

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 Regulated Industries Committee

BILL: PCS/SB 590
 INTRODUCER: Committee on Regulated Industries
 SUBJECT: Pari-mutuel Wagering
 DATE: February 15, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bedford	Imhof	RI	Pre-meeting
2.			GA	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill amends several sections of the “Florida Pari-mutuel Wagering Act.” The bill deletes an exception to requirements with respect to licensing for the Division of Pari-Mutuel Wagering (division or DPMW) within the Department of Business and Professional Regulation (department or DBPR). It grants rule authority to the division for the humane treatment of racing animals at pari-mutuel facilities. It provides for monthly payments for license fees and taxes for pari-mutuels and for the tax payments on slot machine revenues. It deletes the provisions requiring the biweekly period for the payment of jai alai and greyhound taxes. The bill provides for occupational license fees to be set by rule by the division. It provides a definition for “convicted” that conforms with the slot machine definition. The bill deletes the 30 day validity of the temporary occupational license. It deletes the witness and notary requirement of the signature on the application for an occupational license. The bill deletes expired provisions.

The bill repeals the requirement banning all electronic transmitting devices from all pari-mutuel facilities. The bill repeals the reverse severability clause. It amends two sections to conform cross-references.

This bill amends ss. 550.01215, 550.0251, 550.0951, 550.09511, 550.09514, 550.105, 550.2415, 550.5251, 551.106, 772.102, and 895.02, F.S.

This bill repeals ss. 550.3605 and 550.71, F.S.

II. Present Situation:

Overview

The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-Mutuel Wagering within the Department of Business and Professional Regulation.

Pari-mutuel wagering is 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. The pari-mutuel industry in the State of Florida is made up of horseracing, greyhound racing, and Jai Alai. There are 27 facilities currently in operation with 32 active permits in the state.¹ The industry consists of 18 greyhound permits operating at 16 greyhound tracks, eight Jai Alai permits operating at six frontons, four thoroughbred permits operating at three thoroughbred tracks,² and one harness permit operating at one harness track. Section 550.6308, F.S., authorizes a limited license to conduct intertrack wagering at a thoroughbred sales facility that meets the requirements of that section. Patrons to pari-mutuel events can wager on live races at the facility or live races being conducted at other racetracks in Florida or out-of-state. The wagers on races being conducted at other racetracks fall into two categories: wagers on live races occurring at other Florida tracks and on live races at tracks outside the state.

Types of Pari-mutuels

Greyhound racing was authorized in Florida in 1931.³ Betting is permitted on the outcome of the races around an oval track. The greyhounds typically chase a “lure,” which is usually a mechanical hare or rabbit. Racing greyhounds are those which are bred, raised, or trained to be used in racing at a pari-mutuel facility and are registered with the National Greyhound Association.⁴

Horse Racing, like greyhound racing, was also authorized in the State of Florida in 1931. Currently, the state authorizes three forms of horse racing classes for betting; thoroughbred, harness, and quarter horse racing. Florida currently has approximately 600 horse farms throughout the state which generate a direct economic impact of approximately \$3 billion.⁵

Thoroughbred racing involves only horses specially bred and registered by certain bloodlines. The thoroughbred industry is highly regulated and specifically overseen by national and

¹ Currently there are 11 valid pari-mutuel permits in the state which are not operating, including two greyhound permits, three Jai Alai permits, and six quarter horse permits.

² There were five thoroughbred pari-mutuel permits. However, the revocation of Hialeah Park’s pari-mutuel wagering thoroughbred racing permit was affirmed on July 13, 2005. *Hialeah Racing Association, LLC v. Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering*, 30 Fla. L. Weekly D1699 (Fla. 3rd DCA July 13, 2005).

³ *Deregulation of Intertrack and Simulcast Wagering at Florida’s Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.

⁴ Section 550.002(29), F.S.

