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.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

BILL:	PCS/SB 840 (514374)
INTRODUCER:	Appropriations Subcommittee on Finance and Tax and Senator Hutson
SUBJECT:	Gaming
DATE:	February 14, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	**Favorable**
2.	Fournier	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 840 revises Florida law concerning gaming. The bill:

- Authorizes the execution of a new gaming compact between the State of Florida (state) and the Seminole Tribe of Florida (Seminole Tribe), which:
  - Authorizes the Seminole Tribe to continue 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 all seven facilities ;
  - Is for a term of 20 years, through June 30, 2038; 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);
  - Provides exceptions to the Tribe's exclusive rights to allow:
    1. The authorization of fantasy contests;
    2. The play of Designated Player Games in cardrooms in the state; and
    3. Certain pari-mutuel permitholders to end live racing.
- Authorizes certain fantasy contests in which participants pay an entry fee, fantasy contest operators and their employees and agents may not be participants in a fantasy contest, prizes

and awards must be established and disclosed before a contest, winning outcomes must reflect knowledge and skill of participants and be determined predominantly by statistical results of performances of individuals, including athletes in sporting events, and winning outcomes may not be based on performances in collegiate, high school, or youth sporting events.

- Provides that the Department of Business and Professional Regulation (DBPR) may not regulate fantasy contests and certain gambling laws set forth in Ch. 849, F.S., do not apply to a fantasy contest conducted by a fantasy contest operator or a commissioner who participates in fewer than ten contests each calendar year and distributes all contest entry fees as prizes.
- Allows, subject to eligibility requirements, greyhound racing permitholders, harness horse racing permitholders, and quarter horse racing permitholders to stop conducting live performances but continue operating slot machine facilities or cardrooms (decoupling).
- Requires permitholders licensed to conduct slot machine gaming or cardrooms that choose to discontinue live racing or games, (i.e., decouple), to make annual payments for the benefit of live thoroughbred horse racing purses.
- Eliminates dormant pari-mutuel permits and repeals authorization for the issuance of summer jai alai permits.
- Reduces the tax rate on slot machines from 35 percent to 30 percent effective January 1, 2019, and to 25 percent effective July 1, 2020.
- Provides that if, in any state fiscal year, the aggregate amount of tax paid to the state by all the slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount paid in the 2017-2018 state fiscal year, each of those licensees must pay a surcharge to alleviate the shortfall.
- Provides that a Designated Player Game is not a banking game and sets certain requirements and limitations for a Designated Player Game.
- Limits the number of Designated Player Game tables in a cardroom to not more than 50 percent of the cardroom's total licensed tables.
- Grants additional rulemaking authority to the DBPR's Division of Pari-Mutuel Wagering (division) relating to requests from licensed cardrooms and imposes deadlines for response by the division to submissions by cardroom licensees relating to rules for new authorized games, revisions to internal controls, and revisions to rules for games.
- Amends the definition of "slot machine or device" to include machines or devices that provide a preview of the outcome of the game (i.e., pre-reveal games).

If the new compact is agreed to by the Seminole Tribe and approved by the United States Secretary of the Interior, the payments made by the Seminole Tribe to the state will increase both during the Guarantee Period (Fiscal Years 2018-2019 through 2024-2025) and thereafter, compared to the payments the Seminole Tribe would be required to pay the state under the 2010 Gaming Compact.

If the new gaming compact does not become effective, and any provisions of PCS/SB 840 are determined to violate the 2010 Gaming Compact, the Seminole Tribe could stop making payments to the State. The payments are estimated to be $391.1 million in Fiscal Year 2018-2019, and from $328.2 to $361.4 million annually in the following seven years. The bill will also result in the loss of $4.1 million on a recurring basis in slot machine revenue. See Section V., Fiscal Impact Statement.

PCS/SB 840 takes effect upon becoming a law.

II. Present Situation:

Background

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

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

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[10]

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

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[1] *See* s. 849.08, F.S.
[2] *See* s. 849.01, F.S.
[3] *See* s. 849.09, F.S.
[4] 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.
[5] Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[6] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[7] *See* ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.
[8] Section 849.086, F.S., and *see* s. 849.086(2)(c), F.S., which defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[9] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2017-2018 Operating Licenses to operate 25 cardrooms. *See* http://www.myfloridalicense.com/dbpr/pmw/PMW-PermitholderOperatingLicenses--2017-2018.html (last visited Jan. 11, 2018).
[10] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).
[11] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[12] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

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

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.

Gaming Compacts with Seminole Tribe of Florida

Present Situation:

In 2010, a gaming compact (2010 Gaming Compact) between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida (state) was ratified by the Legislature.[18] The 2010 Gaming Compact authorizes the Seminole Tribe to conduct certain Class III gaming for a 20-year period, and to offer banked card games for five years, through July 31, 2015. The 2010 Gaming Compact provides that any expanded gaming (beyond what is specifically acknowledged) allowed in the state relieves the Seminole Tribe of its obligations to make substantial revenue sharing payments.[19]

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 2010 Gaming Compact.[20]

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

[13] *See* s. 849.085, F.S.
[14] *See* s. 849.0931, F.S.
[15] *See* s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[16] *See* s. 849.141, F.S.
[17] *See* s. 546.10, F.S.
[18] The 2010 Gaming Compact was executed by the Governor and the Seminole Tribe on April 7, 2010, ratified by the Legislature, effective April 28, 2010, and approved by U.S. Secretary of the Interior, pursuant to the Indian Gaming Regulatory Act of 1988, on June 24, 2010. It took effect when published in the Federal Register on July 6, 2010. The 20-year term of the 2010 Gaming Compact expires July 31, 2030, unless renewed. Section 285.710(1)(f), F.S., designates the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation as the "state compliance agency" having authority to carry out the state's oversight responsibilities under the 2010 Gaming Compact. *See* http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[19] *See* last sentence in paragraph B of Part XII of 2010 Gaming Compact at page 43.
[20] *See* s. 285.710, F.S., especially subsections (3), (13), and (14). The seven tribal locations where gaming is authorized by the 2010 Gaming 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).

local share distributed to the specified counties and municipalities is based on the net win per facility in each county and municipality.

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 of the Department of Business and Professional Regulation (DBPR) carries out the state's oversight responsibilities under the 2010 Gaming Compact.[21]

Federal Litigation Concerning the 2010 Gaming Compact

The state and the Seminole Tribe were parties to litigation in federal court relating to the offering of table games by the Seminole Tribe after July 31, 2015, in which the state alleged that the Seminole Tribe's conduct of banked card games violated the 2010 Gaming Compact. The Seminole Tribe alleged it had authority to conduct banked card games under the 2010 Gaming Compact after 2015 because the state had allowed pari-mutuel cardrooms to conduct banked games (i.e., Designated Player Games).

On November 9, 2016, U.S. District Court Judge Robert L. Hinkle issued an Opinion on the Merits, 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).[22]

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 at all seven of its gaming facilities, for the Compact's full 20-year term (through July 31, 2030).[23] The DBPR appealed Judge Hinkle's decision.[24]

[21] *See* s. 285.710(1)(f), F.S.

[22] *See Seminole Tribe of Florida v. State of Florida,* 219 F.Supp. 3d 1177 (N.D. Fla. Nov. 9, 2016), Case No.: 4:15-cv-516-RH/CAS, Document 103. In addition to the holding as to banked card games, Judge Hinkle held that sovereign immunity barred the court from considering whether the State had failed to negotiate in good faith as to authorizing roulette and craps, and that a ruling on whether electronic forms of blackjack are also a banked card game was unnecessary as that issue was too close to resolve and was not essential to the outcome of the case.

[23] *Id.* at p. 19, and s*ee* 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. *See Federal Litigation Concerning the 2010 Gaming Compact and Banked Card Games (including Player Banked Card Games with a Designated Player)*, below, for a discussion of Judge Hinkle's decision relating to banked card games.

