.

The division may impose a penalty for violations, including suspension or revocation of a permit, and may require the permitholder to take corrective action. Administrative fines may not exceed \$1,000 for each count or separate offense. All fines imposed and collected are deposited into the General Revenue Fund. Imposition of the above penalties does not exclude a prosecution for cruelty to animals or for any other criminal act.

***Effect of Proposed Changes:***

**Section 29** amends s. 550.1648, F.S., to require, as a condition of greyhound adoption, that a bona fide organization must provide sterilization of greyhounds by a licensed veterinarian before relinquishing custody of the greyhound to the adopter; the sterilization fee may be included in adoption cost adoption.

**Section 33** creates s. 550.2416, F.S., to require specified, detailed reporting of racing greyhound injuries. The bill requires greyhound track veterinarians to prepare and sign detailed reports under oath, on a form adopted by the division, of all injuries to racing greyhounds that occur while the greyhounds are on a racetrack. Penalties for false reporting are provided.

**Pari-Mutuel Permit Reduction Program**

***Present Situation:***

Current law does not provide for the reduction of pari-mutuel permits.

***Effect of Proposed Changes:***

**Section 30** creates s. 550.1752, F.S., to establish a \$20 million pari-mutuel permit reduction program and authorize the division to purchase and cancel active pari-mutuel permits. Funding for the program is provided from revenue share payments made by the Seminole Tribe under the Gaming Compact.

A pari-mutuel permitholder may not submit an offer to sell its permit unless it is actively conducting racing or jai-alai required by law and satisfies all applicable permit requirements. The value of the permit must be based upon the permit's fair market value by one or more independent appraisers selected by the division and may not include the value of real estate or personal property. The division may establish a lower value for a permit than the amount determined by the independent appraiser, but not a higher value.

The division must accept the offer or offers that best use the available funding but may also accept offers that it determines are the most likely to reduce gaming in Florida. After execution of a contract to purchase a permit and not less than 30 days after authorization of the necessary nonoperating budget authority, the division may request the Chief Financial Officer (CFO) to distribute funds to complete the purchase. A permit purchased through the program must be cancelled. This section expires July 1, 2019, unless reenacted.

### **Thoroughbred Purse Pool Contributions**

#### ***Present Situation:***

Section 550.2625, F.S., describes the requirements for contributions to purses and breeders' and owners' awards by horse racing permitholders (harness, quarter horse, and thoroughbred permitholders).

Thoroughbred racing permitholders must contribute:

- 7.5 percent of all pari-mutuel wagering handle;
- An additional 0.625 percent on thoroughbred racing conducted between January 3 and March 16;
- An additional 0.225 percent on thoroughbred racing conducted between March 17 and May 22; and
- An additional 0.85 percent on thoroughbred racing conducted between May 23 and January 2.<sup>128</sup>

Any thoroughbred permitholder whose total handle on live performances during the 1991-1992 state fiscal year was not greater than \$34 million is not subject to the additional purse payments above 7.5 percent.<sup>129</sup>

A thoroughbred permitholder may withhold from the handle an additional amount equal to one percent on exotic wagering for use as owners' awards, and may withhold from the handle an amount equal to two percent on exotic wagering for use as overnight purses. No permitholder may withhold in excess of 20 percent from the handle without withholding all of the amounts listed above.<sup>130</sup>

A portion of purses generated through intertrack wagering and interstate simulcasting equal to 8.5 percent is used for owners awards; certain thoroughbred permitholders may be exempt from

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<sup>128</sup> Section 550.2625(2)(a), F.S.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

this requirement.<sup>131</sup> Each horseracing permitholder conducting any thoroughbred race, including any intertrack or interstate simulcast races taken by the permitholder, must pay a sum equal to 0.955 percent on all pari-mutuel pools conducted during any such races for the payment of authorized breeders', stallion, or special racing awards, including Breeders' Cup races conducted outside Florida.

On any race originating live in this state which is broadcast out-of-state to any location at which wagers are accepted, the host track is required to pay 3.475 percent of the gross revenue derived from such out-of-state broadcasts as breeders', stallion, or special racing awards. The Florida Thoroughbred Breeders' Association is authorized to receive these payments from the permitholders and make payments of awards earned. The Florida Thoroughbred Breeders' Association has the right to withhold up to 10 percent of the permitholder's payments as a fee for administering the payments of awards and for general promotion of the industry.<sup>132</sup>

***Effect of Proposed Changes:***

**Section 31** creates s. 550.1753, F.S., to establish a long-term thoroughbred purse supplement program, effective July 1, 2019, to maintain an active and viable live thoroughbred racing, owning, and breeding industry in Florida.

Funding for the program is provided from revenue share payments made by the Seminole Tribe under the Gaming Compact and received by the State after July 1, 2019. The annual funding is \$20 million. After the funds paid under the Gaming Compact to the state each state fiscal year exceed \$20 million and not less than 30 days after the authorization of the necessary nonoperating budget authority, the division may request the CFO to distribute funds for the purse and awards supplement to eligible thoroughbred permitholders and to the Florida Thoroughbred Breeders' Association, Inc. The purse supplement program expires June 30, 2036, the day the proposed 2015 Gaming Compact, as amended, will expire.

The first \$10 million is to be distributed to a thoroughbred permitholder who conducted a full schedule of live racing for 15 consecutive years after June 30, 2000, has never operated at a facility with slot machines, and has never held a slot machine license.

The remaining funds are to be distributed by the division on a pro rata basis based upon the number of live race days to be conducted by each thoroughbred permitholder per its annual racing license. If a permitholder fails to conduct a race day, then the allocated funds associated with that day must be returned to the division, so that it may reapportion the allocation of funds. If a limited thoroughbred permitholder receives a license pursuant to s. 550.01215(7), F.S., (*see Section 17*), it too will receive a portion of the remaining funds, but the number of its racing days will be increased by 50 percent for three years to calculate the pro-rata distribution.

Ten percent of the purse and awards supplement funds must be distributed by the division to the Florida Thoroughbred Breeders' Association, Inc., for breeders', stallions, and special racing awards.

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<sup>131</sup> Section 550.2625(2)(e), F.S.

<sup>132</sup> *Id.*

See also, **Section 43**, (Slot Machine gaming licensees; live thoroughbred horse racing purse payments), and **Section 52** (lines 3128 - 3148), (Cardrooms; live thoroughbred horse racing purse payments).

### **Testing of Racing Animals for Prohibited Substances**

#### ***Present Situation:***

The racing of animals (horses and greyhounds) using any drug, medication, stimulant, depressant, hypnotic, narcotic, local anesthetic, or drug-masking agent is generally prohibited, and those medications that are permitted under certain conditions are specified by law.<sup>133</sup> However, the division may adopt rules specifying acceptable levels of naturally occurring substances in untreated animals which may not be exceeded in race-day specimens.<sup>134</sup>

Classification of a substance in a sample as permissible or impermissible may be dependent upon whether:

- The substance is administered within or outside the allowed time frame before a race is scheduled to begin;
- The racing animal is approved for administration of the substance, or is qualified by gender to receive it;
- The level of the substance exceeds acceptable levels set by administrative rule; and
- The method of administration of the substance is prohibited.<sup>135</sup>

#### ***Effect of Proposed Changes:***

**Section 32** amends s. 550.2415, F.S., relating to rules to be adopted by the division on the testing of racing animals. The split sample procedure used for testing racing animals is modified to require two samples be drawn. One sample must be tested by the state's testing laboratory and the second sample retained in a separate secure location for testing at a later date. The bill provides that the division may only authorize testing by laboratories accredited by the Racing Medication and Testing Consortium.

Section 550.2415, F.S., is amended to delete a reference in current law to a specific version of the Controlled Therapeutic Medication Schedule adopted by the Association of Racing Commissioners International, Inc. (ARCI),<sup>136</sup> which the division must use in adopting rules to establish maximum concentrations of medication, drugs, and naturally occurring substances in racing animals.

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<sup>133</sup> Section 550.2415, F.S.

<sup>134</sup> Section 550.2415(1)(b), F.S. The division may also set acceptable levels of environmental contaminants and trace levels of prohibited substances that are not reportable as a violation.

<sup>135</sup> See Rule 61D-6.008(1)-(9), F.A.C., respecting permitted medications for horses.

<sup>136</sup> According to ARCI, it is a not-for-profit trade association of governmental regulators of horse and greyhound racing in the United States, Canada, Mexico, Jamaica, and Trinidad-Tobago, who have the legal responsibility to ensure the integrity of racing and pari-mutuel wagering in their jurisdictions. See <http://arcicom.businesscatalyst.com/about-rci.html> (last visited Feb. 24, 2017).

The bill also requires the division to adopt rules to include a classification and penalty system for the use of drugs, medications, and other foreign substances, that incorporates the Uniform Classification Guidelines for Foreign Substances, Recommended Penalty Guidelines, and the Multiple Medication Violation Penalty System adopted by the ARCI, and deletes reference to an earlier, specific version of the Uniform Classification Guidelines for Foreign Substances.