⁵ Estimate provided by the representative of the Florida Breeders’ and Owners’ Association. The Department of Agriculture and Consumer Services has estimated that direct impact of the entire horse industry, comprising racing, showing, recreation, and other activities, is approximately \$3 billion.

international governing agencies. Thoroughbred horses are defined as “a purebred horse whose ancestry can be traced back to one of three foundation sires and whose pedigree is registered in the American Stud Book or in a foreign stud book that is recognized by the Jockey Club and the International Stud Book Committee.”⁶ Pari-mutuel betting is allowed on the outcome of the race which runs typically from one mile to one and one-quarter of a mile.⁷

Harness racing in the State of Florida is currently only permitted at the Pompano Park facility. Harness racing uses standardbred horses, which are a “pacing or trotting horse ... that has been registered as a standardbred by the United States Trotting Association” (USTA) or by a foreign registry whose stud book is recognized by the USTA.⁸

Quarter horse racing is currently legal in the State of Florida, but at the present time there are six valid permits that are not in operation.⁹ Quarter horses are defined as those developed in the western United States which are capable of high speed for a short distance.¹⁰ They are registered with the American Quarter Horse Association. Quarter horse racing is over a much shorter distance than either the thoroughbred or harness race classes with races only permitted at less than 870 yards.

Jai Alai is a game originating from the Basque region in Spain played in a fronton¹¹ in which a ball is hurled through the court and points are assessed based on legal throws and catches. Jai Alai was first permitted in 1935. Florida is the only state where Jai Alai is currently played.

Issuance of Permits

Licenses are issued by March 15 for all permit holders, except for thoroughbred racing under s. 550.01215(3), F.S. According to the department, if this exception is deleted, it will provide uniformity so that a thoroughbred track’s annual license is issued on the same date as operating dates to all other pari-mutuels.

Inspections

The division supervises and regulates the welfare of racing animals at the pari-mutuel facilities under s. 550.0251(11), F.S. According to the division, it does not have the authority needed for the humane treatment of racing animals. The division indicated that it cannot conduct the inspections needed to supervise the welfare of the racing animals without the consent of the owners of the racing animals.

Tax Exemptions or Credits

Section 550.0951, F.S., allows for certain tax exemptions or credits. Currently, upon approval of

⁶ Section 550.002(35), F.S.

⁷ Anything over 870 yards is considered a thoroughbred racing distance.

⁸ Section 550.002(33), F.S.

⁹ As of February 14, 2008.

¹⁰ Section 550.002(28), F.S.

¹¹ “A building or enclosure that contains a playing court with three walls designed and constructed for playing the sport of Jai Alai or pelota,” Section 550.002(10), F.S.

a transfer by the division, the transferred tax exemption or credit will be effective for the first performance of the next biweekly pay period under s. 550.0951(5), F.S. The payment for the admission tax, tax on handle, and the breaks tax are paid to the division. The payment is paid on the Wednesday of each week for the taxes imposed and collected for the preceding week ending on Sunday.

Calculation of Jai Alai Taxes

The payment of taxes pursuant to s. 550.0951(b), (c), and (d), F.S., is calculated and starts the day after the biweekly period in which the permitholder is first entitled to the reduced rate specified in this section.

The payment of taxes pursuant to paragraph (a) is calculated and starts the day after the biweekly period in which the permitholder is first entitled to the reduced rate specified in this section.

Greyhound Dogracing Taxes

Wagering on greyhound racing is subject to a tax on handle for live greyhound racing under s. 550.09514(1), F.S. No tax on handle is paid until there is a tax savings per state fiscal year of \$360,000. After that, each permitholder will pay the tax as specified in s. 550.0951(3), F.S., on all handle for the remainder of the current race meet. The tax must be calculated and commence beginning the day after the biweekly period in which the permitholder reaches the tax savings.

Occupational Licenses

Section 550.105(1), F.S., provides that an annual occupational license which is valid from May 1 to June 30 is required for all persons specified in s. 550.105(2)(a), F.S. The permitholder can choose the option of purchasing a three year license if the fees are paid for all three years. According to the department it would be beneficial if they could charge a reduced rate for a three year license as an incentive for people to get a three year license instead of just the one year license.

Section 550.105(2)(a), F.S., specifies the types of persons required to get occupational licenses, breaks down the types of licenses into three categories and the fee required for each business license, professional occupational license, and general occupational license.

The division may bring administrative charges against a person not holding a current license and can declare the person ineligible to hold a license for a certain amount of time under s. 550.105(5)(d), F.S. The division can impose a fine up to \$1,000 for each violation of the rules. The division can also exclude the person from all pari-mutuel facilities for a time not to exceed the period of suspension, revocation, or ineligibility.

