

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

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 1046

INTRODUCER: Fiscal Policy Committee; Appropriations Committee on Agriculture, Environment, and General Government; and Senator Martin

SUBJECT: Gaming Control

DATE: February 23, 2024

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Kraemer/Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Fav/CS</u>
3.	<u>Kraemer</u>	<u>Yeatman</u>	<u>FP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1046 revises laws relating to illegal gambling and gaming to:

- Provide that false personation of Florida Gaming Control Commission (commission) staff and agents is a crime;
- Increase the penalties applicable for the offense of knowingly keeping a gambling house;
- Prohibit the production and publication of advertisements for use or distribution in Florida of an illegal gambling or gaming operation by any person or property owner;
- Provide that the enhanced penalties offenses relating to the manufacture, sale, lease, play, or possession of slot machines apply, if at the time of the violation, the violator is knowingly acting as a manager of a location where illegal slot machines are offered for play or the violator has a prior violation of this section;
- Provide that the enhanced penalties offenses relating to the manufacture, sale, lease, play, or possession of slot machines apply, if at the time of the violation, the violator is knowingly acting as a manager of a location where illegal slot machines are offered for play and the violation involves five or more slot machines, or the violator has two or more prior violation of this section;
- Except special laws enacted for the benefit of local governments related to enforcement of the gambling and gaming laws, from the state preemption to enforce those laws. Also excepted from the preemption to the state currently in the bill are express provisions in the State Constitution and general law;

- Revise the information to be considered by a court for determining bail or release of persons arrested for crimes involving controlled substances, a slot machine, or illegal gambling or gaming, including the amount of currency seized that is connected to a violation of chs. 550, 551, or 849, F.S., (Pari-mutuel Wagering, Slot Machines, and Gambling) (gambling laws); and
- Revise the Offense Severity Ranking Chart to provide for enhanced penalties for bookmaking offenses and repeated bookmaking offenses.

The bill has an indeterminate fiscal impact to the state. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

## II. Present Situation:

### Background

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

- Pari-mutuel<sup>5</sup> wagering at licensed greyhound and horse tracks and jai alai frontons;<sup>6</sup>
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;<sup>7</sup>
- Cardrooms<sup>8</sup> at certain pari-mutuel facilities;<sup>9</sup>
- The state lottery authorized by section 15 of Article X of the State Constitution and established under ch. 24, F.S.;<sup>10</sup>
- Skill-based amusement games and machines at specified locations as authorized by s. 546.10, F.S., the Family Amusement Games Act;<sup>11</sup> and

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

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

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

<sup>4</sup> Section 849.16, F.S.

<sup>5</sup> “Pari-mutuel” is defined in Florida law as “a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. See s. 550.002(22), F.S.

<sup>6</sup> See ch. 550, F.S., relating to the regulation of pari-mutuel activities.

<sup>7</sup> See FLA. CONST., art. X, s. 23, and ch. 551, F.S.

<sup>8</sup> Section 849.086, F.S. 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.”

<sup>9</sup> See Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023* (Annual Report), at p. 15, at <https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf> (last visited Jan. 17, 2024), which states that of 29 licensed permitholders, 26 operated at a pari-mutuel facility.

<sup>10</sup> Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery; s. 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

<sup>11</sup> See s. 546.10, F.S.

- The following activities, if conducted as authorized under ch. 849, relating to Gambling, under specific and limited conditions:
  - Penny-ante games;<sup>12</sup>
  - Bingo;<sup>13</sup>
  - Charitable drawings;<sup>14</sup>
  - Game promotions (sweepstakes);<sup>15</sup> and
  - Bowling tournaments.<sup>16</sup>

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.<sup>17</sup>

The 1968 State Constitution states that “[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . .” are prohibited.<sup>18</sup> A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited in the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.<sup>19</sup>

### **Enforcement of Gaming Laws and Florida Gaming Control Commission**

In 2021, the Legislature updated Florida law for authorized gaming in the state, and for enforcement of the gambling laws and other laws relating to authorized gaming.<sup>20</sup> The Office of Statewide Prosecution in the Department of Legal Affairs is authorized to investigate and prosecute, in addition to gambling offenses, any violation of chs. 24, 285 (part II), 546, 550, 551, or 849, F.S., (State Lotteries, Gaming Compact, Amusement Facilities, Pari-mutuel Wagering,

<sup>12</sup> See s. 849.085, F.S.