### **Limited Thoroughbred Racing Permits Transfer and Relocation**

#### ***Present Situation:***

The issuance of limited thoroughbred racing permits (through conversion from a quarter horse permit as allowed by ch. 2010-29, Laws of Fla.), is addressed in s. 550.3345, F.S. The State provided a limited opportunity for 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.<sup>137</sup>

#### ***Effect of Proposed Changes:***

**Section 35** amends s. 550.3345, F.S., relating to the issuance of limited thoroughbred racing permits (through conversion from a quarter horse permit as allowed by ch. 2010-29, Laws of Fla.), to:

- Prohibit the transfer of a limited thoroughbred racing permit to another person or entity.
- Remove obsolete language.
- Delete the requirement that restricts racing under the permit only to the location of the quarter horse racing permit that was converted to a limited thoroughbred racing permit.
- Allow leasing of a facility by a limited thoroughbred racing permit holder, notwithstanding s. 550.475, F.S.
- Retain existing law allowing for relocation of the permit but allow relocation to another county without a referendum, if the permit "is situated in such a manner that it is located in more than one county." A relocation remains subject to the requirement in s. 550.3345(2)(d), F.S., that the relocation be approved under zoning and land use regulations in the new county or municipality.
- Allows a holder of a limited thoroughbred racing permit to be licensed to receive broadcasts of horse races and conduct intertrack wagering as a guest track.

### **Leasing of Pari-mutuel Facilities**

#### ***Present Situation:***

Section 550.475, F.S., allows a pari-mutuel permit holder with a valid permit for the conduct of any jai alai games, greyhound racing, or thoroughbred and harness (Standardbred) horse racing in this state to lease any and all of its facilities to any other permit holder of a same class with a valid permit for jai alai games, greyhound racing, or thoroughbred or harness (Standardbred) horse racing, when located within a 35-mile radius of each other, and the lessee is entitled to a permit and license to operate its race meet or jai alai games at the leased premises.

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<sup>137</sup> See s. 550.2625(3), F.S.

*Effect of Proposed Changes:*

**Section 37** amends s. 550.475, F.S., to prohibit a permitholder from leasing facilities from another permitholder that is not conducting a full schedule of live racing.<sup>138</sup>

**Thoroughbred Permitholder Applications for Operating Licenses***Present Situation:*

Section 550.5251, F.S., regulates the applications for thoroughbred permitholders, which are required annually.

*Effect of Proposed Changes:*

**Section 38** repeals s. 550.5251(1), F.S., which requires thoroughbred permitholders to annually file applications to conduct race meetings that specify the number and dates of all performances that the permitholder intends to conduct. **Section 17** amends s. 550.01215(1), F.S., to require all pari-mutuel permitholders to apply for an annual operating license. In addition, certain thoroughbred permitholders may elect not to conduct live racing, as provided under **Section 17**.

**Section 38** also repeals s. 550.5251(2), F.S., which prohibits thoroughbred horse races from beginning after 7 p.m. and which allows thoroughbred permitholders with a cardroom to receive and rebroadcast out-of-state races after 7 p.m. only when the permitholder is conducting live racing.

**Intertrack Wagering and Simulcast Wagering***Present Situation:*

Section 550.615(2), F.S., allows any permitholder that has conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers on any type of pari-mutuel race or game conducted by other licensed pari-mutuel permitholders in the state. This type of wagering is defined as “intertrack wagering.”<sup>139</sup>

Wagering on a simulcast event occurs when a wager is placed on: (1) a live race or game that is broadcast outside the state from an in-state location, or (2) a live race or game that occurs outside the state but is broadcast to a permitholder in the state.<sup>140</sup>

<sup>138</sup> According to information in the 2015-2016 latest available Fiscal Year Annual Report from the Division of Pari-Mutuel Wagering, available at <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf>, at pp 29 - 33 of the online Annual Report (equivalent to pp. 25- - 29 of the printed Annual Report) (last visited Feb. 7, 2017), both Jacksonville Kennel Club and Bayard Raceways (St. Johns Greyhound Park) conduct races at Orange Park Kennel Club; H&T Gaming conducts racing at Mardi Gras; Palm Beach Greyhound Racing conducts racing at Palm Beach Kennel Club; Tampa Greyhound conducts races at St. Petersburg Kennel Club (Derby Lane); West Volusia Racing conducts races at Daytona Beach Kennel Club; Dania Summer Jai Alai conducts games at Dania Jai Alai; Tropical Park conducts races at Calder Race Course.

<sup>139</sup> Section 550.002(17), F.S.

<sup>140</sup> Section 550.002(32), F.S.

***Effect of Proposed Changes:***

**Section 36** amends s. 550.3551, F.S., relating to transmission of racing and jai alai information, to remove an outdated reference and to remove a reference to live racing requirements for intertrack wagering by harness horse permitholders.

**Section 39** amends s. 550.615, F.S., relating to intertrack wagering, to specify which tracks or frontons may receive broadcasts of any type of race or game and accept wagering on them. Only tracks that have conducted a full schedule of live racing for at least five consecutive years since 2010 may receive such broadcasts. Section 550.615(4), F.S., is amended to provide that a greyhound racing permitholder which accepts intertrack wagers is not required to obtain the written consent of another greyhound racing permitholder within its market area.

Section 550.615(9), F.S., is created to address the acceptance of pari-mutuel wagers by a greyhound racing permitholder that has conducted a full schedule of live racing for at least five consecutive years since 2010, but has requested and been issued an operating license that specifies no live racing will be conducted. Wagering on live races conducted at out-of-state greyhound tracks may be accepted but only on the days when the permitholder receives broadcasts of all live races that any Florida greyhound host track makes available.

Current subsections (6) and (7) of 550.615, F.S., are amended to delete provisions that:

- Limit intertrack wagering where there are three or more horserace permitholders within 25 miles of each other, and require the consent of a permitholder where there are only two permits (greyhound racing and jai alai) in the county; and
- Require a greyhound racing permitholder that accepts intertrack wagers on live greyhound signals to obtain written consent from any operating greyhound racing permitholder within its market area.

**Limited Intertrack Wagering License*****Present Situation:***

Under s. 550.6308, F.S., a limited amount of intertrack wagering is authorized by statute for one permanent thoroughbred sales facility.<sup>141</sup> 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 one day of nonwagering thoroughbred racing in this state, with a purse structure of at least \$250,000 per year for two 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; or

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<sup>141</sup> Section 550.6308, F.S.

- 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.<sup>142</sup> The licensee must pay 2.5 percent of total wagers on jai alai or greyhound racing to thoroughbred permitholders operating live races for purses.<sup>143</sup>

***Effect of Proposed Changes:***

**Section 40** amends s. 550.6308, F.S., to:

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

Certain restrictions and requirements for intertrack wagering are deleted, including the requirements that intertrack wagering must 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.

The following requirements imposed on the limited intertrack wagering permitholder are deleted:

- That intertrack wagering must be conducted only on thoroughbred racing unless the consent of all thoroughbred, jai alai, and greyhound racing permitholders in the same county is obtained; and
- That a contribution to a purse pool of 2.5 percent be made for intertrack wagering on greyhound or jai alai.

**Slot Machines, Thoroughbred Purse Pools, and Horsemen's Agreements**

***Present Situation:***

Chapter 551, F.S., authorizes slot machine gaming at the location of certain licensed pari-mutuel locations in Miami-Dade County or Broward County and provides for state regulation.<sup>144</sup> Currently eight facilities in Miami-Dade and Broward counties are authorized to operate slot machines. Voters in each county approved slot machine facilities after an amendment to the State Constitution was approved in 2004.<sup>145</sup>

The Florida Supreme Court has under review, in *Gretna Racing, LLC v. Department of Business and Professional Regulation, Division of Pari-mutuel Wagering*, whether additional licenses to conduct slot machine gaming may be issued for pari-mutuel locations in counties other than

<sup>142</sup> See s. 550.6308(4), F.S.

<sup>143</sup> See s. 550.6308(5), F.S.

<sup>144</sup> See ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.

<sup>145</sup> See FLA. CONST., art. IX, s. 23 (1968).

Broward and Miami-Dade counties.<sup>146</sup> The case before the Florida Supreme Court is an appeal of a decision by the First District Court of Appeal (First DCA) which affirmed the denial by the division of Gretna Racing’s application for a license to conduct slot machine gaming that was filed by Gretna Racing in 2013.<sup>147</sup> Gretna Racing’s facilities are located in Gadsden County, which held a countywide non-binding vote, in which a majority of the voters favored slot machines at pari-mutuel facilities in the county.<sup>148</sup> The First DCA held that “nothing in the language, structure, or history of slot machine legislation, . . . provides authorization for the holding of slot machine referenda in counties other than Miami-Dade and Broward counties,” including the Gadsden County referendum.<sup>149</sup>

***Effect of Proposed Changes:***

**Section 41** amends s. 551.101, F.S., to allow eligible slot machine facilities to conduct slot machine gaming pursuant to a pari-mutuel permit or license issued pursuant to s. 551.1043 (*see Section 45*) and to delete provisions referring to the eligibility requirements for a slot machine license under the state constitution.