Temporary occupational licenses may be granted under s. 550.105(6), F.S. However, no temporary occupational license will be valid for more than 30 days, and no more than one temporary license may be issued for any person in any year. According to the department, it would be beneficial to lengthen this amount of time to allow more thorough application processing.

The required information for the occupational license application including a requirement that each applicant have their signature witnessed and notarized or signed in the presence of a division official is provided in s. 550.105(10), F.S. The department recommends that this requirement be eliminated to allow for electronic application processing.

Racing Prohibitions

Section 550.2415(6)(a), F.S., states the intent of the legislature that all racing animals be treated humanely both on and off the tracks for the lives of the animals. It also states that any conviction of cruelty to animals pursuant to s. 828.12, F.S., involving a racing animal constitutes a violation of this chapter.

Florida Thoroughbred Racing Season

The "Florida Thoroughbred Racing Season" is from June 1 to May 31 pursuant to s. 550.5251, F.S. Each permitholder whose thoroughbred permit was conducted in this state between January 1, 1987 and January 1, 1988 is required to annually apply for race meets during the thoroughbred racing season starting the following June 1. The division will issue the license on or before February 15 of each year. Each permitholder can request changes in its racing schedule up to March 31 of each year. Under s. 550.5251(6), F.S., a permitholder who failed to run all of its races during the 2001-2002 season did not lose its right to retain its permit or is not subject to disciplinary action. Section 550.5251(7), F.S., required that any thoroughbred permitholder must notify the division by July 1, 2002, if it was unable to operate the performances scheduled for the 2002-2003 license. Section 550.5251(6) and (7), F.S., expired on July 1, 2003. According to the division, there is a benefit to providing uniformity by conforming thoroughbred tracks' annual operating dates to all pari-mutuel operating dates.

Slot Machine Taxes

Section 551.106(3), F.S., requires the payment of taxes for slot machine revenues to be paid by 3 p.m. Wednesday of each week. For taxes imposed and collected for the preceding week ending on Sunday. The slot machine licensee shall file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month.

Use of Electronic Transmitting Equipment

Section 550.3605, F.S., makes it a misdemeanor of the second degree to possess or control on the premises of a licensed facility any electronic transmitting equipment or device that is capable of transmitting or communicating any information whatsoever to another person, without the written permission of the division. According to the division, this would allow the individual pari-mutuel permitholder the discretion to ban cell phones, iPods, PDAs, or other such electronic devices from their facilities. It would also protect patrons from a potential criminal violation for carrying and using such devices.

Operation of Chapter 96-364, Laws of Florida

Section 550.71, F.S., provides that if any provision of ch. 96-364, L.O.F., is held to be invalid or inoperative for any reason, the remaining provisions of that act will be void and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included. Up until this year, none of the provisions in that act had been held unconstitutional.

On April 8, 2002, the division filed an administrative complaint against Gulfstream Park Racing Association, Inc.¹² The complaint alleged that Gulfstream Racing Association had violated s. 550.615(6), F.S., by participating in an unauthorized exchange of intertrack wagering signals with PPI, Inc. (Pompano Harness Track) in violation of s. 550.615(6), F.S. Gulfstream Racing Association filed suit challenging the complaint and alleging, among other things, that s. 550.615(6), F.S., was an unconstitutional special law enacted in the guise of a general law in violation of Art. III, s. 10, Florida Constitution.

The Supreme Court has held s. 550.615(6), F.S., unconstitutional as a special act in *Florida Department of Business and Professional Regulation v. Gulfstream Park Racing Association, Inc.*, 967 So.2d 802 (Fla. 2007). Section 550.615(6), F.S., was created in ch. 96-364, L.O.F. The Supreme Court requested that the parties research and brief the issue of a reverse severability clause, but the majority opinion did not address the issue. Chief Justice Lewis did address this issue in his concurring opinion. He noted that although severability clauses are highly persuasive, they are not binding on courts. Chief Justice Lewis also pointed out that the majority of the provisions contained in ch. 96-364, L.O.F., have subsequently been amended and that it appeared that the only provisions which would be affected are ss. 550.71 and 550.6335, F.S.