<sup>13</sup> See s. 849.0931, F.S.

<sup>14</sup> See s. 849.0935, F.S.

<sup>15</sup> See s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>16</sup> See s. 849.141, F.S.

<sup>17</sup> See s. 550.1625(1), F.S., “. . .legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state.” See also, *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states “Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right,” citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936), and *Zimmerman v. State of Florida, Fla. Gaming Control Comm’n*, \_\_\_So.3d \_\_\_ (Fla. 5th DCA Jan. 12, 2024) (*Case No. 5D23-1062; not final until disposition of motions as set forth in the opinion*).

<sup>18</sup> The pari-mutuel pools that were authorized by law on the effective date of the State Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

<sup>19</sup> The Department of the Lottery is authorized by s. 15, Art. X of the State 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.

<sup>20</sup> See ch. 2021-268, Laws of Fla., (Implementation of 2021 Gaming Compact between the Seminole Tribe of Florida and the State of Florida); ch. 2021-269, Laws of Fla., (Gaming Enforcement), ch. 2021-270, Laws of Fla., (Public Records and Public Meetings), and 2021-271, Laws of Fla., (Gaming), as amended by ch. 2022-179, Laws of Fla., (Florida Gaming Control Commission). Conforming amendments are made to the section in ch. 2022-7, Laws of Fla., (Reviser’s Bill) and ch. 2023-8, Laws of Fla., (Reviser’s Bill).

Slot Machines, and Gambling), which are referred to the Office of Statewide Prosecution by the Florida Gaming Control Commission (commission).<sup>21</sup>

In addition to the enhanced authority of the Office of Statewide Prosecution, the commission was created<sup>22</sup> within the Department of Legal Affairs. The commission has two divisions, including the Division of Gaming Enforcement (DGE), and the Division of Pari-mutuel Wagering (DPMW) which was transferred from the Department of Business and Professional Regulation effective July 1, 2022 (as discussed below).

The commission must do all of the following:<sup>23</sup>

- Exercise all of the regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the State Constitution or law, excluding state lottery games as authorized by the State Constitution.
- Establish procedures consistent with ch. 120, F.S., the Administrative Procedure Act, to ensure adequate due process in the exercise of the commission's regulatory and executive functions.
- Ensure the laws of this state are not interpreted in any manner that expands the activities authorized in chs. 24, 285 (part II), 546, 550, 551, or 849, F.S.
- Review the rules and regulations promulgated by the Seminole Tribal Gaming Commission for the operation of sports betting and propose to the Seminole Tribe Gaming Commission any additional consumer protection measures it deems appropriate. The proposed consumer protection measures may include, but are not limited to, the types of advertising and marketing conducted for sports betting, the types of procedures implemented to prohibit underage persons from engaging in sports betting, and the types of information, materials, and procedures needed to assist patrons with compulsive or addictive gambling problems.
- Evaluate, as the state compliance agency or as the commission, information that is reported by sports governing bodies or other parties to the commission relating to:
  - Any abnormal betting activity or patterns that may indicate a concern about the integrity of a sports event or events;
  - Any other conduct with the potential to corrupt a betting outcome of a sports event for purposes of financial gain, including, but not limited to, match fixing; suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, or use of false identification; and
  - The use of data deemed unacceptable by the commission or the Seminole Tribal Gaming Commission.
- The commission must provide reasonable notice to state and local law enforcement, the Seminole Tribal Gaming Commission, and any appropriate sports governing body of non-proprietary information that may warrant further investigation of nonproprietary information by such entities to ensure integrity of wagering activities in the state.
- Review any matter within the scope of the jurisdiction of the DPMW.