**Section 42** amends the definition of “eligible facility” in s. 551.102, F.S., for the conduct of slot machine gaming to include (1) any licensed pari-mutuel facility or (2) any facility authorized to conduct slot machine gaming pursuant to s. 551.1043, F.S., (*see Section 45*), either of which meets the requirements of s. 551.104(2) (*see Section 43*). The bill also amends the definitions of “slot machine license” and “slot machine licensee” to include a licensee authorized under s. 550.1043, F.S.

**Section 43** amends s. 551.104, F.S., to:

- Authorize approval by the division of applications for a license to conduct slot machine gaming for:
  - The seven pari-mutuel facilities in Miami-Dade and Broward Counties that existed when the State Constitution was amended and slot machines in these counties were approved by county referenda, including a facility that relocates pursuant to s. 550.0555, F.S., (*see Section 20*);
  - A licensed pari-mutuel facility, if slot machines in the county are approved by voters in a countywide referendum, and if the permitholder conducted a full schedule of live racing for two consecutive years immediately preceding its application;<sup>150</sup>
  - The additional authorized slot machine gaming facilities (one in Miami-Dade County and one in Broward County (*see Section 45*)); or
  - Pari-mutuel facilities (except the seven pari-mutuel facilities in Miami-Dade and Broward counties) by referendum if associated with a public-private partnership.

<sup>146</sup> For information about the documents filed by the parties, *see* [http://jweb.flcourts.org/pls/docket/ds\\_docket?p\\_caseyear=2015&p\\_casenumbr=1929&psCourt=FSC&psSearchType=](http://jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2015&p_casenumbr=1929&psCourt=FSC&psSearchType=) (last visited Jan. 23, 2017).

<sup>147</sup> *See Gretna Racing, LLC v. Dep’t of Bus. & Prof’l Regulation, Div. of Pari-Mutuel Wagering*, 178 So. 3d 15 (Fla. 1st DCA 2015).

<sup>148</sup> *Id.* at p. 16.

<sup>149</sup> *Id.*

<sup>150</sup> As of November 2016, eight counties have adopted referenda approving slot machines: Brevard, Duval, Gadsden, Hamilton, Lee, Palm Beach, St. Lucie, and Washington.

- Disqualify permit holders from receiving a slot machine license, if a permit holder includes, or previously included, an ultimate equitable owner whose permit was voluntarily or involuntarily surrendered, suspended, or revoked by the division within 10 years before the date of the permit holder's application for a slot machine license.
- Revise conditions for licensure and for maintaining continued authority for conducting slot machine gaming to reflect that certain pari-mutuel permit holders are authorized to discontinue conducting live racing or games (i.e., decouple).

If a slot machine licensee is not running a full schedule of live racing under its pari-mutuel permit, then the licensee must contribute the lesser of \$2 million or three percent of the permit holder's prior fiscal year slots revenue to the thoroughbred purse pool created in s. 551.104(c)(2), F.S. This requirement is repealed July 1, 2036 (the day after the proposed 2015 Gaming Compact ends). The purse pool is for the benefit of slot machine licensees that conduct at least 160 days of live thoroughbred racing. A slot machine licensee that receives those funds must remit ten percent of the funds to the Florida Thoroughbred Breeders' Association, Inc., for payment of breeders', stallion, and special racing awards, subject to the fee authorized in s. 550.2515(3), F.S. There is a dollar-for-dollar credit for payments made to a horsemen's association under a binding written agreement entered into by the permit holder pursuant to s. 551.104(10), F.S. The requirement in existing law for a thoroughbred racing permit holder to have a horsemen's agreement governing the payment of purses on live thoroughbred racing does not apply to a summer thoroughbred racing permit holder. *See also*, **Section 31**, (Thoroughbred Purse Supplement Program), and **Section 52** (lines 3717 - 3736), (Cardrooms; live thoroughbred horse racing purse payments).

- Allow live racing or games to be conducted at a leased facility of a permit holder pursuant to s. 550.475, F.S, if the leasing permit holder has operated its live races or games by lease for at least 10 consecutive years prior to its slot machine license application.
- Delete the requirement that a quarter horse racing permit holder have a horsemen's agreement governing the payment of purses on live quarter horse races.

**Section 44** creates s. 551.1042, F.S., to prohibit the relocation of a slot machine facility except through the relocation of the pari-mutuel permit pursuant to s. 550.0555, F.S.

**Section 45** creates s. 551.1043, F.S., to provide two additional slot machine licenses in Broward County or a county as defined in s. 125.011, F.S.,<sup>151</sup> for the purpose of enhancing live pari-mutuel activity. Only one of these licenses may be issued in each county.

Any person that is not a slot machine licensee may apply for one of the two additional licenses, upon payment of a \$2 million nonrefundable application fee. The fee must be used by the division and the Department of Law Enforcement for investigations, the regulation of slot machine gaming, and the enforcement of slot machine gaming under ch. 551, F.S. In the event of a successful award of the license to a licensee, the license application fee will be credited against the license application fee required by s. 551.106, F.S.

If there is more than one applicant for the additional slot machine gaming license in a county, the license will be awarded by the division to the applicant that receives the highest score based on

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<sup>151</sup> Currently, the only county that meets the definition in s. 125.011, F.S., is Miami-Dade County.

legislatively specified criteria; however, the relative value or points the division must assign to the selection criteria are not specified.

The division must complete its evaluations at least 120 days after the submission of applications and notice its intent to award the license within that time. Any protest of the intent to award the license will be heard by the Division of Administrative Hearings under an expedited schedule. Any appeal of a license denial must be made to the First District Court of Appeal and must be accompanied by the posting of a supersedeas bond in an amount determined by the division to be equal to the projected annual slot machine revenue expected to be generated by the successful licensee for the state which shall be payable to the state if the state prevails in the appeal.

The division is authorized to adopt emergency rules to implement this section.

The additional slot machine gaming licensees are authorized to operate a cardroom and to operate up to 25 house banked blackjack tables notwithstanding that the licensee does not have a pari-mutuel permit, under the same wagering requirements and tax rate for each of these types of gaming facilities, and are exempt from ch. 550 (Pari-Mutuel Wagering). The licensees are also exempt from certain requirements relating to pari-mutuel permit holders operating a slot machine facility which are contained in s. 551.104(3), (4)(b) and (c)(1), (5), and (10), and s. 551.114(4), F.S.

An applicant shall submit an application to the division, with the same disclosures as required of persons seeking to conduct pari-mutuel wagering in the state. Any person prohibited from holding any horseracing or greyhound permit or jai alai fronton permit pursuant to s. 550.1815, F.S., is ineligible to apply for the additional slot machine license.

### **House Banked Blackjack**

#### ***Present Situation:***

The conduct of house banked blackjack is authorized pursuant to the 2010 Gaming Compact only at five of the seven<sup>152</sup> tribal casinos the Seminole Tribe for a five-year period that ended on August 31, 2015.

The playing of house banked blackjack under limited circumstances is an exception to the exclusivity provided to the Seminole Tribe under the proposed 2015 Gaming Compact.<sup>153</sup> Not more than fifteen blackjack card game tables are authorized, limited to the locations of the eight pari-mutuel facilities in Broward and Miami-Dade counties (the Broward and Miami-Dade slot machine facilities), provided the facility has a current operating license for Fiscal Year 2015-2016.<sup>154</sup>

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<sup>152</sup> See the executed 2010 Gaming Compact available at [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last visited Jan. 23, 2017). The 2010 Gaming Compact provides that banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the 2010 Gaming Compact, at page 4. In addition, in paragraph B of Part XVI, at page 49, the period of authorization to conduct table games is five years. F

<sup>153</sup> See subparagraph 3 of paragraph C of Part XII of the proposed 2015 Gaming Compact at pp. 46-47.

<sup>154</sup> *Id.*

Other limitations on the conduct of house banked blackjack in pari-mutuel facilities under the proposed 2015 Gaming Compact include:

- The maximum bet allowed for such games may not exceed \$15.00 for each initial two-card wager;
- All wagers on splits and/or double downs may not exceed the initial two-card wager;
- With the exception of a single side bet of not more than \$1.00, no bonus or progressive components are permitted;
- Each blackjack card game table must have a maximum of seven betting spots;
- Such licenses may not be transferred or otherwise used to move or operate blackjack card game tables at any other location; and
- The operation of blackjack card tables must be approved by a county-wide referendum held after the effective date of the proposed 2015 Gaming Compact.