[24] *See Seminole Tribe of Florida v. State of Florida*, 219 F.Supp. 3d 1177 (N.D. Fla. Jan. 19, 2017), Case No.: 4:15-cv-516-RH/CAS, Document 120.

Settlement of the Federal Litigation and Establishment of Forbearance Period

After the appeal of Judge Hinkle's decision was filed, the Seminole Tribe and the DBPR entered into a Settlement Agreement and Stipulation (2017 Settlement) on July 5, 2017.[25] The parties agreed to undertake certain actions.

The state agreed to dismiss the pending appeal, and, upon issuance of the final order of dismissal of the appeal, the Seminole Tribe agreed to release the state from all claims by the Tribe for past Revenue Share Payments,[26] based on the operation of player-banked games which use a designated player (Designated Player Games) or electronic forms of blackjack (Electronic Table Games) in Florida. The state and the Seminole Tribe also agreed that the findings of fact and conclusions of law in Judge Hinkle's decision are binding on the parties.[27]

The Seminole Tribe also agreed it would not seek the return of funds associated with tribal gaming paid to and segregated by the state during the pendency of the federal litigation, granting the state unencumbered use of the segregated funds.[28]

As to the continued operation of banked card games (i.e., Designated Player Games operated as described in Judge Hinkle's decision), the Seminole Tribe agreed to delay taking certain actions until after the last day of the month that the Legislature adjourns[29] its 2018 legislative session (the Forbearance Period). The Seminole Tribe agreed not to:

- Suspend Revenue Share Payments; or
- Deposit Revenue Share Payments into an escrow account in accordance with Part XII of the 2010 Gaming Compact, provided that the State takes aggressive enforcement action against the continued operation of banked card games and no other violations of the Tribe's exclusivity occur during the Forbearance Period.[30]

Effect of Proposed Changes:

Section 1 ratifies and approves in advance a new gaming compact between the Seminole Tribe and the state (the 2018 Gaming Compact) and authorizes the Governor to execute such a compact in the identical form set forth in the legislation. If ratified, the 2018 Gaming Compact will supersede the 2010 Gaming Compact; otherwise, the 2010 Gaming Compact remains in effect. The bill requires the Governor to cooperate with the Seminole Tribe in seeking approval of the 2018 Compact from the United States Secretary of the Interior. The state's ratification expires January 1, 2019, unless the 2018 Gaming Compact becomes effective.

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[25] *See* Settlement Agreement and Stipulation (2017 Settlement) (July 5, 2017) (on file with the Senate Committee on Regulated Industries).

[26] Revenue Share Payments are the periodic payments to the State by the Seminole Tribe, based on the Tribe's Net Win. Net Win is defined as total receipts from the play of authorized tribal gaming in Florida, less all prizes, free play, or promotional credits. *See* paragraphs U and X of Part III of the 2010 Gaming Compact at page 11 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).

[27] *See* 2017 Settlement at page 8.

[28] *See* the 2017 Settlement at page 6.

[29] Should the 2018 legislative session be adjourned as anticipated on March 9, 2018, the Forbearance Period will end on March 31, 2018.

[30] *See* 2017 Settlement at page 7.

The 2018 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;
- Is for a term of 20 years, through June 30, 2038; 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).[31]

After ratification by the Legislature, the 2018 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.[32]

The following table compares the terms of the 2010 Gaming Compact to the 2018 Gaming Compact:

	2018 COMPACT	**2010 COMPACT**
Guarantee Money to State	7-year Guarantee worth $3 billion (Starts 7/1/2018) 1- $325 million 2- $350 million 3- $375 million 4- $425 million 5- $475 million 6- $500 million 7- $550 million Total: $3 Billion guaranteed (true-up at end of year 7)	5-year Guarantee worth $1 billion 1- $150 million 2- $150 million 3- $233 million 4- $233 million 5- $234 million Total: $1 Billion guaranteed
Term	20 years; 7-year minimum guarantee.	20 years; 5-year minimum guarantee; Banked Card Games exclusivity expired after 5 years.
Revenue Share to State	Revenue Share to State from Tribe's Gaming Revenue $0-2B: 13% (1% increase) $2-3B: 17.5% (2.5% increase) $3-3.5B: 17.5% $3.5-4B: 20%	Revenue Share to State from Tribe's Gaming Revenue $0-2B: 12% $2-3B: 15% $3-3.5B: 17.5% $3.5-4B: 20%

[31] *Id*.
[32] 25 U.S.C. s. 2710(d)(8). *See* **Section 2** of the bill.

	2018 COMPACT	2010 COMPACT
	$4-4.5B: 22.5% $4.5B+: 25%	$4-4.5B: 22.5% $4.5B+: 25%
Games	1. Slot Machines 2. Banked Card Games 3. Raffles and Drawings 4. Any new game authorized for any person except Banked Card Games authorized for another Indian Tribe 5. Live Table Games	1. Slot Machines (all Facilities) 2. Banked Card Games (all Facilities except Big Cypress & Brighton) 3. Raffles and Drawings 4. Any new game authorized for any person except Banked Card Games authorized for another Indian Tribe
Facilities	1. Seminole Indian Casino-Brighton 2. Seminole Indian Casino-Coconut Creek 3. Seminole Indian Casino-Hollywood 4. Seminole Indian Casino-Immokalee 5. Seminole Indian Casino-Big Cypress 6. Seminole Hard Rock Hotel & Casino-Hollywood 7. Seminole Hard Rock Hotel & Casino-Tampa	1. Seminole Indian Casino-Brighton 2. Seminole Indian Casino-Coconut Creek 3. Seminole Indian Casino-Hollywood 4. Seminole Indian Casino-Immokalee 5. Seminole Indian Casino-Big Cypress 6. Seminole Hard Rock Hotel & Casino Hollywood 7. Seminole Hard Rock Hotel & Casino-Tampa
State Oversight	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.	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.
Pari-Mutuel Policy Choices for Legislature	Explicitly states that the following do not violate exclusivity: • Lower taxes for pari-mutuels on the operation of slot machines provided the effective tax rate is not less than 25% of slot machine revenues • Decoupling for pari-mutuels • Fantasy contests, as authorized in the bill • Designated player games	N/A
Internet Gaming	Tribe recognizes that internet gaming, with the exception of fantasy contests as authorized in the bill, is illegal in Florida. If State authorizes internet gaming, other than fantasy contests, as authorized in the bill, THEN→ • Guaranteed Minimum Payments cease; but • Revenue Share Payments continue. If Tribe offers internet gaming to players in Florida then Guaranteed Minimum Payments continue. Affirmative	If State authorizes internet gaming and Tribe's Net Win from all Facilities drops more than 5% below Net Win from previous year THEN → • Guaranteed Minimum Payments cease; but • Revenue Share Payments continue If Tribe offers internet gaming then Guaranteed Minimum Payments continue.

	2018 COMPACT	2010 COMPACT
	recognition by Tribe that internet gaming is illegal in Florida.	
Smoking	Tribe will make efforts to promote smoke-free environment at Facilities	Tribe will make efforts to promote smoke-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.	Tribe will make annual $250,000 donation per Facility to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list.
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 January 1, 2018.	Florida may enter into a Compact with another federally-recognized Tribe that has land in trust in the State as of February 1, 2010.

Fantasy Contests (Section 3)

Present Situation:

The operation of fantasy sports activities in Florida has 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,[33] as there are millions of participants.[34]

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. The term "commissioner" has been used in the context of fantasy baseball leagues to denote a person who manages a fantasy baseball league, establishes league rules, resolves disputes over rule interpretations, publishes league standings, or selects the Internet service for publication of league standings.[35]

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,[36] provides that a person who wagers any "thing of value" upon the result of a contest of skill or endurance of

[33] *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) (Edelman Treatise), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited Jan. 11, 2018), and Jonathan Griffin, *The Legality of Fantasy Sports*, National Conference of State Legislatures Legisbrief (Sep. 2015) (on file with the Committee on Regulated Industries).