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<sup>21</sup> Section 16.56(1)(a), F.S.

<sup>22</sup> Section 16.71, F.S.

<sup>23</sup> Section 16.712, F.S. The commission also administers the Pari-mutuel Wagering Trust Fund. *See* s. 16.71(6), F.S.

- Review the regulation of licensees, permitholders, or persons regulated by the DPMW and the procedures used by that division to implement and enforce the law.
- Review the procedures of the DPMW which are used to qualify applicants applying for a license, permit, or registration.
- Receive and review violations reported by a state or local law enforcement agency, the Department of Law Enforcement, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of the Lottery, the Seminole Tribe of Florida, or any person licensed under chs. 24, 285 (part II), 546, 550, 551, or 849, F.S., and determine whether such violation is appropriate for referral to the Office of Statewide Prosecution.
- Refer criminal violations of chs. 24, 285 (part II), 546, 550, 551, or 849, F.S., to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.
- Exercise all other powers and perform any other duties prescribed by the Legislature, and adopt rules to implement the above.

### ***Commissioners***

As set forth in s. 16.71, F.S., of the five commissioners appointed as members of the commission, at least one member must have at least 10 years of experience in law enforcement and criminal investigations, at least one member must be a certified public accountant licensed in this state with at least 10 years of experience in accounting and auditing, and at least one member must be an attorney admitted and authorized to practice law in this state for the preceding 10 years. All members serve four-year terms, but may not serve more than 12 years. As of the date of this analysis, there is one vacancy on the commission.

### ***Division of Gaming Enforcement***

Section 16.711, F.S., sets forth the duties of the Division of Gaming Enforcement (DGE) within the commission.<sup>24</sup> The DGE is a criminal justice agency, as defined in s. 943.045, F.S. The commissioners must appoint a director of the DGE who is qualified by training and experience in law enforcement or security to supervise, direct, coordinate, and administer all activities of the DGE.<sup>25</sup>

The DGE director and all investigators employed by the DGE must meet the requirements for employment and appointment provided by s. 943.13, F.S., and must be certified as law enforcement officers, as defined in s. 943.10(1), F.S. The DGE director and such investigators must be designated law enforcement officers and must have the power to detect, apprehend, and arrest for any alleged violation of chs. 24, 285 (part II), 546, 550, 551, or 849, F.S., or any rule adopted pursuant thereto, or any law of this state.<sup>26</sup>

Such law enforcement officers may enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any necessary equipment, and such entry does not constitute a trespass. In any instance in which there is reason to believe that a violation has occurred, such officers have the authority, without

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<sup>24</sup> For a summary of DGE investigations and actions in Fiscal Year 2022-2023, see Annual Report, *supra* n. 11 at p.5.

<sup>25</sup> Section 16.711(2), F.S.

<sup>26</sup> Section 16.711(3), F.S.

warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring.<sup>27</sup>

Further, any such officer may, consistent with the United States and Florida Constitutions, seize or take possession of any papers, records, tickets, currency, or other items related to any alleged violation. Investigators employed by the commission also have access to, and the right to inspect, premises licensed by the commission, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons licensed by the commission.<sup>28</sup>

The DGE and its investigators are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. The term “contraband” has the same meaning as the term “contraband article” in s. 932.701(2)(a)2., F.S.<sup>29</sup> The DGE is specifically authorized to store and test any contraband that is seized in accordance with the Florida Contraband Forfeiture Act and may authorize any of its staff to implement this provision. The authority of any other person authorized by law to seize contraband is not limited by these provisions.<sup>30</sup>