In addition under the proposed 2015 Gaming Compact, the Broward and Miami-Dade slot machine facilities may be authorized by state law to add not more than ten additional blackjack card game tables at each such facility, subject to all of the above limitations above, except that the maximum bet allowed for the additional blackjack card game tables shall not exceed \$25.00 for each initial two-card wager. These ten additional blackjack card game tables may not be authorized until the fiscal year after the combined total of all annual revenue generated by the Seminole Tribe from its banking or banked card games at its facilities in Broward County and all blackjack card game tables operated by the pari-mutuel facilities in Broward and Miami-Dade Counties has increased by at least 40 percent above the revenue generated by such banking or banked card games and blackjack card tables during the "base fiscal year."<sup>155</sup> Changes to the tax rate paid to the state by pari-mutuel permitholders for the operation of slot machines and/or blackjack will not violate the exclusivity granted to the Seminole Tribe, provided that the effective tax rate is not less than 25 percent.<sup>156</sup>

***Effect of Proposed Changes:***

**Section 46** creates s. 551.1044, F.S., to authorize house banked blackjack table games, with a maximum of 25 such tables at each facility, at:

- The seven facilities in Miami-Dade and Broward counties that are eligible under the slot machines constitutional amendment where live racing or games were conducted during calendar years 2002 and 2003; and

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<sup>155</sup> The "base fiscal year" means the first fiscal year after both of the following conditions have been satisfied: (a) the Broward and Miami-Dade slot machine facilities have each offered 15 blackjack card tables for a full fiscal year, and (b) the Tribe's expansion projects at the Seminole Hard Rock Hotel & Casino - Tampa and Seminole Hard Rock Hotel & Casino - Hollywood have been fully completed and are open to the public. *See* subparagraph 3 of paragraph C of Part XII of the proposed 2015 Gaming Compact at p. 66-47.

<sup>156</sup> If the effective tax rate on the operation of slot machines and/or blackjack is less than 25%, then the Seminole Tribe shall be relieved of its obligations to make guaranteed minimum payments and any further guaranteed revenue sharing cycle payment, but instead shall make payments to the state for all future revenue sharing cycles based on the percentage payments in the proposed 2015 Gaming Compact, exclusive of all revenue generated by slot machines at the Seminole Tribe's facilities in Broward County. *See* subparagraph 1 of paragraph F of Part XII of the proposed 2015 Gaming Compact at pp. 51-52.

- The facility located in a county defined under s. 125.011, F.S., where a full schedule of live horse racing has been conducted for two consecutive years.

Each of the two new slot machine gaming facilities authorized under **Section 45** also could operate the same number of house banked blackjack tables.

Wagers may not exceed \$100 for each initial two-card wager. Subsequent wagers on splits or double downs are allowed, but may not exceed the initial two-card wager. Single side bets of not more than \$5 are also allowed.

Each pari-mutuel permitholder offering banked blackjack (as well as the two new slot machine gaming facilities authorized under **Section 45**) must pay a tax to the state of 25 percent of the blackjack operator's monthly gross receipts.

### **Slot Machines Tax Rate Reduction**

#### ***Present Situation:***

The tax rate on slot machine revenues is 35 percent pursuant to s. 550.106(2), F.S. If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade Counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee must pay to the state, within 45 days after the end of the state fiscal year, a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year that resulted in the revenue shortfall. All revenue from slot machine gaming is deposited into the Educational Enhancement Trust Fund of the Department of Education.

#### ***Effect of Proposed Changes:***

**Section 47** amends s. 551.106, F.S., to:

- Reduce the tax rate for slot machine revenues to 30 percent, effective January 1, 2018, and to 25 percent effective July 1, 2019.
- Require that if, in any year, the aggregate amount of tax paid to the state by slot machine licensees in Broward and Miami-Dade counties which were licensed before January 1, 2017, is less than the amount paid in the 2017-2018 state fiscal year, any of those licensees that paid less in that year than it paid in the 2017-2018 fiscal year must pay a surcharge equal to the difference between the amount of tax it paid in the 2017-18 fiscal year and the amount paid during the applicable state fiscal year.
- Provide that any pari-mutuel permitholder located in a county that has conducted a successful slot machine referendum after January 1, 2012, or a holder of a slot machine license awarded pursuant to s. 551.1043, F.S. (which allows one additional slot machine licensee in both Broward and Miami-Dade counties) must pay at least \$11 million in total slot machine taxes, license fees, or surcharge in Fiscal Year 2018-2019, and \$21 million in total slot machine taxes, license fees, or surcharge in Fiscal Year 2019-2020 and thereafter, regardless of whether the permitholder or licensee operated slot machines during the fiscal year.
- Remove obsolete language relative to the slot machine license fee for Fiscal Year 2010-2011.

- Provide that slot machine revenues associated with a slot machine licensee that is associated with a public-private partnership be deposited into the Pari-mutuel Wagering Trust Fund and that 90 percent of those revenues be transferred to the Educational Enhancement Trust Fund and 10 percent be transferred to the responsible public entity for the public-private partnership of the licensee.

## **Slot Machine Regulations**

### ***Present Situation:***

Section 551.108, F.S., prohibits contracts that provide for revenue sharing calculated on a percentage of slot machine revenues.

Provisions in ss. 551.114, 551.116 and 551.121, F.S., (1) require that slot machine licensees display pari-mutuel races or games to slot machine patrons in slot machine gaming areas; (2) require that slot machine gaming areas be within current live gaming areas or within a building contiguous or connected to the live gaming area; (3) limit slot machine gaming to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays; and (4) prohibit serving complimentary or reduced cost alcoholic beverages to persons playing slot machines.

### ***Effect of Proposed Changes:***

**Section 48** amends s. 551.108, F.S., relating to prohibited relationships, to address contracts between slot machine licensees and a manufacturer or distributor and to exempt contracts related to a progressive system used in conjunction with slot machines to allow a revenue sharing provision.

**Section 49** amends s. 551.114, F.S., to require slot machine licensees to display pari-mutuel races or games and offer slot machine patrons the ability to engage in wagering on live, intertrack, and simulcast races conducted or offered to patrons “if such races or games are available to the slot machine licensee.” The revised requirement is conditioned upon whether the races or games “are available” to the licensee; however, the term “are available” is not defined.

A limitation on the location of slot machine gaming areas is revised to allow a gaming area to be located anywhere within the property described in the licensee’s pari-mutuel permit. Existing law requires that a gaming area be located within the live gaming facility or in an existing building that is contiguous and connected to the facility.

**Section 50** amends s. 551.116, F.S., to extend the number of hours that a slot machine gaming area may be open on weekdays, from 18 hours to 24 hours, the same allowed for weekend operating hours.

**Section 51** amends s. 551.121, F.S., to allow complimentary or reduced-costs alcoholic beverages to be served to a person playing a slot machine and allow slot machine licensees to authorize automatic teller machines (ATMs) or similar devices designed to provide credit or dispense cash, to be located in the gaming area.

## Cardrooms and Designated Player Games

### *Present Situation:*

Chapter 849, F.S., authorizes cardrooms at certain pari-mutuel facilities.<sup>157</sup> In Fiscal Year 2016-2017, 24 cardrooms are authorized to operate.<sup>158</sup> Cardrooms are operated by 14 greyhound permitholders, four jai alai permitholders, one harness horse permitholder, three quarter horse permitholders, and two thoroughbred permitholders.<sup>159</sup> 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.<sup>160</sup>

Section 849.086, F.S., provides that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit and license to conduct a full schedule of live racing or games 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 poker or dominoes.<sup>161</sup> Such games must be played in a non-banking manner, 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 must be used to supplement greyhound purses, and quarter horse permitholders must also have a contract with a horsemen's association governing the payment of purses on live quarter horseraces conducted by the permitholder.<sup>162</sup>

Renewal of a cardroom license requires that a permitholder must, in its annual pari-mutuel license application, request to conduct at least 90 percent of the performances conducted either (1) in the year in which its first cardroom license was issued, or (2) in the state fiscal year immediately prior to the application if a full schedule of live racing was conducted.<sup>163</sup> If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.<sup>164</sup>

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<sup>157</sup> Section 849.086, F.S. Section 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 charges a fee for participation by the operator of such facility.

<sup>158</sup> See <http://www.myfloridalicense.com/dbpr/pmw/documents/MAP-Permitholders--WITH--2016-2017-OperatingLicenses--2016-07-15.pdf> (last visited Jan. 23, 2017).

<sup>159</sup> Cardroom locations, by class of permit held are: (1) greyhound racing: Bonita Springs (Lee Co.), Daytona Beach (Volusia Co.), Ebro (Washington Co.), Hallandale Beach (Broward Co.), Melbourne (Brevard Co.), Miami (Miami-Dade Co.) Orange Park (Clay Co.), Pensacola (Escambia Co.), St. Petersburg (Pinellas Co.), and West Palm Beach (Palm Beach. Co.); (2) jai alai: Dania Beach (Broward Co.), Ft. Pierce (St. Lucie Co.), Miami (Miami-Dade Co.), and Reddick (Marion Co.); (3) quarter horse: Gretna (Gadsden), Hialeah (Miami-Dade Co.) and Summerfield (Marion Co.); and (4) thoroughbred racing: Hallandale Beach (Broward Co.), and Tampa (Hillsborough Co.).