[34] 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 "rotisserie 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. 11, 2018).

[35] *See* Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/, (last visited Jan. 11, 2018).

[36] *See* Fla. AGO 91-03 (Jan. 8, 1991), at http://myfloridalegal.com/. . . 91-03 (last visited Jan. 11, 2018).

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.[37]

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.[38] 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.[39]

Florida Attorney General Opinions on Fantasy Sports Leagues and Contests Involving Skill

In 1991, Florida Attorney General Robert A. Butterworth issued a formal opinion[40] 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.

In the contest described in the opinion, each contestant paid $100 to participate in the fantasy football league and manage one of eight teams. The resulting $800 in proceeds were used for prizes. The prizes were based upon the performance of the individual professional football players in actual games. Attorney General Butterworth determined that the proceeds qualified as a "stake, bet or wager" on the result of a contest of skill and, as a result, the operation of the fantasy sports leagues violated s. 849.14, F.S., relating to unlawful betting on the result of a trial or contest of skill.[41]

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[37] 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.
[38] *See* Spectrum Gaming Group Gambling Impact Study (Gambling Impact Study), at http://www.leg.state.fl.us/gamingstudy/docs/FGIS_Spectrum_28Oct2013.pdf (Oct. 28, 2013) (last visited Jan. 11, 2018).
[39] *Id.*, Figure 22 at page 119 (equivalent to page 67 of Part 1A of the printed Gambling Impact Study).
[40] *See* Fla. AGO 91-03 (Jan. 8, 1991), at http://myfloridalegal.com/. . . 91-03 (last visited Jan. 11, 2018).
[41] *Id*.

The 1991 opinion cited *Creash v. State*, 179 So. 149, 152 (Fla. 1938). In *Creash*, the Florida Supreme Court held:

> In gamblers' lingo, 'stake, bet or wager' are synonymous and refer to the money or other thing or 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 cards or other games of chance, it is so considered. [Citation omitted.] *It is also banned as gambling if created as in this case by paying admissions to the game, purchasing certificates, or otherwise 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.[42] [Emphasis added.]

However, in a 1990 opinion, Attorney General Butterworth, again citing *Creash v. State*, determined that a contest of skill (such as a hole-in-one golf contest) "where the contestant pays an entry fee, which *does not make up* (i.e., create) *the prize*, for the opportunity to win a valuable prize by the exercise of skill, *did not violate the gambling laws of [Florida]*."[43] (Emphasis in original.) That 1990 opinion reasoned, "[t]hus, the payment of an entry fee to participate in a contest of skill when the sponsor of the contest does not participate in the contest of skill and where the prize money does not consist of entry fees would *not* appear to be a 'stake, bet or wager'" in violation of s. 849.14, F.S., relating to gambling. (Emphasis added.)[44]

Class III Gaming under the Indian Gaming Regulatory Act

Fantasy contests, if classified as Class III gaming, also could affect the revenue sharing provisions of the 2010 Gaming Compact.[45] Under the compact if fantasy contests are a form of new Class III gaming in Florida, payments due to the state under the compact would cease.[46]

Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA).[47] The 2010 Gaming Compact authorizes the Seminole Tribe to conduct specified Class III gaming activities at its seven tribal facilities in Florida.[48]

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[42] *See Creash v. State*, 179 So. 149, 152 (Fla. 1938).
[43] *See* Fla. AGO 90-58 (Jul. 27 1990) at http://www.myfloridalegal.com/ago.nsf/Opinions/DEF7C36F0D75C323852563D2007AA34C (last visited Jan. 11, 2018).
[44] *Id.*
[45] *See* paragraph A of Part XII of the 2010 Gaming Compact at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[46] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[47] *See* 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.*
[48] *See* paragraph F of Part III of the 2010 Gaming Compact at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 11, 2018). The 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-

Under IGRA, gaming is categorized in 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;
- **Class II** gaming 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; and
- **Class III** gaming includes all forms of gaming that are not Class I or Class II gaming, such as banked card games (such as baccarat, chemin de fer, and blackjack(21), casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.[49]

If fantasy contests are gaming, constitute Class III gaming under federal law, and constitute *new* Class III gaming in Florida (i.e., gaming not in operation as of February 1, 2010, or July 1, 2015, respectively), then authorizing fantasy contests in Florida (i.e., additional Class III gaming) violates the exclusivity provisions in the 2010 Gaming Compact and the Proposed 2015 Gaming Compact. As a result, certain revenue sharing requirements would not apply, and the Seminole Tribe would be authorized to offer similar internet/on-line gaming.

In a letter to Senator Travis Hutson and Representative Mike La Rosa dated December 5, 2017,[50] Jim Shore, General Counsel for the Seminole Tribe, indicated:

> The Tribe believes the games permitted by these bills [HB 223 and SB 374 (Fantasy Contests), and SB 840 (Gaming)] would violate the Tribe's exclusivity, as set forth in Part XII of the 2010 Gaming Compact between the State and Tribe. By providing this notice, the Tribe hopes to avoid a situation where the State enacts legislation that inadvertently violates the Tribe's exclusivity. That said, the Tribe and the State have discussed the issue of fantasy sports contests in previous compact negotiations and the Tribe remains willing to do so now. However, federal law requires that any reduction in the Tribe's exclusivity must be balanced by some additional consideration from the State. Without such an agreement, the 2010 Gaming Compact would allow the Tribe to cease all revenue sharing payments to the State based on the expanded gaming contemplated by these bills.

Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The 2010 Gaming Compact was approved by the U.S. Department of the Interior effective July 6, 2010. *See* 75 Fed. Reg. 38833-38834 at https://www.gpo.gov/fdsys/pkg/FR-2010-07-06/pdf/2010-16213.pdf (last visited Jan. 11, 2018). *See* http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 11, 2018).

[49] *See* 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*.

[50] *See* Letter from Jim Shore, General Counsel for the Seminole Tribe, to Senator Travis Hutson and Representative La Rosa (Dec. 5, 2017) (on file with the Senate Committee on Regulated Industries).

The National Indian Gaming Commission (commission) issued an opinion dated March 13, 2001,[51] relating to a sports betting game proposed for future play in Arizona and California via the Internet. In that sports betting game, players could wager upon various sporting *events*, including NFL football, baseball, golf, and the Olympics. The commission determined that game to be Class III gaming because it was not included within the definitions of Class I or Class II gaming under IGRA.

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

In 1992, the U.S. Congress enacted the Professional and Amateur Sports Protection Act (PASPA),[52] which provides that it is unlawful for a governmental entity or any person to sponsor, operate, advertise, or promote:

> 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.[53]

The prohibited activity is known generally as "sports betting." Governmental entities are also prohibited from licensing such activities or authorizing them by law or compact.[54] However, PASPA does not apply to pari-mutuel animal racing or jai alai games.[55] 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.[56]

The prohibition against sports 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.[57]

In a case pending before the United States Supreme Court, the State of New Jersey has challenged the constitutionality of PASPA, on the basis that PASPA "commandeers" or impermissibly controls the regulatory power of states relating to the legalization of sports betting, thereby violating the Tenth Amendment to the U.S. Constitution.[58] The respondents (the

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[51] *See* https://www.nigc.gov/images/uploads/game-opinions/WIN%20Sports%20Betting%20Game-Class%20III.pdf (last visited Jan. 11, 2018).
[52] *See* 28 U.S.C. ss. 3701-3704 (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[53] *See* 28 U.S.C. s. 3702 (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[54] *Id*.
[55] *See* 28 U.S.C. s. 3704(a)(4) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 20187).
[56] *See* 28 U.S.C. s. 3704(a)(1) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[57] *See* 28 U.S.C. s. 3704(a)(2) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Jan. 11, 2018).
[58] *See Christie v. National Collegiate Athletic Association,* Docket No. 16-476, (*Christie*) at http://www.scotusblog.com/case-files/cases/christie-v-national-collegiate-athletic-association-2/ (last visited Jan. 11, 2018). Oral argument in the case was held on December 4, 2017.