Section 16.711(5), F.S., requires the Florida Department of Law Enforcement (FDLE) to provide assistance in obtaining criminal history information relevant to investigations required for honest, secure, and exemplary gaming operations, and such other assistance as may be requested by the commission’s executive director and agreed to by FDLE’s the executive director. Any other state agency, including the DBPR and the Department of Revenue, must, upon request, provide the commission with any information relevant to any investigation conducted as described above, and the commission must reimburse any agency for the actual cost of providing any such assistance.<sup>31</sup>

### ***Division of Pari-mutuel Wagering***

The commission 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. The DPMW is a program area of the commission which is charged with the regulation of Florida’s pari-mutuel, cardroom, and slot gaming industries, as authorized by chs. 550, 551, 849, F.S., as well as collecting and safeguarding associated revenues due to the state. The DPMW supports the commission in meeting the commission’s obligations as the State Compliance Agency (SCA)<sup>32</sup> in carrying out the state’s oversight responsibilities under the provisions of the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.<sup>33</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Section 16.711(4), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> Section 16.711(5), F.S.

<sup>32</sup> See s. 285.710, F.S. Until June 30, 2022, the DPMW was designated as the SCA, prior to that division’s transfer to the commission from the Department of Business and Professional Regulation, as set forth in ch. 2021-269, Laws of Fla.

<sup>33</sup> See s. 285.710(3)(b), F.S., which provides that the Gaming Compact between the Seminole Tribe of Florida and the State of Florida (2021 Gaming Compact), executed by the Governor and the Tribe on April 23, 2021, as amended on May 17, 2021, is ratified and approved. The 2021 Gaming Compact may be accessed at <https://www.flgov.com/wp-content/uploads/pdfs/2021%20Gaming%20Compact.pdf> (last visited Jan. 10, 2024). The May 17, 2021 amendment states that Part XVIII.A [relating to certain negotiations within 36 months] is deleted in its entirety and replaced with “Reserved”, and that the Seminole Tribe of Florida agrees that it will not commence Sports Betting, as defined in Park III.CC, prior to October 15, 2021 (on file with the Senate Regulated Industries Committee).

### **Manufacture, Sale, Possession, etc., of Slot Machines or Devices**

Section 849.15(1), F.S., relating to actions relating to slot machines or devices, provides that is unlawful to:

- Manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person or under the person's management or control, any slot machine or device or any part thereof; or
- Make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.

Section 849.15(2), F.S., provides:

- Counties in Florida where slot machine gaming is authorized pursuant to ch. 551, F.S. (i.e., in Broward and Miami-Dade counties)<sup>34</sup> are exempt from federal law prohibiting transportation of gaming devices in interstate and foreign commerce; and
- All shipments of gaming devices, including slot machines, into any Florida county where slot machine gaming is authorized are deemed to be legal shipments into Florida, if the destination of such shipments is a licensed slots facility, or the facility of a slot machine manufacturer or slot machine distributor.

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

**Section 1** amends s. 843.08, F.S., relating to the obstruction of justice, to provide that a person who falsely assumes or pretends to be, and acts as any personnel or representative of the Florida Gaming Control Commission (commission), commits a third degree felony.<sup>35</sup>

Under current law, the false personation offense occurs when a person impersonates and acts as a firefighter, a sheriff, a Florida Highway Patrol officer, a Fish and Wildlife Conservation Commission officer, a Department of Environmental Protection officer, a Department of Financial Services officer, any personnel or representative of the Division of Investigative and Forensic Services, a Department of Corrections officer, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide prosecutor, a state attorney investigator, a coroner, a police officer, a lottery special agent or lottery investigator, a beverage enforcement agent, any personnel or representative of the Department of Law Enforcement, certain federal law enforcement officers, and others.<sup>36</sup>

<sup>34</sup> In addition, pursuant to s. 285.710, F.S., relating to gaming compacts, the Seminole Tribe of Florida is authorized to conduct slot machine gaming and to own, possess, and operate slot machines. *See* s. 285.710(13)(a), F.S.