III. Effect of Proposed Changes:

This bill amends s. 550.01215(3), F.S., changing the deadline for the issuance of the annual operating date's licenses for the thoroughbred permitholders to the same date as the other permitholders, which is March 15 of each year.

This bill amends s. 550.0251(11), F.S., adding rulemaking authority for the humane treatment of racing animals at pari-mutuel facilities. The bill also gives the division the ability to inspect any area at a pari-mutuel facility where racing animals are housed or maintained, including where food, medications, or other supplies are kept.

The bill amends s. 550.0951(1)(b), F.S., deleting biweekly tax payments and changing it to payment. It amends s. 550.0951(5), F.S., providing for payments on the 5th day of the calendar month instead of weekly. If the 5th day of the calendar month falls on a weekend, payments will be remitted by 3 p.m. the first Monday following the weekend.

¹² Initial Brief of Appellant, State of Florida, Department of Business Regulation, Division of Pari-Mutuel Wagering, *Florida Department of Business and Professional Regulation v. Gulfstream Park Racing Association, Inc.* Case No. SC05-2131 (filed January 5, 2006).

The bill amends s. 550.09511(2)(e) and (3)(b), F.S., deleting “after the biweekly period,” so that the calculation begins the first day the permitholders are entitled to the reduced rate specified in this section.

The bill amends s. 550.09514(1), F.S., deleting the requirement that the tax calculation begin the day after the biweekly period in which the permitholder reaches the tax savings.

The bill amends s. 550.105(1)(a), F.S., deleting the ability of a person to purchase an occupational license for three years if the purchaser pays in full the fee for the three years. The bill creates a new paragraph (b) allowing any person pursuant to rules to apply for and, if qualified, be issued an occupational license for three years upon payment of the fee. The bill creates a new paragraph (c) creating the annual fee structure to be determined by rule but not to exceed \$10 for a general license, \$40 for a professional individual occupational license, and \$50 for a business occupational license.

The bill amends s. 550.105(2)(a), F.S., deleting the scheduled annual fee amounts from this paragraph.

The bill amends s. 550.105(5)(d), F.S., allowing the division to impose a civil fine of up to \$1,000 for each violation of this chapter or the rules of the division. The bill creates paragraph (e) defining the term convicted to conform with the term convicted in the slot machine statutes, to mean having been found guilty, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

The bill amends s. 550.105(6), F.S., deleting the 30 day validity of the temporary occupational license and allowing a temporary occupational license to be valid until the licensee’s application is granted or denied by the division.

The bill amends s. 550.105(10), F.S., deleting the requirement that an applicant have his or her signature witnessed and notarized.

The bill amends s. 550.2415(6)(a) and (d), F.S., granting the division rule authority for the supervision and regulation of the welfare of racing animals at pari-mutuel facilities. It deletes the reference to conviction and changes it to any act committed by a licensee which would constitute cruelty to animals as defined by s. 828.02, F.S., involving any animal, not just a racing animal, constitutes a violation of this chapter. Imposing a penalty for violation of this chapter or any rule does not prohibit prosecution for cruelty to animals.

The bill amends s. 550.5251, F.S., deleting subsection (1) and the annual thoroughbred race dates for specified permitholders. The bill changes the start date of the racing season from June 1 to July 1. It requires the division to issue the license by March 15 instead of February 15. It allows permitholders to request changes in race performances by February 28 instead of March 31 of each year. The bill deletes subsection (3) including provisions requiring summer thoroughbred horse racing permits. The bill deletes subsection (6) including expired permit provisions for the 2001-2002 thoroughbred licenses. The bill deletes subsection (7) including expired provisions relating to failure to operate all thoroughbred performances.

The bill amends s. 551.106(3), F.S., changing weekly tax payments on slot revenues to a monthly payment on the 5th day of the calendar month. If the 5th day falls on a weekend then payments will be made by 3 p.m. the first Monday following the weekend.

The bill repeals ss. 550.3605 and 550.71, F.S.

The bill amends ss. 772.102 and 895.02, F.S., conforming cross-references.

The bill will take effect on July 1, 2008.

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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