National Collegiate Athletic Association, the National Basketball Association, the National Football League, the National Hockey League, and the Office of the Commissioner of Baseball) defend PASPA's pre-emption of state laws that authorize sports gambling as a valid exercise of congressional power to regulate commerce.[59] The Court's decision in the case is anticipated no later than June 29, 2018.

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)[60] was signed into law by President George W. Bush on October 13, 2006.[61] Internet gambling is not determined to be legal in a state, nor illegal. Instead, UIGEA targets financial institutions in an attempt to prevent the flow of money from an individual to an internet gaming company. Congress found that enforcement of gambling laws through new mechanisms "are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders."[62] UIGEA expressly states that none of its provisions "shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States."[63]

"Unlawful internet gambling" prohibited by UIGEA includes the placement, receipt, or transmission of certain bets or wagers.[64] However, the definition of the term "bet or wager" specifically excludes any fantasy game or contest in which a fantasy team is not based on the current membership of a professional or amateur sports team, and:

- All prizes and awards are established and made known to the participants in advance of the game or contest;
- Prize amounts are not based on the number of participants or the amount of entry fees;
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals or athletes in multiple "real-world sporting or other events;" and
- No winning outcome is based:
  - On the score, point-spread, or any performance or performances of any single "real-world" team or combination of teams; or
  - Solely on any single performance of an individual athlete in any single "real-world sporting or other event."[65]

While UIGEA excludes bets or wagers of participants in certain fantasy sports games and contests,[66] it does not, however, authorize fantasy contests and activities in Florida.

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[59] *See* the respondents' Brief in Opposition at http://www.scotusblog.com/wp-content/uploads/2016/12/16-476-16-477-BIO.pdf at page 17 (last visited Jan. 11, 2018).
[60] *See* https://www.gpo.gov/fdsys/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIV-chap53.pdf, (UIGEA online) at page 46 (last visited Jan. 11, 2018).
[61] The provisions of UIGEA were adopted in Conference Committee as an amendment to H.R. 4954 by Representative Daniel E. Lungren (CA-3), "The SAFE Ports Act of 2006."
[62] *See* 31 U.S.C. s. 5361(a)(4), UIGEA online, at page 46.
[63] *See* 31 U.S.C. s. 5361(b).
[64] *See* 31 U.S.C. s. 5362(10), UIGEA online, at page 48.
[65] *See* 31 U.S.C. s. 5362(E)(ix), UIGEA online, at page 47.
[66] *Id*.

Effect of Proposed Changes:

Section 3 creates s. 546.13, F.S., to authorize certain fantasy contests in which participants must pay an entry fee. Section 546.13(1), F.S., provides requirements for fantasy contests and associated definitions.

"Entry fee" means cash or a cash equivalent required to be paid by a person for the ability to participate in a fantasy contest offered by a fantasy contest operator.

"Fantasy contest operator" means a person or entity, including any employee or agent, that offers fantasy contests with an entry fee for a cash prize but is not a participant in the fantasy contest. The term does not include an individual who serves as the commissioner of no more than 10 fantasy contests in a calendar year. The term "commissioner" is not defined in the bill, but has been used in the context of fantasy baseball leagues to denote a person who manages a fantasy baseball league, establishes league rules, resolves disputes over rule interpretations, and publishes league standings or selects the Internet service for publication of league standings.[67]

A "fantasy contest" is a fantasy or simulated game in which:

- The value of all prizes and awards offered to winning participants must be established and disclosed to the participants in advance of the contest;
- All winning outcomes reflect the relative knowledge and skill of contest participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events; and
- No winning outcome is based:
  - On the score, point spread, or any performance or performances of any single actual team or combination of teams;
  - Solely on any single performance of an individual athlete or player in any single actual event; or
  - On the performances of participants in collegiate, high schools, or youth sporting events.

The bill provides that the Department of Business and Professional Regulation (DBPR) may not regulate fantasy contests and the offenses in 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 do not apply to a fantasy contest operated or conducted by:

- A fantasy contest operator; or
- A natural person, who is a participant in the fantasy contest, serves as the commissioner of not more than ten contests in a calendar year, and distributes all contest entry fees as prizes or awards to the participants in that fantasy contest.

If the 2018 Gaming Compact between the Seminole Tribe and the state. which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to fantasy contests will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because fantasy contests, as authorized under this bill, are excluded from the consequences associated

[67] *See* Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/, (last visited Jan. 11, 2018).

with any future authorization of internet gaming and are an exception to the exclusivity granted to the Seminole Tribe under that compact.

Regulation of Pari-Mutuel Wagering (Section 4)

Present Situation:

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, there were 10 license suspensions, and $107,655 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2015-2016.[68]

According to the latest information available from the DBPR, as of February 2017, there were 39 pari-mutuel permitholders with operating licenses[69] in Florida, operating at 12 greyhound tracks, six jai alai frontons, five quarter horse tracks, three thoroughbred tracks, and one harness track.[70] One jai alai permitholder voluntarily relinquished its permit in 2016.[71] Jai alai games were conducted pursuant to a new permitholder license beginning in June 2017 at a new jai alai fronton in Florida City (Miami-Dade County).[72]

Of the 19 greyhound racing permitholders with operating licenses during Fiscal Year 2016-2017, six permitholders conducted races at leased facilities.[73] Five pari-mutuel facilities have two

[68] *See* the 85th Annual Report for Fiscal Year 2015-2016 (the most current report) issued by the division *available at* http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf (last visited Jan. 11, 2018) at page 5 (equivalent to page 3 of the printed Annual Report).
[69] *See* Pari-Mutuel Wagering Permitholders With 2016-2017 Operating Licenses map dated Feb. 10, 2017, (on file with Senate Committee on Regulated Industries).
[70] *Id.*
[71] 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. 11, 2018).
[72] *See* http://www.myfloridalicense.com/dbpr/pmw/documents/Licenses/2017-2018-j/284--License--KingsCourtKey--2017-2018--2017-03-15.pdf (last visited Jan. 11, 2018).
[73] 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 Jan. 11, 2018), 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.

permits operating at those locations.[74] One greyhound racing permitholder's operating license was suspended late in 2014.[75]

There are 11 permitholders that do not have operating licenses for Fiscal Year 2017-2018: two greyhound,[76] three jai alai,[77] one limited thoroughbred,[78] and five quarter horse.[79]

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.[80]

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,

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[74] 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.

[75] *See* http://www.myfloridalicense.com/dbpr/pmw/documents/CurrentPermitholdersList.pdf (last visited Jan. 11, 2018) 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. 11, 2018).

[76] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).

[77] Gadsden Jai-alai (Chattahoochee), Tampa Jai Alai, and West Flagler Associates (Miami).

[78] 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).

[79] ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County).

[80] *See* s. 550.054(2), F.S.

and number of days during which pari-mutuel operations may be conducted at the specified location.[81]

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

Current law provides complex requirements for what constitutes 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;
- 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.[82]

A "performance" is a minimum of eight consecutive live races.[83] At least three live performances must be held at a track each week.[84] When a permitholder conducts at least three live

[81] *See* s. 550.054(9)(a), F.S.
[82] *See* s. 550.002(11), F.S.
[83] Section 550.002(25), F.S.
[84] Section 550.002(11), F.S.

performances in a week,[85] 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).[86] In order to receive an operating license, permitholders must have conducted a full schedule of live racing during the preceding year.[87]

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[88] 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.[89]

The conduct of a full schedule of live racing or games is a condition of licensure for a slot machine licensee,[90] and the conduct of a minimum number of live races is a condition of renewal for a cardroom license.[91]

Effect of Proposed Changes:

License Applications by Permitholders and Decoupling

Section 4 amends s. 550.01215, F.S., relating to operating license applications filed annually with the division by pari-mutuel permitholders for licenses for the next fiscal year (July 1 through June 30).