<sup>35</sup> Section 775.082, F.S., provides a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides a felony of the third degree is punishable by a fine not to exceed \$5,000. Under s. 775.084, F.S., an habitual felony offender is subject to enhanced penalties.

<sup>36</sup> *See* s. 843.08, F.S.

If the false personation occurs during the course of the commission of a felony, the violator commits a second degree felony (up to 15 years/\$10,000 fine).<sup>37</sup>

**Section 2** amends s. 849.01, F.S., relating to the keeping of gambling houses, to specify a violation of the prohibition against keeping a gambling house must be committed knowingly and to increase the penalty for that offense from a second degree misdemeanor (up to 60 days/\$500 fine)<sup>38</sup> to a third degree felony (up to five years/\$5,000 fine).<sup>39</sup> Current law provides, in part, that the keeping of a gambling house includes any person, servant, clerk, or agent who:

[H]as, keeps, exercises or maintains a gaming table or room, or gaming implements or apparatus, or house, booth, tent, shelter or other place for the purpose of gaming or gambling or in any place of which she or he may directly or indirectly have charge, control or management, either exclusively or with others, procures, suffers or permits any person to play for money or other valuable thing at any game whatever . . . .

**Section 3** revises s. 849.15, F.S., relating to the prohibited manufacture, sale, or possession of slot machines or devices. The term “conviction” is defined to mean “a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

The term “manager” is defined to mean a person who, at any business, establishment, premises, or other location at which a slot machine or device is offered for play, has:

- Authorization to operate or hold open the business, establishment, premises, or other location without any other employee present;
- Authorization to supervise another employee or employees; or
- Any ownership interest in the business, establishment, premises, or other location.

For those convicted of violating s. 849.15(2), F.S., as renumbered by the bill, relating to the manufacturing, ownership, , possession, sale, or transport of slot machines or devices, the bill sets forth the following offenses and respective penalties, with enhanced penalties for managers under certain circumstances:

- A person who violates this provision commits a first degree misdemeanor (imprisonment up to one year and a fine up to \$1,000), unless the person is knowingly acting as a manager or has one prior conviction for violating this provision;
- A person acting as a manager at the time of the violation or who has one prior conviction for a violation of this provision, commits a third degree felony (imprisonment up to five years and a fine up to \$5,000);
- A person is knowingly acting as a manager at the time of the violation who has two or more prior convictions for a violation of this provision, and the violation involves five or more slot

<sup>37</sup> Section 775.082, F.S., provides a felony of the second degree is punishable by a term of imprisonment not to exceed 15 years. Section 775.083, F.S., provides a felony of the second degree is punishable by a fine not to exceed \$10,000. Under s. 775.084, F.S., an habitual felony offender is subject to enhanced penalties.

<sup>38</sup> Section 775.082, F.S., provides a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides a misdemeanor of the second degree is punishable by a fine not to exceed \$500. The enhanced penalties for this violation increase to imprisonment not to exceed five years and a fine not to exceed \$5,000.

<sup>39</sup> Section 775.082, F.S., provides a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides a felony of the third degree is punishable by a fine not to exceed \$5,000.

machines or devices, commits a second degree felony (imprisonment up to 15 years and a fine up to \$10,000).

**Section 4** creates s. 849.155, F.S., relating to trafficking in slot machines or devices, or parts thereof, relating to trafficking in slot machines or devices. The bill makes it a:

- First degree felony, (imprisonment up to 30 years and a fine up to \$10,000), to knowingly sell, purchase, manufacture, transport, deliver, or bring into Florida more than 15 slot machines or devices or any part thereof; and includes
  - An additional fine of \$100,000, if the quantity of slot machines or devices or any part thereof involved is more than 15 slot machines or devices or any part thereof, but less than 25 slot machines or devices or any part thereof.
  - An additional fine of \$250,000, if the quantity of slot machines or devices or any part thereof involved is 25 slot machines or devices or any part thereof or more, but less than 50 slot machines or devices or any part thereof.
  - An additional fine of \$500,000, if the quantity of slot machines or devices or any part thereof involved is 50 slot machines or devices or any part thereof or more.