<sup>160</sup> 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).

<sup>161</sup> See s. 849.086(2)(a), F.S.

<sup>162</sup> See s. 849.086(13)(d), F.S.

<sup>163</sup> See s. 849.086(5)(b), F.S.

<sup>164</sup> *Id.*

Eleven of the 12 greyhound racing locations have cardrooms. As a result of the “90 percent rule,” the required minimum of live performances varies among greyhound racing permitholders, from 93 to 394 performances.<sup>165</sup>

There is only one harness horse permitholder, and it has a cardroom. The permitholder must request authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to its application for an operating license.<sup>166</sup> As a result of the “90 percent rule,” the required minimum of live performances for the harness horse permitholder is 126 performances.<sup>167</sup>

Four of the six jai alai permitholders have cardrooms. As a result of the “90 percent rule,” the required minimum of live performances varies among jai alai permitholders, from 36 to 150 performances.<sup>168</sup>

Three of the five quarter horse permitholders have cardrooms. As a result of the “90 percent rule,” the required minimum of live performances varies among quarter horse permitholders, from 18 to 40 performances.<sup>169</sup>

Two of the three thoroughbred permitholders have cardrooms. As a result of the “90 percent rule,” the required minimum of live performances varies among thoroughbred racing permitholders, from 40 to 81 performances.<sup>170</sup>

If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.<sup>171</sup>

Banking games are defined as those in which the house is a participant.<sup>172</sup> Designated player<sup>173</sup> games, if conducted as defined in Rule 61D-11.002(5), F.A.C., are not considered by the DBPR to be banking games. A designated player game is not authorized if it is not played in compliance with house rules required to be available for review by players or the division, which must:

- Establish uniform requirements to be a designated player;
- Ensure that the dealer button rotates clockwise around the card table for each hand, so that all players desiring to be a designated player have the opportunity to do so; and
- Not require the designated player to cover all potential wagers.<sup>174</sup>

The conducting of designated player games by cardroom operators is one of the issues in the federal court litigation between the State of Florida and the Seminole Tribe of Florida (Seminole

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<sup>165</sup> Telephone interview with division staff (Jan. 23, 2017).

<sup>166</sup> See s. 849.086(5)(b), F.S.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> See s. 849.086(5)(b), F.S.

<sup>172</sup> Section 849.086(2)(b), F.S.

<sup>173</sup> Rule 61D-11.001(17), F.A.C., defines “designated player” as the “player identified by the button as the dealer in the player position.”

<sup>174</sup> See Rules 61D-11.002(3) and (5), F.A.C.

Tribe); the federal district court (trial) decision was appealed by the State to the United States Court of Appeals for the Eleventh Circuit on January 19, 2017. The U.S. district court found that the exclusivity granted to the Seminole Tribe was reduced by the State's actions to allow designated player games because such games violated the exclusivity granted to the Seminole Tribe as to banked card games in the 2010 Gaming Compact. As a result, the court held the 2010 Gaming Compact allows the Seminole Tribe to conduct banked card games at all seven of its gaming facilities, for the Compact's full 20-year term (through July 31, 2030). The 2010 Gaming Compact permitted the Seminole Tribe to conduct banked card games at only five of its seven gaming locations for five years, unless the State authorized others to conduct banked games.<sup>175</sup> (See section on *Federal Litigation Regarding 2010 Gaming Compact*, above.)

The playing of poker in a nonbanking manner pursuant to state law<sup>176</sup> is an exception to the exclusivity provided to the Seminole Tribe under the proposed 2015 Gaming Compact; however, any game “that involves banking by the house or any player, other than Designated Player Games . . .”<sup>177</sup> is not authorized. A designated player is defined in the proposed 2015 Gaming Compact as “the player identified by a button as the player in the dealer position, seated at any traditional player position in a Designated Player Game, who is not required to cover all wagers.”<sup>178</sup>

Designated player game(s) are defined in the proposed 2015 Gaming Compact as “games consisting of at least three (3) cards in which players compare their cards only to those cards of the player in the dealer position, who also pays winners and collects from losers,” and the ranking of poker hands in such games must be consistent with the definition of traditional poker hand rankings provided in Hoyle's Modern Encyclopedia of Card Games, 1974 Ed.<sup>179</sup>

The following conditions apply to designated player games at cardrooms under the proposed 2015 Gaming Compact:<sup>180</sup>

- The maximum wager in any such designated player game may not exceed \$25;
- A player participating as a designated player must occupy a playing position at the table;
- Each player participating in a designated player game must be offered, in a clockwise rotation, the opportunity to be the designated player after each hand;
- Any player participating as a designated player for thirty (30) consecutive hands must subsequently play as a non-designated player for at least two (2) consecutive hands before resuming play as a designated player;
- Designated players may not be required to cover more than ten (10) times the minimum posted bet for players seated during any one game;
- Pari-mutuel locations that offer slot machines and/or Video Race Terminals<sup>181</sup> may not offer designated player games; and

<sup>175</sup> See *Seminole Tribe of Florida v. State of Florida*, 2016 U.S. Dist. LEXIS 155708 (N.D. Fla. Nov. 9, 2016) Case No.: 4:15-cv-516-RH/CAS, Document 103. at p. 19.

<sup>176</sup> Section 849.086(2)(a), F.S.

<sup>177</sup> See subparagraph 7 of paragraph C of Part XII of the proposed 2015 Gaming Compact at pp. 48-49.

<sup>178</sup> *Id.* at paragraph I of Part III of the proposed 2015 Gaming Compact at p. 5.

<sup>179</sup> *Id.* at paragraph J of Part III of the proposed 2015 Gaming Compact at p. 5.

<sup>180</sup> *Id.* at subparagraph 7 of paragraph C of Part XII of the proposed 2015 Gaming Compact at pp. 48-49.

<sup>181</sup> The offering of video race terminals is permitted to certain permitholders in limited conditions as an exception to exclusivity granted to the Seminole Tribe under the proposed 2015 Gaming Compact; “Video Race Terminal” means “an

- Pari-mutuel cardroom locations offering designated player games may not have designated player game tables in excess of 25 percent of the total poker tables authorized at that cardroom.

***Effect of Proposed Changes:***

**Section 52** amends s. 849.086, F.S., to:

- Provide that the division must establish a reasonable period to respond to requests from a licensed cardroom and has a maximum of 45 days to approve a cardroom's internal controls or the rules for a new authorized game, or provide a list of deficiencies. The division has ten days after receipt of revised internal controls or rules for a new game addressing the deficiencies identified by the division to approve or reject the revised internal controls or rules.
- Allow operation 24 hours daily, (currently 8 hours Monday through Friday and 24 hours on Saturday and Sunday); the same hours that a slot machine gaming area may be open pursuant to the amendments in Section 48.
- Remove the ability of a permitholder to amend a renewal application for a cardroom.
- Delete the 90 percent rule in existing law mandating the minimum number of races that must be conducted by a permitholder to renew a cardroom license.
- Require that a permitholder conducting less than a full schedule of live racing or games have a contract with a thoroughbred permitholder that conducts live racing and does not possess a slot machine gaming license; the contract must provide that the (decoupled) permitholder will pay four percent of gross cardroom receipts to the thoroughbred permitholder for use as purses during its next racing meet. A thoroughbred racing permitholder receiving those funds must pay ten percent of the funds to the Florida Thoroughbred Breeders' Association, Inc., for the payment of breeders', stallion, and special racing awards, subject to the fee authorized in s. 550.2625(3), F.S. *See also, Section 31*, (Thoroughbred Purse Supplement Program) and **Section 43**, (Slot Machine gaming licensees; live thoroughbred horse racing purse payments).
- Provide that a designated player game is not a banking game, and that a designated player is the player in the dealer position seated at a traditional player position who pays winning players and collects from losing players.

A designated player game is defined as "a game in which the players compare their cards only to the cards of the designated player or to a combination of cards held by the designated player and cards common and available for play by all players." All cardroom operators may offer designated player games.

The cardroom operator may not serve as a designated player but may collect a rake as posted at the table. If there are multiple designated players at a table, the dealer button must be rotated clockwise after each hand. A cardroom operator may not allow a designated player to pay an opposing player who holds a lower ranked hand. Any designated player may not be required by

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individual race terminal linked to a central server as part of a network-based video game, where the terminals allow pari-mutuel wagering by players on the results of previously conducted horse races, but only if the game is certified in advance by an independent testing laboratory licensed or contracted by the Division of Pari-Mutuel Wagering as complying with all of the following requirements" See subparagraph 4 of paragraph C of Part XII of the proposed 2015 Gaming Compact at pp. 47-48 and paragraph KK of Part III of the proposed 2015 Gaming Compact at page 14.

the rules of a game or by the rules of a cardroom to cover all wagers posted by opposing players. The cardroom, or any cardroom licensee, may not contract for or receive compensation other than a posted table rake from any player to participate in any game to serve as a designated player.