In general, 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. Permitholders accepting wagers on intertrack and simulcast events are required to disclose the dates of all those events in their license application. For the 2018-2019 Fiscal Year only, the division may approve changes in racing dates for permitholders, if the requests are received before May 31, 2018.

Greyhound Racing Permitholders

Certain greyhound racing permitholders[92] 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 racing or games (i.e., decouple), while they continue to operate their licensed slot machine

[85] 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.
[86] Section 550.09514(2)(c), F.S.
[87] 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.
[88] After Jefferson County Kennel Club failed to conduct scheduled performances, its operating license was suspended September 22, 2014 under a consent order a*vailable at* http://www.myfloridalicense.com/dbpr/pmw/documents/Licenses/PMW--Consent Order--JEFFERSON_COUNTY_KENNEL_CLUB_INC--146--2014-09-23--20141023.pdf (last visited Jan. 11, 2018).
[89] Section 550.01215(4), F.S.
[90] Section 551.104(4)(c), F.S.
[91] Section. 849.086(5)(b), F.S.
[92] 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.

facilities and/or cardrooms, if any, pursuant to ch. 551, F.S., and s. 849.086, F.S., as amended by the bill.

Decoupled greyhound permitholders retain their pari-mutuel permits, are pari-mutuel facilities as defined in s. 550.002(23), and remain eligible, but not required, to be a guest track for purposes of intertrack wagering and simulcasting.

Harness Horse Racing and Quarter Horse Racing Permitholders

Section 4 provides that harness horse racing permitholders and quarter horse racing permitholders that have conducted live racing for at least five years may discontinue live racing (i.e., decouple), if the irrevocable election to discontinue live racing is made during the 30-day period after the effective date of the bill.

A harness horse racing permitholder or quarter horse racing permitholder that makes the irrevocable election to decouple may retain its permit and is a pari-mutuel facility as defined in s. 550.002(23), F.S.

A decoupled harness horse racing permitholder is eligible, but not required, to be a *host* track for purposes of intertrack wagering and simulcasting; a decoupled quarter horse racing permitholder is eligible, but not required, to be a *guest* track for purposes of intertrack wagering and simulcasting.

Section 4 provides that a decoupled harness horse racing permitholder or a decoupled quarter horse racing permitholder 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.

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to decoupling will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because the decoupling of greyhound racing permitholders, quarter horse racing permitholders and harness horse racing permitholders is permitted under that compact and is not a violation of the exclusivity granted to the Seminole Tribe under that compact.

Prohibition on Issuance of Additional Pari-Mutuel Permits, Revocation of Dormant Permits, and Repeal of the Authority to Issue New Summer Jai Alai Permits

Present Situation:

The permit of a harness horse permitholder or thoroughbred horse permitholder that 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.[93] Financial hardship of the permitholder does not constitute just cause for either failure.[94]

[93] *See* s. 550.09512(3), F.S. and s. 550.09515(3), F.S.
[94] *Id.*

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.[95]

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.

Section 550.0745 authorizes, under certain circumstances, the conversion of a pari-mutuel permit to a summer jai alai permit, for the conduct of jai alai games only during the summer season. Provisions of law prohibiting the location and operation of jai alai frontons within a specified distance from the location of another jai alai fronton or other permitholder, which prohibit the division from granting any permit at a location within a certain designated area, are inapplicable to summer jai alai permits issued pursuant to s. 550.0745, F.S.

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

Effect of Proposed Changes:

Section 5 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 after January 1, 2018.
- 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.
- Delete 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.
- Repeal provisions authorizing conversion and relocation of pari-mutuel permits, cardrooms, or slot machine facilities.

Section 6 repeals s. 550.0745, F.S., relating to summer jai alai permits.

[95] *See* ss. 550.09512(3)(b) and 550.09515(3)(b), F.S.

Sections 7 and **8** amend s. 550.09512, F.S., relating to harness horse racing, and s. 550.09515, F.S., relating to thoroughbred racing, respectively, to:

- Require the division to revoke a harness or thoroughbred horse racing permit that has not paid the tax due on the handle for a full live schedule of harness or thoroughbred 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 or thoroughbred horse permit that has been revoked for nonpayment of taxes.

Section 9 amends s. 550.3345, F.S., to delete provisions authorizing conversion of quarter horse racing permits to limited thoroughbred racing permits.

Slot Machine Gaming and Decoupling (Sections 10 and 11)

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.[96] 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.[97]

Section 550.475, F.S., allows a pari-mutuel permitholder 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 permitholder of a same class with a valid permit, 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.

Effect of Proposed Changes:

Section 10 revises conditions for licensure and for maintaining continued authority for conducting slot machine gaming to reflect that certain pari-mutuel permitholders are authorized to discontinue conducting live racing or games (i.e., decouple). Section 10 authorizes a permitholder with a slot machine license to receive an operating license to conduct pari-mutuel wagering activities at another pari-mutuel facility, if the permitholder has operated its live races or games by lease for at least five consecutive years immediately prior to the permitholder's application for a slot machine license; however, the permitholders must be located within 35 miles of each other.[98]

Section 10 requires a slot machine licensee that chooses not to run a full schedule of live racing or games, (i.e., decouple), to make payments for the benefit of live thoroughbred horse racing purses. If a slot machine licensee is not running a full schedule of live racing or games under its pari-mutuel permit, then the decoupled licensee must remit each month to each qualified

[96] *See* ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.
[97] *See* FLA. CONST., art. IX, s. 23 (1968).
[98] *See* s. 550.475, F.S., and lines 267 to 285 of the bill.

thoroughbred permitholder, by the fifth day of each calendar month[99] via electronic funds transfer instructions provided by the permitholder, an amount equal to one-twelfth of the lesser of $1.5 million or 2.75 percent of the permitholder's prior fiscal year slots revenue, divided by the total number of qualified thoroughbred permitholders for that fiscal year. A qualified thoroughbred permitholder must use such payments exclusively for purses and awards for live thoroughbred horse races held at that permitholder's racing facility.

The term "qualified thoroughbred permitholder":

- Does not include limited thoroughbred permitholders or thoroughbred permitholders leasing a racetrack facility from another thoroughbred permitholder.
- Includes thoroughbred permitholders conducting no less than a full schedule of live racing, and no fewer than the number of performances conducted in Fiscal Year 2017-2018.

The division must, within 15 days of issuing a slot machine license to a decoupled permitholder, notify the licensee of the qualified thoroughbred permitholders to which payments must be paid. A qualified thoroughbred permitholder that receives those funds must remit, within 10 days of receipt, 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. 550.2625(3), F.S.[100]

Slot Machines Tax Rate Reduction (Section 11)

Present Situation:

The tax rate on slot machine revenues is 35 percent under 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 11 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 state fiscal year, the aggregate amount of tax paid to the state by all the slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount paid in the 2017-2018 state fiscal year, each of those licensees must pay a surcharge calculated by dividing the aggregate amount of slot machine taxes paid to the state by all

[99] The bill provides if the fifth day of the calendar month falls on a weekend, the payment must be remitted on the first Monday following the weekend.

[100] Section 550.2625(3), F.S, states the Florida Thoroughbred Breeders' Association has the right to withhold up to 10 percent of a permitholder's payments under that section as a fee for administering the payments of awards and for general promotion of the horse racing industry.

such slot machine licensees in the 2017-18 fiscal year by the aggregate amount of slot machine taxes paid by all such licensees during the applicable fiscal year, multiplying the result by the amount of slot machine taxes paid by the licensee during the applicable state fiscal year, and then subtracting from that product the amount of slot machine taxes paid by the licensee during the applicable state fiscal year. However, the sum of taxes paid by a licensee at the reduced tax rates and any surcharge may not exceed 35 percent of the licensee's slot machine revenue in the applicable state fiscal year.