The bill requires all fines imposed and collected pursuant to these provisions to be deposited into the Pari-mutuel Wagering Trust Fund and authorizes such funds to be used for the enforcement of chs. 546, 550, F.S., 551, F.S., and 849, F.S., by the commission.

**Section 5** creates s. 849.157, F.S., relating to making false or misleading statements regarding the legality of slot machines or devices to facilitate their sale. The bill makes it a:

- Third degree felony (imprisonment up to five years and a fine up to \$5,000) , punishable as provided in ss. 775.082, 775.083, or 775.084, F.S., to knowingly and willfully:
  - Make a materially false or misleading statement regarding the legality of a slot machine or device for the purpose of facilitating the sale or delivery of a slot machine or device for any money or other valuable consideration; or
  - Disseminate false or misleading information regarding the legality of a slot machine or device for the purpose of facilitating the sale or delivery of a slot machine or device for any money or other valuable consideration.
- Second degree felony, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S., when such a violation involves the sale or delivery, or attempted sale or delivery, of five or more slot machines or devices.

**Section 6** repeals s. 849.23, F.S., relating to slot machine penalties.

**Section 7** creates s. 849.47, F.S., relating to transporting or procuring the transportation of persons to facilitate illegal gambling. A person who knowingly and willfully for profit or hire transports, or procures the transportation of, five or more other persons into or within Florida when he or she knows or reasonably should know such transportation is for the purpose of facilitating illegal gambling, commits a first degree misdemeanor (a fine up to \$1,000). Anyone who transports or procures the transportation of a minor, a person 65 years of age or older, or 12 or more persons to facilitate illegal gambling, commits a third degree felony (imprisonment up to five years and a fine up to \$5,000).

**Section 8** creates s. 849.48, F.S., relating to prohibited gambling or gaming advertisements.

Except as otherwise specifically authorized by law, a person may not:

- Knowingly and intentionally make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated or circulated or placed before the public in Florida, in any manner, any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice for the purpose of promoting or facilitating illegal gambling; and
- Set up any type or plate for any type of advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice when he or she knows or reasonably should know that such material will be used for the purpose of promoting or facilitating illegal gambling.

The bill provides that violators of the above prohibitions commit a first degree misdemeanor.

Under the bill, the printing or producing of any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice to be used for the purpose of promoting or facilitating gambling conducted in any other state or nation, outside of Florida, where such gambling is not prohibited.

The bill defines the term “illegal gambling” to mean any criminal violation of chs. 546, 550, 551, or 849, F.S., that occurs at any business, establishment, premises, or other location which operates for profit.

**Section 9** creates s. 849.49, F.S., relating to preemption, and provides that a Florida county, municipality, or other political subdivision may not enact or enforce any ordinance or local rule relating to gaming, gambling, lotteries, or any activities described in s. 546.10, F.S., relating to amusement games or machines, or ch. 849, F.S., relating to gambling, except as otherwise expressly provided by the State Constitution, general law, or special law.

**Section 10** revises s. 903.046, F.S., relating to the purpose of and criteria for bail determination, to revise considerations to be considered by a court for determining bail or release of persons arrested for crimes involving controlled substances, a slot machine, or illegal gambling or gaming, including the amount of currency seized that is connected to a violation of chs. 546, 550, 551, or 849, F.S., (Amusement Facilities, Pari-Mutuel Wagering, Slot Machines, and Gambling).