Employees of a designated player must be licensed, and the designated player must pay, in addition to the cardroom business occupational fee, an employee occupational fee which may not exceed \$500.00 per employee annually.

Transfer or relocation of a cardroom is prohibited, except through the relocation of a pari-mutuel permit pursuant to s. 550.0555, F.S., or s. 550.3345, F.S.

## **Bingo**

### ***Present Situation:***

Section 849.0931, F.S., authorizes the conduct of bingo games under specified conditions, including limitations on how bingo game proceeds may be used. The term “bingo game” means a game in which participants pay money for the use of one or more bingo cards.<sup>182</sup> The term “bingo card” means the “flat piece of paper or thin pasteboard” used by players, printed with at least 24 numbers from 1 through 75.<sup>183</sup> The term “instant bingo” means a form of bingo that is played at the same location as bingo, using tickets by which a player wins a prize by opening and removing a cover from the ticket to reveal a set of numbers, letters, objects,<sup>184</sup> or patterns, some of which have been designated in advance as prize winners.<sup>185</sup>

Florida law does not prohibit or prevent charitable, nonprofit, or veterans’ organizations<sup>186</sup> that have been in existence and active for three or more years and have engaged in charitable, civic, community, benevolent, religious, or scholastic works or other similar endeavors (charitable endeavors), from conducting bingo games or instant bingo.<sup>187</sup> The entire proceeds<sup>188</sup> of such games, less actual business expenses for articles designed for and essential to the operation, conduct, and playing of bingo or instant bingo, must be donated by an organization to the

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<sup>182</sup> Section 849.0931(1)(a), F.S. When the bingo game begins, numbers are drawn by chance, one by one, and announced. The players mark those numbers on their bingo cards until a player has the numbers in a preannounced sequence targeted for a particular game. This player calls out “bingo” and is declared the winner of a predetermined prize. More than one game may be played upon a bingo card, and numbers called for one game may be used for a succeeding game or games.

<sup>183</sup> See s. 849.0931(1)(b), F.S. More than one set of bingo numbers may be printed on any single piece of paper.

<sup>184</sup> Section 849.0931(1)(g), F.S., provides that “objects” means a set of 75 balls or other precision shapes that are imprinted with letters and numbers in such a way that numbers 1 through 15 are marked with the letter “B,” numbers 16 through 30 are marked with the letter “I,” numbers 31 through 45 are marked with the letter “N,” numbers 46 through 60 are marked with the letter “G,” and numbers 61 through 75 are marked with the letter “O.”

<sup>185</sup> See s. 849.0931(1)(f), F.S.

<sup>186</sup> Charitable, nonprofit, or veterans’ organization” means “an organization which has qualified for exemption from federal income tax as an exempt organization under the provisions of s. 501(c) of the Internal Revenue Code of 1954 or s. 528 of the Internal Revenue Code of 1986, as amended; which is engaged in charitable, civic, community, benevolent, religious, or scholastic works or other similar activities; and which has been in existence and active for a period of three years or more.” See s. 849.0931(1)(c), F.S.

<sup>187</sup> See s. 849.0931(2)(a), F.S.

<sup>188</sup> *Id.* The proceeds of conducting bingo games or instant bingo is not considered to be the solicitation of public donations, which requires the filing of registration statements under ch. 496, F.S., relating to Solicitation of Funds.

organization's charitable endeavors. The net proceeds may not be used for any other purpose whatsoever.

Charitable, nonprofit, or veterans' organization may not serve as a sponsor of a bingo game or instant bingo conducted by another person; it must be directly involved in the conduct of such games.<sup>189</sup> Every charitable, nonprofit, or veterans' organization involved in the conduct of a bingo game or instant bingo must be located in the county, or within a 15-mile radius of, where the bingo game or instant bingo is located.<sup>190</sup>

If a charitable, nonprofit, or veterans' organization is not engaged in charitable endeavors, it may conduct bingo games, but its right to do so requires the return of all the proceeds from such games to the players in the form of prizes.<sup>191</sup> Authorized amounts of prizes and the limits on the number of jackpots differ for bingo and instant bingo:<sup>192</sup>

- Except for instant bingo prizes, which are limited to the amounts displayed on the ticket or on the game flare,<sup>193</sup> a jackpot may not exceed the value of \$250.00 in actual money or its equivalent, and there may be no more than three jackpots in any one session<sup>194</sup> of bingo.
- Except for instant bingo, which is not limited, the number of days per week during which organizations authorized under this section may conduct bingo may not exceed two.
- Except for instant bingo prizes, which are limited to the amounts displayed on the ticket or on the game flare, there may be no more than three jackpots on any one day of play, and all other game prizes may not exceed \$50.00.

Bingo games or instant bingo may be held only on certain premises:<sup>195</sup>

- Property owned by the charitable, nonprofit, or veterans' organization.
- Property owned by the charitable, nonprofit, or veterans' organization that will benefit by the proceeds.
- Property leased for a period of not less than 1 year by a charitable, nonprofit, or veterans' organization, providing the lease or rental agreement does not provide for the payment of a percentage of the proceeds generated at such premises to the lessor or any other party and providing the rental rate for such premises does not exceed the rental rates charged for similar premises in the same locale.

<sup>189</sup> See s. 849.0931(2)(b), F.S.

<sup>190</sup> See s. 849.0931(9), F.S.

<sup>191</sup> See s. 849.0931(3), F.S., which also requires that if there are proceeds remaining at the conclusion of play of a bingo game that have not been paid out as prizes, the organization must conduct bingo games on the next scheduled day of play without any charge to the players and continue to do so until the carried-over proceeds have been exhausted. The limitation on the number of prize or jackpot games allowed in one day under s. 849.0931(7), F.S. is not extended by this procedure for handling carried-over proceeds.

<sup>192</sup> See ss. 849.0931(5), (6), and (7), F.S.

<sup>193</sup> The term "flare" means the board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it the following information: (1) the game name; (2) the manufacturer's name or distinctive logo; (3) the form number; (4) the ticket count; (5) the prize structure, including the number of symbols or number combinations for winning instant bingo tickets by denomination, with their respective winning symbols or number combinations; (6) the cost per play; and (7) the game serial number.

<sup>194</sup> Section 840.0931(1)(j) defines "session" as a designated set of games played in a day or part of a day.

<sup>195</sup> See s. 849.0931(11), F.S.

- Property owned by a municipality or a county when the governing authority has, by appropriate ordinance or resolution, specifically authorized the use of such property for the conduct of such games.
- Certain property owned by the residents of eligible property owner associations, or constituting common area located within a condominium, mobile home park, or recreational vehicle park.

Section 849.0931(13), F.S. includes specified requirements for instant bingo tickets.

An organization or person that violates s. 849.0931, F.S., is subject to prescribed criminal penalties.<sup>196</sup>

***Effect of Proposed Changes:***

**Section 53** amends s. 849.0931, F.S., to authorize veterans' organizations engaged in charitable, civic, community, benevolent, religious, or scholastic works or other similar endeavors, that have been in existence for three or more years to conduct instant bingo pursuant to s. 849.0931, F.S., using electronic tickets in lieu of or together with paper tickets. An electronic ticket must be nontransparent until opened by the player in electronic form.

Instant bingo using electronic tickets may be conducted only on the following premises:

- Property owned by the veterans' organization.
- Property owned by the veterans' organization that will benefit by the proceeds.
- Property leased for a period of not less than 1 year by a veterans' organization, providing the lease or rental agreement does not provide for the payment of a percentage of the proceeds generated at such premises to the lessor or any other party and providing the rental rate for such premises does not exceed the rental rates charged for similar premises in the same locale.

Electronic tickets for instant bingo may only be sold or distributed in this state by a veterans' organization after the software for the tickets has been independently analyzed and certified to be compliant by a nationally recognized independent gaming laboratory.

**Revocation of Pari-Mutuel Permits**

***Present Situation:***

Section 550.1815, F.S., addresses the revocation and suspension of pari-mutuel permits, and provides that the division must refuse to issue or renew, or suspend as appropriate, any permit if the permitholder or affiliated persons has been convicted of a felony in Florida or in any other state, or convicted of a felony under the laws of the United States.

The permit of a harness horse permitholder or thoroughbred horse permitholder who does not pay tax on handle for live performances for a full schedule of live races during any two consecutive state fiscal years is void and escheats to and becomes property of the state, unless

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<sup>196</sup> The first violation is a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. A second or subsequent offense is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

the failure to operate and pay tax on handle is the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control.<sup>197</sup> Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to operate and pay tax on handle.<sup>198</sup>

***Effect of Proposed Changes:***

**Section 54** provides that the division must revoke any permit to conduct pari-mutuel wagering if a permitholder has not conducted live events within the 24 months preceding the effective date of the bill, unless the permit is a limited thoroughbred racing permit that was issued under s. 550.3345, F.S. A permit revoked for failure to conduct live events within the 24 months preceding the effective date of the bill may not be reissued.