- Remove obsolete language relative to the slot machine license fee for Fiscal Year 2010-2011.

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill becomes effective, the provisions in this bill relating to the taxation of slot machine revenues will not cause any impact to the revenues to be paid to the state **by the Seminole Tribe** because the reduction of the tax on slot machine revenues is permitted under that compact and is not a violation of the exclusivity granted to the Seminole Tribe under that compact. Slot machine tax revenues are likely to be reduced by this provision.

Cardrooms and Designated Player Games (Section 12)

Present Situation:

Chapter 849, F.S., authorizes cardrooms at certain pari-mutuel facilities.[101] In Fiscal Year 2017-2018, 25 cardrooms are authorized to operate.[102] Cardrooms are operated by 14 greyhound permitholders, five jai alai permitholders, one harness horse racing permitholder, three quarter horse racing permitholders, and two thoroughbred racing permitholders.[103] 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.[104]

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.[105] Such games must be played in a non-banking manner,[106] where the participants play against each

[101] Section 849.086, F.S. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[102] *See* http://www.myfloridalicense.com/dbpr/pmw/PMW-PermitholderOperatingLicenses--2017-2018.html (last visited Jan. 11, 2018).
[103] 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.), Florida City and 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.).
[104] *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).
[105] *See* s. 849.086(2)(a), F.S.
[106] *Id.*

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 supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.[107]

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 ("90 percent rule").[108] 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.[109]

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.[110]

There is only one harness horse racing 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.[111] As a result of the "90 percent rule," the required minimum of live performances for the harness horse racing permitholder is 126 performances.[112]

Five 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.[113]

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.[114]

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.[115]

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.[116]

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[107] See s. 849.086(13)(d), F.S.
[108] *See* s. 849.086(5)(b), F.S.
[109] *Id.*
[110] Telephone interview with division staff (Jan. 23, 2017).
[111] *See* s. 849.086(5)(b), F.S.
[112] *Id*.
[113] *Id*.
[114] *Id*.
[115] *Id*.
[116] *See* s. 849.086(5)(b), F.S.

State Litigation Challenging DBPR's Administrative Rules Relating to Designated Player Games

In July 2014, the Division of Pari-Mutuel Wagering (division) of the Department of Business and Professional Regulation (DBPR) adopted two administrative rules relating to the play of Designated Player Games.[117] Under the rules, 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.[118]

Banking games are defined in current law as those in which the house is a participant.[119] Designated player[120] games, if conducted as defined in Rule 61D-11.002(5), Florida Administrative Code, were not considered by the DBPR to be banking games.

The division pursued additional rulemaking concerning Designated Player Games in September 2014, to "address issues discovered in the implementation and practical application of [the July 2014] cardroom rules."[121] In October 2015, the division proposed to repeal the rule defining the term "designated player" as "the player identified by the button in the dealer position" and the rule establishing the standards for Designated Player Games.[122]

Various cardroom operators challenged the repeal of the rules in December 2015. In August 2016, Administrative Law Judge Gary Early of the Division of Administrative Hearings found:

> The evidence is conclusive that, by its repeal of rule 61D-11.002(5), Respondent simply changed its mind as to whether playing with a designated player constituted the establishment of a prohibited banking game. [Footnote omitted.] It previously determined that such games were lawful under the terms of section 849.086 [F.S.]; it has now determined they are not.[123]

Judge Early determined the division:

> Has taken divergent views of the statute in a manner that has substantially affected the interests of [cardroom operators]. For [the division] to suggest

[117] *See* Fla. Admin. Code R. 61D-11.001(17) and R. 61D-002(5) (2018) at https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61D-11 (last visited Jan. 11, 2018).
[118] *Id*. and *see* Fla. Admin. Code R. 61D-11.002(3) and (5) (2017).
[119] Section 849.086(2)(b), F.S.
[120] Fla. Admin. Code R. 61D-11.001(17) (2018) defines "designated player" as the "player identified by the button as the dealer in the player position."
[121] *See Dania Entertainment Center, LLC. v. Dep't of Bus. and Prof. Reg., Div. of Pari-mutuel Wagering, (Dania Entertainment)* Case No. 15-7010RP (Fla DOAH 2016) at page 17.at https://www.doah.state.fl.us/ROS/2015/15007010.pdf (last visited Jan. 11, 2018).
[122] *Id*. at p. 18.
[123] *See Dania Entertainment* at pp. 24-25.

> that its repeal of the rules is a clarification, a simplification, or reflection of the unambiguous terms of the statute, and that [the cardrooms] should just tailor their actions to the statute without any interpretive guidance from [the division], works contrary to the role of government to provide meaningful and understandable standards for the regulation of business in Florida. [The division] cannot, with little more than a wave and well-wishes, expect regulated businesses to expose themselves to liability through their actions under a statute that is open to more than more one interpretation, when the agency itself has found it problematic to decipher the statute under which it exercises its regulatory authority.[124]

In November 2017, the Florida First District Court of Appeal (DCA) affirmed Judge Early's ruling that the proposed repeal of the Designated Player Games rules was invalid.[125] The DCA stated the ruling correctly found that repeal of the rules was a rule itself because it was a change of the DBPR's policy on Designated Player Games[126] However, the DCA declined to adopt Judge Early's finding that the division "lacked the authority to either promulgate or to repeal rules" on Designated Player Games, noting that the role of the division "is to provide meaningful and understandable standards for cardrooms, particularly where a statute is ambiguous."[127]

Federal Litigation Concerning the 2010 Gaming Compact and Banked Card Games (including Player Banked Card Games with a Designated Player) and Settlement

As discussed above in connection with the 2018 Gaming Compact authorized in this bill, the state and the Seminole Tribe were parties to litigation in federal court relating to the offering of table games by the Seminole Tribe after July 31, 2015.
As to the banked card games issue, Judge Hinkle found:

- The 2010 Gaming Compact defines 'Covered Games' to include 'banking or banked card games, including baccarat, chemin de fer, and blackjack (21);[128]
- Under s. 849.086, F.S., licensed pari-mutuel facilities may operate cardrooms, but the statute explicitly forbids "banking" card games;[129]
- 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;

[124] *Id*. at page 25.
[125] *See Dep't of Bus. and Prof. Reg., Div. of Pari-Mutuel Wagering v. Dania Entertainment Center, et al.* 229 So.3d 1259 (Fla. 1st DCA 2017) at https://edca.1dca.org/DCADocs/2016/4275/164275_1284_11082017_08460223_i.pdf (last visited Jan. 11, 2018).
[126] *Id*. The DCA also affirmed the finding that the Division of Pari-Mutuel Wagering (division) of the DBPR failed to follow required rulemaking procedures by not preparing a statement of estimated regulatory costs (SERC). *Id*. at pp. 11-12.
[127] *Id*. at page 14.
[128] *See Seminole Tribe of Florida v. State of Florida, 219 F.Supp. 3d 1177 (N.D. Fla. Nov. 9, 2016), Case No.: 4:15-cv-516-RH/CAS, Document 103*, at pp. 4-5.
[129] *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.)

- 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 [Indian Game Regulatory Act], banked games include both house banked games and player-banked games.[130]

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;[131]
- 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.

After the DBPR's appeal of Judge Hinkle's decision,[132] the Seminole Tribe and the DBPR entered into a Settlement Agreement and Stipulation (2017 Settlement) on July 5, 2017.[133]

Authorization of Designated Player Games in Florida (i.e., player banked card games with a designated player) could affect the revenue sharing provisions of the 2010 Gaming Compact[134] Judge Hinkle found Designated Player Games to be banked card games, a form of Class III gaming. The Settlement Agreement that the state entered with the Seminole Tribe provides that

[130] *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.
[131] *Id*. at p. 10.
[132] *See Seminole Tribe of Florida v. State of Florida*, 219 F.Supp. 3d 1177 (N.D. Fla. Jan. 19, 2017), Case No.: 4:15-cv-516-RH/CAS, Document 120.
[133] *See* Settlement Agreement and Stipulation (2017 Settlement) (July 5, 2017) (on file with the Senate Committee on Regulated Industries).
[134] *See* paragraph A of Part XII of the 2010 Gaming Compact at http://www.flsenate.gov/. . .RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Jan. 11, 2018).

