

STORAGE NAME: h1573a.br.doc
DATE: February 21, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 1573
RELATING TO: Wagering
SPONSOR(S): Representative(s) Fasano
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 9 NAYS 1
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill addresses gambling in two distinct areas: gambling excursions on vessels commonly referred to as "cruises-to-nowhere" or "day-cruises" and pari-mutuel wagering.

This bill gives statutory authority for gambling vessels operating cruises-to-nowhere to operate from Florida's fourteen deepwater ports. Operation of these cruises from any other public or private port is prohibited and a third-degree felony penalty is established.

The bill allows certain greyhound tracks and jai alai frontons to receive rebroadcasts of thoroughbred and harness horse races when the horse track is not operating live and to retain 45% of the net proceeds from wagers placed at the guest track.

The bill is expected to have an insignificant impact on state revenue collections and expenditures.

The bill provides that the act will take effect upon becoming a law.

[A "strike-everything" amendment is traveling with the bill. Please see VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES: for explanation of the amendment.]

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This legislation prohibits the operation of gambling ship cruises-to-nowhere from certain ports in the state from which some vessels are currently operating.

B. PRESENT SITUATION:

As a matter of constitutional law and public policy, gambling is generally prohibited in Florida. Article X, Section 7 of the State Constitution prohibits lotteries, other than the types of pari-mutuel pools authorized by general law. A further amendment to the Constitution was adopted in 1986, Article X, Section 15, which authorized state-operated lotteries.

Chapter 849, Florida Statutes, embodies the codification of this general prohibition policy. In addition to specific prohibitions against certain types of gambling, the law also contains restrictions on possession of certain gambling devices for use in those activities. Section 849.05, Florida Statutes, provides that possession of a gambling device constitutes prima facie evidence that a place is kept for the purpose of gambling and s. 849.01, Florida Statutes, creates a third degree felony violation.

Section 849.231(3), Florida Statutes, exempts vessels of foreign registry or vessels operating under the authority of a foreign country from the state statute prohibitions against the possession of gambling devices and equipment. While the state statute does not provide this exception for vessels of American registry, the federal law authorizing vessels of any registry to possess such devices and equipment specifically preempts state law and, therefore, overrides the state authorization of possession only on the part of foreign registered vessels.

Federal Law

The Gambling Devices Act [Johnson Act],¹ grants limited authority to coastal states regarding the prohibition against cruise ships operating gambling devices. The federal law provides that by specifically prohibiting the use of gambling devices on certain types of cruises, a state may exempt itself [opt out], in certain situations, from the federal law which allows the use of such devices when the vessels are on the high seas.

¹ See Section 1171-1177, Title 15 U. S. Code, as amended by P.L. 102-251

States may prohibit the use of gambling devices on vessels within state territorial waters and outside of state waters when the vessels are engaged in cruises-to-nowhere. While the term "cruises-to-nowhere" is not used in the federal law, the term is commonly used to describe the type of voyages for which the states are given, in the federal law, the authority to prohibit the use of gambling devices on the high seas. The state authority is for any voyage or segment of a voyage which begins and ends in the state during which the vessel does not make an intervening stop within the boundaries of another state, U. S. possession, or a foreign country.

Cruises-to-Nowhere

Florida has fourteen deepwater ports and numerous marinas and docks, both public and private, from which ocean going vessels of all sizes operate. Many of these vessels offer cruises, of varying duration, to foreign ports. Others offer cruises which have no foreign port destination, but rather take passengers on cruises to the high seas [beyond the three-mile limit on the Atlantic coast and 9.1 miles on the Gulf coast] which last only several hours. These cruises are often referred to as cruises-to-nowhere or day cruises. In addition, a number of larger vessels operating from state ports engage in gambling activities when the vessels are outside of the territorial waters of the state.

Gambling is among the various entertainment options available on the larger vessels. It is typically the primary entertainment, other than food and beverage service, available on the smaller vessels. The Florida Day Cruise Association indicates that there are presently 18 vessels operating from Florida deepwater ports² which conduct cruises-to-nowhere on which gambling is offered to passengers. The association estimates that these cruises account for approximately three million passengers annually and that approximately 42% of these passengers are tourists. At the time of publication of this analysis, staff was unable to determine the number of vessels operating day cruises from any of the other public or private ports, marinas and docks.

On June 22, 1999, the Cabinet acting in their capacity as the Board of Trustees of the Internal Improvement Trust Fund made a decision to prohibit gambling ships conducting cruises to nowhere from mooring on sovereign submerged lands.³ This rule was challenged and overturned as an invalid exercise of their authority.⁴

Pari-Mutuel Wagering

Section 550.6305(9) Florida Statutes, provides that when a non-thoroughbred permitholder receives the rebroadcast of a simulcast thoroughbred or harness horse signal, the net proceeds are split three ways with equal shares going to the host permitholder, purses at the host facility, and the guest track.

²Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina and Key West.

³ In accordance with that decision, the Department of Environmental Protection drafted the following conditions to be incorporated into sovereignty submerged lands leases: "During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leases premises of gambling ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the State of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from gambling cruise ships."

⁴ See State of Florida, Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc., 794 So.2d 696.

Subsection (9) contains two exceptions to this distribution formula. First, the host track, guest track, and horsemen's association are permitted to negotiate a different distribution arrangement with regard to their respective portions. Second, an exception to this distribution formula exists for guest tracks located *in any area of the state* where there are only two permits, one for dogracing and one for jai alai. In this scenario the guest track may accept wagers on rebroadcasts of an out-of-state thoroughbred race or harness horse race if the host track *located within the area* is operating live and the guest track is authorized to retain 45% of the net proceeds on wagers accepted at the guest facility.