**Section 11** revises s. 921.0022, F.S., relating to the offense severity ranking chart of the Criminal Punishment Code, to revise the penalties for offenses in the ranking chart as follows:

- Section 849.01, F.S., related to knowingly keeping a gambling house, is increased from a second degree misdemeanor to a third degree felony (Level 3);
- Section 849.09(1)(a) - (d), F.S., relating to promoting, conducting, or advertising a lottery, is increased to a third degree felony (Level 3) from a third degree felony (Level 1);
- Section 849.09(1)(e), (f), (g), (i), and (k), F.S., relating to a second or subsequent offense of conducting an unlawful lottery, is added to the ranking chart as a third degree felony (Level 3);
- Section 849.15(3)(b), F.S., relating to a violator who is knowingly acting as a manager at the time of the violation or who has one prior conviction for violating this provision, is added to the ranking chart as a third degree felony (Level 3);

- Section 849.15(c), F.S., relating to a violator who is knowingly acting as a manager at the time of the violation or who has two or more prior convictions for violating this provision, and the violation involves five or more slot machines or devices, is added to the ranking chart as a second degree felony (Level 5);
- Section 849.155, F.S., relating to knowingly trafficking in slot machines or devices or any parts thereof, is added to the ranking chart as a first degree felony (Level 7);
- Section 849.157(1), F.S., relating to knowingly and willfully disseminating false or misleading statements regarding the legality of slot machines or devices to facilitate their sale, is added to the ranking chart as a third degree felony (Level 3);
- Section 849.157(2), F.S., relating to false or misleading statements regarding the legality of slot machines or devices to facilitate the sale of five or more slot machines or devices, is added to the ranking chart as a second degree felony (Level 5);
- Section 849.23, F.S., relating to slot machine penalties, is deleted from the ranking chart, as the provision is repealed by the bill;
- Section 849.25, F.S., relating to bookmaking, to provide for enhanced penalties for bookmaking offenses, is revised in the ranking chart. The penalty for engaging in bookmaking under s. 849.25(2), F.S., is enhanced from a third degree felony (Level 1) to a third degree felony (Level 3), and the penalty for repeated bookmaking offenses under s. 894.25(3), F.S., is added as a second degree felony (Level 5 );
- Section 849.47(1), F.S., relating to knowingly and willfully transporting or procuring the transportation of five or more persons to facilitate illegal gaming, is added to the ranking chart as a first degree misdemeanor;
- Section 849.47(2), F.S., relating to transporting or procuring the transportation of a minor or a person 65 years of age or older, or of 12 or more persons, to facilitate illegal gambling, is added to the ranking chart as a third degree felony (Level 3).

The offense severity ranking chart must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The offense severity ranking chart has 10 offense levels, ranked from least severe, which are Level 1 offenses, to most severe, which are Level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense.<sup>40</sup>

**Section 12** amends s. 772.102, F.S., to conform definitions relating to civil remedies for criminal practices, to remove references to s. 849.23, F.S., which is repealed by the bill.

**Section 13** amends s. 895.02, F.S., to conform definitions relating to offenses concerning racketeering and illegal debts, to remove references to s. 849.23, F.S., which is repealed by the bill.

**Section 14** provides that the bill takes effect July 1, 2024.

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<sup>40</sup> See s. 921.0022, F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Persons who violate the gambling laws will be subject to penalties or increased penalties, as described in Section III of this analysis. *See* the list of penalties in **Section 11**.

Such violators may be impacted by the information that must be considered by a court for determining bail or release of persons arrested for crimes involving controlled substances, a slot machine, or illegal gambling or gaming, including the amount of currency seized that is connected to a violation of the gambling laws.

## C. Government Sector Impact:

The fiscal impact to state and local government is indeterminate. The bill increases and creates new criminal penalties for violations relating to illegal gambling. This may create a positive fiscal impact to the state and local governmental entities that receive proceeds from related fines. This bill may have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds) due to expanding the crimes eligible for enhancements which may lead to an increased number of offenders receiving enhanced sentences.