**Directives to Division of Law Revision and Information**

**Section 55** directs the Division of Law Revision and Information to replace references to the “effective date of this act” throughout the bill with the actual date the bill is effective.

**Effective Dates**

**Section 56** provides that except for section 4, 15, and section 53, which are effective upon becoming a law, this act:

- Is effective only if the proposed 2015 Gaming Compact, as amended as required in Section 4, is approved, or deemed approved, by the United States Department of Interior pursuant to the Indian Gaming Regulatory Act; and
- Takes effect upon the date that the approved compact is published in the Federal Register.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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<sup>197</sup> Section 550.09512(3), F.S. and s. 550.09515(3), F.S.

<sup>198</sup> *Id.*

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference has not reviewed CS/SB 8. However, the fiscal impact of the bill is likely to be indeterminate because there are too many uncertainties.

**Indian Gaming Compact Revenue**

The bill requires the proposed 2015 Gaming Compact between the Seminole Tribe of Florida (the Seminole Tribe) and the State of Florida, executed by the Seminole Tribe and the Governor on December 7, 2015, (the proposed 2015 Gaming Compact) be amended to incorporate additional exceptions from the exclusivity to be provided to the Seminole Tribe under the proposed 2015 Gaming Compact, without any impact or change to the payments to the state under the proposed 2015 Gaming Compact beginning July 1, 2017, and thereafter. (See the Compact Comparison in Section III, above, for a detailed comparison of the proposed 2015 Gaming Compact revenues and 2010 Gaming Compact revenues.) Whether the Seminole Tribe will agree to the amendments to the proposed 2015 Gaming Compact required by the bill is unknown.

With two exceptions, CS/SB 8 is effective only if the proposed 2015 Gaming Compact, as amended, is approved or “deemed approved” by the United States Department of Interior under the Indian Gaming Regulatory Act of 1988. The bill takes effect upon the date that the approved compact is published in the Federal Register. Whether the United States Department of Interior will approve the proposed 2015 Gaming Compact, as amended, and publish the required notice also is unknown.

If the proposed 2015 Gaming Compact, as amended, is approved, the revenue generated pursuant to the Compact will exceed the current estimate, based upon the 2010 gaming Compact, by \$201.7 million in Fiscal Year 2017-2018, increasing to \$344.3 million in Fiscal Year 2021-2022. These new revenues will be deposited into the General Revenue Fund.

This estimate does not include amounts paid by the Seminole Tribe under the 2010 Compact placed in General Revenue reserve due to pending federal litigation regarding banked card games. The amount held in reserve as of January 2017 was \$170.7 million.

**Slot Machine Tax Rate Reduction and Additional Facilities**

The slot machine tax rate reduction, which takes effect on January 1, 2018, combined with the requirement that the existing Broward and Miami-Dade slot machine facilities pay, in each year, at least as much as they paid in Fiscal Year 2017-2018, will result in a loss of revenue to the state. The loss to the Educational Enhancement Trust Fund is estimated to be approximately \$11.6 million in Fiscal Year 2017-2018, increasing to \$21.4 million in Fiscal Year 2021-2022.

The provisions of the bill allowing slot machines in counties that have held a referendum and allowing an additional facility in each of Broward and Miami-Dade counties will result in an indeterminate increase in state revenues deposited in the Educational Enhancement Trust Fund. While the bill requires that permit holders or licensees in those counties must each pay at least \$11 million in slot machine taxes and license fees for activity in Fiscal Year 2018-2019, and \$21 million in each fiscal year thereafter, the number of permit holders or licensees that will pay these amounts is unknown.

These additional revenues will be offset by losses in other state revenue as slot machines supplant other economic activities. In 2016, the Revenue Estimating Conference estimated the impact of an expansion of slot machine availability in SB 7072 to be a negative \$20.1 million on a recurring basis to the General Revenue Fund.

### **Pari-Mutuel Permit Reduction Program**

The bill establishes a permit reduction program which uses \$20 million of Compact funds to purchase and cancel active pari-mutuel permits. The program expires June 30, 2019.

### **Thoroughbred Purse Supplements Program**

The bill establishes a \$20 million per year long-term thoroughbred purse supplement program, effective July 1, 2019, which uses \$20 million annually of Compact funds.

### **Pari-Mutuel Decoupling, and Credit Repeal and Tax Rate Reduction for Greyhound Racing**

The bill authorizes certain pari-mutuel permit holders to cease conducting live racing while retaining intertrack and simulcast wagering, cardrooms, and, where relevant, slot machine facilities. It also eliminates credits and exemptions for greyhound racing and reduces the greyhound racing tax rate. In 2016, the Revenue Estimating Conference estimated the impact of these provisions in SB 7072 to be a \$2.1 million increase in state revenue in the first year, and a \$2.6 million increase on a recurring basis.

### **House Banked Blackjack at Miami-Dade and Broward Slot Machine Facilities**

The bill authorizes facilities in Miami-Dade and Broward counties that currently have slot machines, plus two future potential slot machine facilities in those counties, to offer up to 25 house banked blackjack tables each. Blackjack will be taxed at 25 percent of monthly gross receipts and is expected to generate an indeterminate amount of state revenue for the Pari-Mutuel Wagering Trust Fund.

### **Fantasy Contests**

Initial license application fees and annual license renewal fees paid by fantasy contest operators are expected to generate an indeterminate amount of state revenue.

### **Point-of-Sale Lottery Terminals**

Point-of-Sale Lottery terminals are expected to generate an indeterminate amount of additional revenue for the Educational Enhancement Trust Fund.

#### **B. Private Sector Impact:**

The bill creates additional gambling opportunities for Floridians and visitors. It allows certain pari-mutuel permitholders to offer slot machines or blackjack, creates two additional slot machine facilities (one in each county) to be located in Broward County or a county defined in s. 125.011, F.S., (presently only Miami-Dade County), and expands the hours slot machine facilities and cardrooms may operate. By allowing pari-mutuel permitholders to decouple their live racing and games from cardrooms and slot machine operations, the bill may adversely affect employees and businesses that support live racing and games. The thoroughbred purse and awards supplement program, however, will benefit the thoroughbred racing industry in the state.

Pari-mutuel permitholders who hold active, dormant, and inactive permits must evaluate the impact of the provisions of the bill on their operations and business interests. Greyhound racing permitholders, jai alai permitholders, harness racing permitholders, and quarter horse racing permitholders must determine, on an annual basis, whether to offer live racing or games at their pari-mutuel facilities, (i.e., decoupling), but may continue to offer slot machines or cardrooms. Tax rates are lowered for pari-mutuel permitholders and slot machine licensees.

Existing slot machine licensees in Broward and Miami-Dade counties may be required to pay a surcharge if the slot machine tax, albeit at a reduced rate, produces less revenue than those facilities pay in Fiscal Year 2017-2018. The amount of any surcharge payable by a licensee will depend upon the amount of slot machine tax paid by a licensee. Any surcharge is due 45 days after the end of each state fiscal year.

In addition, a pari-mutuel permitholder in a county that passed a slots machine referendum and the licensees for the new slot machine facilities authorized for Broward and Miami-Dade counties will be subject to a minimum revenue guarantee for slot machine taxes and license fees in Fiscal Year 2018-2019 of \$11 million and in Fiscal Year 2019-2020 and thereafter of \$21 million. The difference between those amounts and the amounts actually paid for slot machine taxes and licensing fees during each state fiscal year is due 45 days after the end of each state fiscal year.

Certain thoroughbred horse racing permitholders may elect to discontinue live racing within the 30-day period after the effective date of the bill (i.e., partial decoupling) but continue to operate their licensed slot machine facilities and/or cardrooms.

Any of the eight pari-mutuel permitholders in Broward and Miami-Dade Counties that have a slot machine license may operate up to 25 house banked blackjack tables at their facilities but must pay a 25 percent tax on gross receipts associated with wagering on those table games.

### C. Government Sector Impact:

The Division of Pari-mutuel Wagering (division) must implement the provisions of the bill and adopt forms and procedures for the pari-mutuel permit reduction program, and for the issuance of additional slot machine licenses in the eight counties which have approved slot machine gaming (Brevard, Duval, Gadsden, Hamilton, Lee, Palm Beach, St. Lucie, and Washington), as well as for the two additional slot machine facilities (one in each county) to be located in Broward County or a county defined in s. 125.011, F.S., (presently only Miami-Dade County).