Judge Hinkle's findings of fact and conclusions of law are binding on the State and the Seminole Tribe. Accordingly, payments due to the state under the 2010 Compact could cease.[135]

Additionally, the Tribe would also be authorized to offer Designated Player Games, because each compact provides the Tribe is authorized to offer "any new game authorized by Florida law for any person for any purpose.[136]

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to Designated Player Games will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because the games are permitted under that compact and are not a violation of the exclusivity granted to the Seminole Tribe under that compact.

Effect of Proposed Changes:

Section 12 amends s. 849.086, F.S., to:

- 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.
- Define "Designated Player Game" 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."
- Repeal 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 make payments for the benefit of live thoroughbred horse racing purses. If a cardroom licensee is not running a full schedule of live racing or games under its pari-mutuel permit, then the decoupled licensee must remit each month to each qualified thoroughbred permitholder, an amount equal to four percent of the permitholder's monthly cardroom gross receipts divided by the total number of qualified thoroughbred permitholders for that fiscal year.

  The required uses of those payments, the requirements for making those payments and the definition of the term "qualified thoroughbred permitholder" are the same as those applicable to the payments decoupled pari-mutuel permitholders that have a slot machine license must pay for thoroughbred horse racing purses under this bill.
- Require the division to respond to requests from a licensed cardroom within 45 days for approval of 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

[135] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[136] *See* subparagraph 4 of paragraph F of Part III of the 2010 Gaming Compact at page 4 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018) and *see* subparagraph 5 of paragraph G of Part XII of the 2015 Gaming Compact at http://www.flsenate.gov/. . .Proposed 2015 Gaming Compact, Comparison Chart, and Letter from Governor Scott.pdf (last visited Jan. 1, 2018).

rules for a new game addressing the deficiencies identified by the division to approve or reject the revised internal controls or rules.[137]

- Authorize cardroom operators to offer Designated Player Games, at not more than 50 percent of the total licensed tables in a cardroom.
- Provide a cardroom operator may not serve as a designated player but may collect a table rake as posted at the table.
- Provide, if there are multiple designated players at a table, the dealer button must be rotated clockwise after each hand.
- Provide that a cardroom operator may not allow a designated player to pay an opposing player who holds a lower ranked hand.
- Provide that any designated player may not be required by the rules of a game or by the rules of a cardroom to cover more than 10 times the maximum wager for opposing players.
- Prohibit a cardroom, or any cardroom licensee, from contracting for or receiving compensation other than a posted table rake from any player to participate in any game to serve as a designated player.
- Require employees of a designated player be licensed, and a designated player pay, in addition to the cardroom business occupational fee, an employee occupational fee which may not exceed $500.00 per employee annually.

If the 2018 Gaming Compact between the Seminole Tribe and the state, which is ratified in Section 1 of this bill, becomes effective, the provisions in this bill relating to Designated Player Games at cardrooms will not cause any impact to the revenues to be paid to the state by the Seminole Tribe because the authorization for Designated Player Games is permitted under that compact and is not a violation of the exclusivity granted to the Seminole Tribe under that compact.

Definition of Slot Machines or Devices

Present Situation:

Slot machine gaming is lawful only in licensed slot machine facilities at pari-mutuel facilities located in Broward and Miami-Dade counties.[138] At issue in recent litigation is whether certain games, popularly known as pre-reveal games, are illegal slot machines.[139] The machines involve a "multiple game system with a preview feature" requiring a player to press a preview button that displays the outcome of the game before play may begin. The preview button shows the outcome of the next game but not the game after that. The circuit court concluded that pre-reveal machines are illegal slot machines, and an appeal of the case is now pending.[140]

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[137] According to the DBPR's Office of General Counsel, the terms "requests from a licensed cardroom" and "submission" in the bill "may create ambiguity in their application." *See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 840, dated Jan. 9, 2018 (on file with Senate Committee on Regulated Industries) at page 8.

[138] Section 551.101, F.S.

[139] *See Gator Coin II, Inc. v. Florida Dep't of Bus. & Prof. Reg.*, No. 2015-CA-2629 (Fla. Cir. Ct. Jul. 10, 2017).

[140] *See Gator Coin II, Inc. v. Florida Dep't of Bus. & Prof. Reg.*, Case No. 1D 17-2966 (Fla. 1st DCA), at http://jweb.flcourts.org/pls/ds/ds_docket_search?pscourt=1 (last visited Feb. 13, 2018).

Effect of Proposed Changes:

Section 13 amends the definition of "slot machine or device" in ch. 849, F.S., relating to gambling, to prohibit pre-reveal games.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Fantasy Contests
None.

Pari-Mutuel Decoupling
The ending of live racing will reduce required daily license fees and taxes on wagering paid by pari-mutuel permitholders that decouple. According to the Department of Business and Professional Regulation (DBPR), the bill's fiscal impact to state government revenues is indeterminate.[141] The Revenue Estimating Conference (REC) has not analyzed this provision of the bill.

Purse Supplements by Decoupled Slot Machine Licensees
None.

Slot Machine Tax Rate Reduction
The REC has not analyzed this bill, but staff expects the impact of this provision of the bill to be loss of $4.1 million on a recurring basis in slot machine revenue. Under current law and current administration, the REC forecasts[142] slot machine revenues to increase by

[141] *See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 840, dated Jan. 9, 2018 (on file with Senate Committee on Regulated Industries) at page 6.
[142] *See Revenue Estimating Conference Slot Machine Tax January 2018* at http://edr.state.fl.us/Content/conferences/slotmachines/SlotsResults.pdf (last visited Feb. 7, 2018).

2.1 percent in Fiscal Year 2018-2019, and by 1.2 percent annually thereafter, growing from $191.9 million in Fiscal Year 2017-2018 to $205.0 million in Fiscal Year 2022-2023. The bill will result in a loss of the growth in slot machine revenue deposited in the Educational Enhancement Trust Fund.

Authorization of Designated Player Games
None.

B. Private Sector Impact:

The bill authorizes certain fantasy contests to be offered by fantasy contest operators, who will retain amounts participants pay as entry fees to participate in fantasy contests. Persons who pay entry fees to participate in fantasy contests have the opportunity to win prizes and awards.

The ending of live racing will reduce required daily license fees and taxes on wagering paid by pari-mutuel permitholders that decouple.

The bill reduces the tax rate on slot machine gaming revenue effective January 1, 2019, but also requires 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.

As to Designated Player Games, the bill:

- Provides a Designated Player Game is not a banking game.
- Sets requirements and limitations for a Designated Player Game.
- Limits the number of Designated Player Game tables in a cardroom to not more than 50 percent of the cardroom's total licensed tables.
- Grants additional rulemaking authority to the DBPR's Division of Pari-Mutuel Wagering (division) relating to requests from licensed cardrooms and imposes deadlines for response by the division to submissions by cardroom licensees relating to rules for new authorized games, revisions to internal controls, and revisions to rules for games.

C. Government Sector Impact:

The REC has not adopted an official estimate of the impact of this bill, but based on preliminary analysis, if the 2018 Gaming Compact between the Seminole Tribe of Florida and the state, which is ratified in Section 1 of this bill, becomes effective, the state would cease to receive payments under the 2010 Gaming Compact and would receive the following revenue from the Seminole Tribe in the fiscal years indicated:

Fiscal Year	Revenue Share (in millions)
2018-2019	$325
2019-2020	350
2020-2021	375
2021-2022	425
2022-2023	475

2023-2024	500
2024-2025	550

In total, during the seven years of the Guarantee Payment Period, the state would receive $619.4 million more in payments from the Seminole Tribe under the 2018 Gaming Compact than the Revenue Estimating Conference (REC) projects will be received under the 2010 Gaming Compact for the same period.