The Criminal Justice Impact Conference (conference), which provides the final, official estimate of the prison bed impact, if any, of legislation, evaluated identical bill CS/HB 189 on February 12, 2024, and the Conference adopted the estimate of “Positive Indeterminate,”<sup>41</sup> (i.e., an unquantifiable positive prison bed impact.

No anticipated fiscal impact to the Florida Gaming Control Commission.<sup>42</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 772.102, 843.08, 849.01, 849.15, 895.02, 903.046, and 921.0022.

This bill creates the following sections of the Florida Statutes: 849.155, 849.157, 849.47, 849.48, and 849.49 of the Florida Statutes.

This bill repeals section 849.23 of the Florida Statutes.

#### **IX. Additional Information:**

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

##### **CS by Fiscal Policy Committee on February 29, 2024:**

The committee substitute:

- Revises the enhanced penalties offenses relating to the manufacture, sale, lease, play, or possession of slot machines, if at the time of the violation, the violator is knowingly acting as a manager of a location where illegal slot machines are offered for play;
- Excepts special laws enacted for the benefit of local governments related to enforcement of the gambling and gaming laws, from the state preemption to enforce those laws. Also excepted from the preemption to the state currently in the bill are express provisions in the state constitution and general law;
- Revises the Offense Severity Ranking Chart to provide for enhanced penalties for bookmaking offenses and repeated bookmaking offenses; and

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<sup>41</sup> See the conference’s Narrative Analysis of CS/HB 189 at <http://www.edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB189.pdf> (last visited Feb. 19, 2024)

<sup>42</sup> See Florida Gaming Control Commission, *2024 Agency Legislative Bill Analysis for SB 1046* at 6 (Jan. 10, 2024) (on file with the Senate Committee on Regulated Industries).

- Makes technical changes to clarify the enhanced penalties when a person is knowingly acting as a manager of a location where illegal slot machines are offered for play, and other conforming changes.
- **CS by Appropriations Committee on Agriculture, Environment, and General Government on February 8, 2024:**  
The committee substitute:
  - Revises the title to “Gaming Control,” a more comprehensive description that conforms to the companion bill CS/HB 189;
  - Revises certain criminal penalties in Florida law related to illegal gambling, as follows:
    - Prohibits falsely impersonating personnel or representatives of the Florida Gaming Control Commission.
    - Increases the penalty for keeping an illegal gambling house from a second degree misdemeanor to a third degree felony.
    - Increases the penalty for the manufacture, sale, and possession of illegal slot machines from a second degree misdemeanor to a first degree misdemeanor, and to a felony for managers with prior convictions.
    - Makes it a first degree felony for trafficking more than 15 illegal slot machines or any parts thereof, and imposes certain monetary fines.
    - Makes it a third degree felony to make a false or misleading statement to facilitate the sale of illegal slot machines, and a second degree felony when such violation involves five or more machines.
    - Makes it a first degree misdemeanor to transport five or more persons into or within the state to facilitate illegal gambling, and a third degree felony when violations include a minor or person 65 years old or older, or 12 or more persons.
    - Makes it a first degree misdemeanor to make certain gambling or gaming advertisements.
    - Prohibits counties, municipalities, or other political subdivisions from regulating gaming, gambling, lotteries, or other activities described in s. 546.10, F.S., relating to Amusement Games or Machines, or ch. 849, F.S., relating to Gambling.
    - Requires courts to consider the amount of currency seized in connection with certain gambling violations when determining bail conditions.
    - Conforms the offense severity ranking chart to the changes made by the bill.
    - Deletes the exemption from ch. 255, F.S. for the commission.
    - Deletes penalties for keeping a gambling house within 1000 feet of certain areas.
    - Deletes penalties for having firearms and serving alcoholic beverages on the premises of a gambling house.
    - Deletes penalties relating to minors, guardianships, and gambling at pool halls.
    - Deletes provisions relating to illegal lotteries.

B. Amendments:

None.

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

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