The bill will result in new state expenditure requirements but is also expected to generate additional revenues. The Department of Business and Professional Regulation (DBPR) analysis indicates that implementation of the bill will require three FTEs to staff the Office of Amusement, and 43 additional FTEs for the division. Cost estimates provided by the DBPR for the additional staff are \$1,890,541 in Fiscal Year 2017-2018, \$2,397,509 in Fiscal Year 2018-2019, and \$2,918,389 in Fiscal Year 2019-2020.<sup>199</sup> Also, according to the DBPR, most updates to the DBPR's computer system, Versa: Regulation and OnBase, and any other possible modifications to Versa: Online, will be made with existing DBPR resources. However, technology infrastructure and licensing costs resulting from the additional FTEs required to implement the bill are included in the fiscal impacts above. In addition, the division's Central Management System (CMS) and Race Monitoring System (RMS) databases are maintained by the division in conjunction with a service provider, which is responsible for making programming changes to the application. Total costs for updates to the CMS and RMS are indeterminate.<sup>200</sup>

The Department of the Lottery indicates it is likely that the implementation of **Sections 1, 2, and 3** of the bill relating to the point-of-sale terminals for the sale of lottery tickets or games will result in some increase in sales of lottery products as well as transfers to education, although the amount is cannot be determined.<sup>201</sup> Any increase in sales will result in increased sales commissions to retailers.<sup>202</sup>

### VI. Technical Deficiencies:

The bill requires that the proposed 2015 Gaming Compact be amended to incorporate additional exceptions from the exclusivity to be provided to the Seminole Tribe. The bill does not stipulate the process by which a determination will be made that the required amendments have been made, or whether the amendments will be incorporated into the original document or will be made in a separate document attached to the original.

The sections of the bill concerning fantasy contests are unclear with respect to certain aspects of how the industry will be regulated. For example, the bill defines a "noncommercial contest

<sup>199</sup> See *2017 Agency Legislative Bill Analysis* issued by the Department of Business and Professional Regulation for SB 8, dated February 10, 2017 (on file with Senate Appropriations Subcommittee on Finance and Tax).

<sup>200</sup> *Id.* at page 12.

<sup>201</sup> See *2017 Agency Legislative Bill Analysis* issued by the Department of the Lottery for SB 8, dated January 20, 2017 (on file with Senate Committee on Regulated Industries) at page 3.

<sup>202</sup> *Id.* at page 4.

operator” but does not apply different standards of regulation to noncommercial operators and other contest operators.

In section 31 of the bill, the Thoroughbred Purse and Awards Supplement (in newly created s. 550.1753, F.S.), requires that the division distribute ten percent of all purse and awards supplement funds (i.e., ten percent of the \$20 million from compact revenues) to the Florida Thoroughbred Breeders’ Association, Inc., which will reduce the funds available for distribution to thoroughbred permitholders. Unclear is which thoroughbred permitholder distribution(s) will be affected to provide the ten percent to be paid to the Florida Thoroughbred Breeders’ Association, Inc.: the funds remaining after the first \$10 million is distributed pursuant to s. 550.1753(3)(c)1., F.S.; *or* all the funds to be distributed pursuant to s. 550.1753(c)1., F.S., and s. 550.1753(3)(c)2., F.S.

In section 52 of the bill, employees of a designated player are required to be licensed, and the designated player must pay, in addition to the business occupation license fee established under s. 849.086(6)(i), F.S., an employee occupational license fee which may not exceed \$500 per employee for any 12-month period. Unclear is whether an employee of a designated player would participate in authorized games conducted at a cardroom as a designated player or would perform some other function or role.

The DBPR General Counsel has noted that the bill may provide an insufficient timeframe for the agency to review applications for new slot machine facilities in Miami-Dade and Broward Counties, and insufficient rulemaking authority for promulgating rules for blackjack and carrying out the duties of the Office of Amusements. The General Counsel also noted potential difficulties for the agency regarding definitions of terms relating to card games and blackjack, and requirements for regulating the welfare of racing greyhounds.<sup>203</sup>

## **VII. Related Issues:**

None.

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 24.103, 24.105, 24.112, 285.710, 285.712, 550.002, 550.01215, 550.0251, 550.054, 550.0555, 550.0951, 550.09512, 550.09514, 550.09515, 550.155, 550.1625, 550.1648, 550.2415, 550.26165, 550.3345, 550.3551, 550.475, 550.5251, 550.615, 550.6308, 551.101, 551.102, 551.104, 551.1042, 551.1043, 551.1044, 551.106, 551.108, 551.114, 551.116, 551.121, 849.086, and 849.0931.

This bill creates the following sections of the Florida Statutes: 546.11, 546.12, 546.13, 546.14, 546.15, 546.16, 546.17, 546.18, 550.1752, 550.1753, 550.2416, 551.1042, 551.1043, and 551.1044.

This bill repeals the following sections of the Florida Statutes: 550.0745 and 550.1647.

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<sup>203</sup> *Id.* at page 15.

This bill creates three undesignated sections of the Florida Statutes.

## IX. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Appropriations on February 23, 2017:**

The committee substitute:

- Limits point-of-sale lottery terminals to sale of lottery tickets only; not games.
- Clarifies the revenue sharing required under the amendments to the 2015 Compact required by SB 8 to:
  - Preserve the payments required in the Guaranteed Payment Period, the payments during the Regular Payment Period, and the Guaranteed Minimum Compact Term Payment.
  - Require deletion of the references to the Initial Payment Period in the Compact.
- Revises the application requirements for a license as a fantasy contest operator.
- Prohibits fantasy contests involving amateur athletic events.
- Clarifies that the licenses fee limitation for fantasy contest operators to be 10 percent of the difference between the amount of entry fees collected by a fantasy games operator and the amount of prizes paid to contest participants.
- Revises the standards for the annual audit a fantasy contest operator must obtain and submit to the Office of Contest Amusements in the Department of Business and Professional Regulations (DBPR).
- Deletes requirements for fantasy operators to file certain quarterly reports.
- Revises penalty provisions applicable to fantasy contest operators so they do not apply to violations before licensure, if the contest operator applies for a license within 90 days after the bill is effective and receives a license within 240 days after the bill is effective.
- Revises provisions on pari-mutuel permit decoupling to:
  - Clarify that decoupled greyhound, jai alai, harness horse and quarter horse permitholders may continue to operate their slot machine and cardroom facilities and continue to conduct intertrack and simulcasting.
  - Revise the requirements for a thoroughbred horse racing permitholder to decouple.
  - Clarify that contracted purse supplement funds under current law paid by a decoupled thoroughbred permitholder must be used to supplement purses on live horse races held at other thoroughbred facilities.
  - Delete the requirement that harness and quarter horse permitholders must have operated a cardroom for 2 years prior to decoupling.
- Allows summer jai alai permitholders to operate a cardroom.
- Revises provisions on the relocation of certain pari-mutuel facilities to allow re-location to an existing permitholder's facility.
- Revises requirements for the operation of the Permit Reduction Program created in the bill.

- Revises the Thoroughbred Purse and Awards Supplement Program (\$20 million of Compact revenue beginning 7.1.2019) to provide that *the first* \$10 million of purse and awards distributions be for a thoroughbred permitholder without slot machines, with ten percent being paid to the Florida Thoroughbred Breeders' Association, Inc.
- Revises requirements applicable to licensing and operation of limited thoroughbred horse racing permits.
- Revises intertrack and simulcasting requirements for conducting thoroughbred horse racing special events.
- Allows thoroughbred horse racing after 7 p.m.
- Revises requirements in the bill for sharing of slot machine revenue and cardroom revenue by decoupled pari-mutuel permitholders with specified thoroughbred horse racing permitholders.
- Provides a 3<sup>rd</sup> degree felony penalty for accepting wagers on horse races *other than* wagers made within the enclosure of a pari-mutuel facility in this state and through a facility's ontrack totalisator system.
- Updates and strengthens the anti-doping standards for racing animals, requires chain of custody and split sample procedures for testing, and requires one sample be tested by the state's testing lab. Requires the Division of Pari-mutuel Wagering (division) in the DBPR adopt recommended penalty guidelines.
- Reduces slot machine taxes from 35 percent to 30 percent on January 1, 2018, and to 25 percent on July 1, 2019.
- Reduces the number of years from ten consecutive years to 5 consecutive years that a pari-mutuel permitholder must operate at a leased pari-mutuel facility in order to qualify for a slot machine license.
- Establishes a minimum revenue guarantee for existing slot machine facilities.
- Establishes a minimum revenue guarantee for *new* slot machine facilities authorized in the bill.
- Revises designated player game requirements and requires that designated players and their employees pay a cardroom employee occupational license fee up to \$500 per employee annually.
- Requires the division to respond within specified time periods to licensed cardroom requests concerning internal controls or new authorized games.
- Authorizes veterans' organizations to conduct instant bingo, in accordance with the requirements of the bingo statute, using electronic tickets in lieu of or together with instant bingo paper tickets at premises owned or leased by a veterans' organization.
- Makes technical changes.

B. Amendments:

None.