During Fiscal Year 2018-2019, the amount the state would receive under the 2018 Gaming Compact would be an increase of $2.2 million above the amount the REC projects will be received under the 2010 Gaming Compact. In Fiscal Year 2019-2020, the state would receive $21.3 million more under the 2018 Gaming Compact than the amount the state is projected to receive under the 2010 Gaming Compact.

If the 2018 Gaming Compact authorized in Section 1 of this bill does not become effective, the bill may significantly impact the Revenue Share Payments[143] required to be paid by the Seminole Tribe of Florida under the 2010 Gaming Compact.

Under current law and current administration, and assuming the state does not violate the "exclusivity" requirements in the current Compact, the REC estimates that during Fiscal Year 2017-2018 $280.4 million revenue will be received from the Seminole Tribe associated with the 2010 Gaming Compact, of which $276.9 million will accrue to the General Revenue Fund and $3.5 million will be distributed to local governments as required by s. 285.710(10), F.S. During Fiscal Year 2018-2019, the REC estimates revenue associated with the 2010 Gaming Compact will be $391.1 million, of which $382.4 million will accrue to the General Revenue Fund and $8.7 million will be distributed to local governments. The REC estimates the revenue associated with the 2010 Gaming Compact will increase to $361.4 million for Fiscal Year 2025-2026.[144]

The REC currently classifies all future Revenue Share Payments to be paid by the Seminole Tribe to the state under the 2010 Gaming Compact as nonrecurring revenue because the continuation of these payments depends on actions by the state and the Seminole Tribe "that cannot be anticipated with sufficient certainty."[145]

[143] Revenue Share Payments are the periodic payments to the State by the Seminole Tribe, based on the Tribe's Net Win. Net Win is defined as total receipts from the play of authorized tribal gaming in Florida, less all prizes, free play, or promotional credits. *See* paragraphs U and X of Part III of the 2010 Gaming Compact at page 11 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).
[144] *See* the estimates for multiple fiscal years in the *Conference Results, Indian Gaming Revenues* at http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf (last visited Feb. 8, 2018).
[145] *Id.*

Fantasy Contests

If the 2018 Gaming Compact between the Seminole Tribe and the state does not become effective, and if fantasy contests permitted under the bill constitute gaming, are considered Class III gaming under federal law, and constitute, under the 2010 Gaming Compact, *new* Class III gaming in Florida, then the payments due to the state under the 2010 Gaming Compact could end when fantasy contests begin to be offered for public or private use.[146]

In a letter to Senator Travis Hutson and Representative Mike La Rosa dated December 5, 2017,[147] Jim Shore, General Counsel for the Seminole Tribe, indicated the Tribe believes the games permitted by HB 223 and SB 374 (Fantasy Contests), and SB 840 (Gaming) would violate the Tribe's exclusivity, as set forth in Part XII of the 2010 Gaming Compact between the State and Tribe. The stated purpose of the letter was to avoid enactment of legislation "that inadvertently violates the Tribe's exclusivity." Mr. Shore noted "federal law requires that any reduction in the Tribe's exclusivity must be balanced by some additional consideration from the State[, and] without such an agreement, the 2010 Gaming Compact would allow the Tribe to cease all revenue sharing payments to the State based on the expanded gaming contemplated by the referenced bills."

Pari-Mutuel Decoupling

The bill authorizes greyhound racing, harness horse racing, and quarter horse racing permitholders to stop conducting live racing while retaining intertrack and simulcast wagering, cardrooms, and, where relevant, slot machine facilities. The ending of live racing will reduce daily license fees and taxes on wagering payable by pari-mutuel permitholders that decouple. The Revenue Estimating Conference has not analyzed this bill, nor the impacts of ending live racing by greyhound racing permitholders and the various horse racing permitholders in the manner provided in the bill.

According to the Department of Business and Professional Regulation (DBPR), expenditures for licensing and sample collection may be reduced at permitholder facilities that choose to end live racing.[148] The DBPR's Office of General Counsel notes that rulemaking will be necessary to address revisions to permit and license application forms, as well as additional forms relating to the ending of live racing.[149]

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[146] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018); the Revenue Share Payments and the required annual donation of $750,000 to the Florida Council on Compulsive Gaming must resume when the new Class III gaming is no longer operated.

[147] *See* Letter from Jim Shore, General Counsel for the Seminole Tribe, to Senator Travis Hutson and Representative La Rosa (Dec. 5, 2017) (on file with the Senate Committee on Regulated Industries).

[148] *See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 840, dated Jan. 9, 2018 (on file with Senate Committee on Regulated Industries) at page 6.

[149] *Id*. at page 8.

Slot Machine Tax Rate Reduction

The bill provides for a slot machine tax rate reduction, which takes effect on January 1, 2019, combined with a 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, but not to exceed 35 percent of any facility's slot machine revenue. The Revenue Estimating Conference (REC) forecasts[150] that under current law slot machine revenues will increase by 2.1 percent in Fiscal Year 2018-2019, and by 1.2 percent annually thereafter, growing from $191.9 million in Fiscal Year 2017-2018 to $205.0 million in Fiscal Year 2022-2023. The REC has not analyzed this bill, but staff expects the impact of the reduction in the slot machine tax rate to be a loss to the Educational Enhancement Trust Fund of the **growth** in slot machine revenue.

Authorization of Designated Player Games

If the 2018 Gaming Compact authorized in Section 1 of the bill does not become effective, authorization of player banked card games with a designated player, which were determined to be Class III gaming in federal litigation between the state of Florida and the Seminole Tribe of Florida, could impact the revenue sharing provisions of the 2010 Gaming Compact, as payments due to the state under the compact could cease.[151]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 285.710, 285.712, 550.01215, 550.054, 550.0745, 550.09512, 550.09515, 550.3345, 551.104, 551.106, 849.086, and 849.16.

This bill creates section 546.13 of the Florida Statutes.

[150] *See Revenue Estimating Conference Slot Machine Tax January 2018* at http://edr.state.fl.us/Content/conferences/slotmachines/SlotsResults.pdf (last visited Feb. 7, 2018).
[151] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 11, 2018).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Finance and Tax on February 12, 2018:

The committee substitute:

- Deletes decoupling of thoroughbred horse racing.
- Reduces the amount of slot machine revenue that a decoupled permitholder with a slot machine license must pay for thoroughbred horse purses to the *lesser* of 2.75 percent (reduced from 3 percent in the bill) of the licensee's slots revenue from the prior fiscal year or $1.5 million annually (reduced from $2 million in the bill).
- Revises provisions relating to the amount of slot machine revenue and cardroom revenue which decoupled permitholders must pay, so that qualified thoroughbred permitholders (conducting minimum live racing requirements) each receive the same amount.
- Provides that limited thoroughbred permitholders and thoroughbred permitholders leasing at another permitholder's racing facility are not qualified thoroughbred permitholders for purposes of receiving a share of revenues from decoupled permitholders.
- Eliminates dormant pari-mutuel permits and repeals authorization for issuance of summer jai alai permits.
- Amends the definition of "slot machine or device" to prohibit pre-reveal games.
- Authorizes the execution of a gaming compact between the state and the Seminole Tribe of Florida (Seminole Tribe), which:
  - 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;
  - Is for a term of 20 years, through June 30, 2038; 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);
  - Provides exceptions to the Tribe's exclusive rights to allow the authorization of fantasy contests, the play of Designated Player Games in the state, and the ending of live racing by certain pari-mutuel permitholders.

B. Amendments:

None.