This statute is presently being challenged in the Leon County Circuit Court as unconstitutional.⁵

C. EFFECT OF PROPOSED CHANGES:

Cruises-to-Nowhere

This bill will prohibit any gambling activity which is prohibited by Chapter 849, Florida Statutes, such as casino style gambling, to be conducted on any vessel operating in and outside of state waters under certain specific conditions. This prohibition will be applicable if such vessel departs from any point within the state and returns to any point within the state without having made an intervening stop at which passengers could disembark within the boundaries of another state or possession of the United States or a foreign country.

However, the bill provides that the prohibition does not apply to ships embarking or disembarking from a deepwater port listed in s. 402.021(9)(b) [Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina and Key West]. Nor does it apply to gambling activities on vessels traveling to or from ports within the boundaries of another state, possession of the United States, or a foreign country at which passengers could disembark when the vessel is outside the state's territorial waters.

The bill makes a violation of this prohibition a felony of the third degree.

Pari-Mutuel Wagering

This bill amends s. 550.6305(9), Florida Statutes, regarding the distribution of net proceeds from the rebroadcasts of simulcasts of thoroughbred and harness horse races. Present law allows a greyhound track or a jai alai fronton located in *an area* of the state in which there is only one greyhound track and one jai alai fronton to receive rebroadcasts of simulcast thoroughbred and harness horse races and to retain 45% of the net proceeds on wagers accepted at the guest facility from that rebroadcast. This bill replaces the term "area" with the more definitive term "county" which more clearly articulates the circumstances when this distribution formula will apply.⁶

⁵ See Calder Race Course, Inc./Tropical Park, Inc. v. Department of Business and Professional Regulation, et. al., Case No. 2001-CA-1951 in which Calder and Tropical allege that s.550.6305 (9)(d) is unconstitutionally vague in that it is unclear as to what "area of the state" this subsection refers; that Calder and Tropical are impermissibly deprived of the privileges and immunities afforded it as a duly licensed permit holder by the disparate distribution of net proceeds from the rebroadcast of its interstate simulcast to the Palm Beach and Daytona greyhound tracks; and, that there is no rational basis for such an arbitrary condition of operation.

⁶ At present, two counties [Palm Beach and Volusia] have one greyhound permit and one jai alai permit issued in each county.

Further, the bill deletes provisions requiring the thoroughbred and harness tracks to be operating live in order for the greyhound track or jai alai fronton situated in a location as defined above to receive the simulcast and retain 45% of the net proceeds on wagers accepted at the guest facility.

The bill also replaces a reference to paragraph (a) with reference to paragraphs (b) and (d). This change appears to be more clarifying than substantive in nature. Paragraph (a) defines "net proceeds" but does not address the distribution of the net proceeds. Paragraphs (b) and (d) address the distribution of the proceeds.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates an unnumbered section of Florida Statutes to prohibit gambling on ships if the ship embarks from a Florida port and disembarks at the same or another Florida port without making an intervening stop in another state, possession of the United States, or a foreign country at which passengers could disembark. This prohibition applies whether the ship is within or without the territorial waters of the state.

The prohibition does not apply, however, to ships embarking or disembarking from a deepwater port listed in s. 402.021(9)(b) [Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina and Key West.]. Nor does it apply to ships to or from ports within the boundaries of another state, possession of the United States, or a foreign country at which passengers could disembark.

Violations of these prohibitions constitute a third-degree felony.

Section 2. Amends paragraphs (c), (d), and (f) of subsection (9) of s. 550.6305, Florida Statutes.

In paragraphs (d) and (f), the bill replaces the term "area" with the more descriptive term "county." Also in paragraphs (d) and (f) the bill strikes language specifying that a thoroughbred or harness permitholder "located in the area specified in this paragraph" be both conducting live races and accepting wagers on ITW in order for the greyhound track or jai alai fronton to accept wagers on their simulcast of an out-of-state thoroughbred or harness horse race.

Under the new provisions of the bill, a permitholder located in a county where there are only two permits, one of which is a dog track and one a jai alai fronton, can accept wagers on thoroughbred or harness horse simulcasts and not be subject to the equal division required by paragraph (b). Further, that guest track is entitled to 45% of the net proceeds wagered at their facility.

The bill, in (9)(c), also replaces a reference to paragraph (a) with reference to paragraphs (b) and (d). This change appears to be more clarifying than substantive in nature. Paragraph (a) defines "net proceeds" but does not address the distribution of the net proceeds. Paragraphs (b) and (d) address the distribution of the proceeds.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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On February 21, 2002, the Committee on Business Regulation adopted a "strike-everything after the enacting clause" amendment to the bill and voted the bill favorably, 9 Yeas and 1 Nay. The amendment made three major changes to the bill as introduced.

First, the amendment deleted all of Section 1 of the bill relating to "cruises-to-nowhere." As amended, the bill does not address this issue.

Second, the amendment contains an amendment to s. 550.334, which provides that a new or relocated permit for quarter horse racing may not substitute other types of horse racing. Any existing quarter horse permit may continue to substitute different types of horse racing as long as the permit is not relocated.

Third, the amendment includes language which provides a two-year reprieve for a thoroughbred permitholder from meeting requirements which would otherwise result in fine, suspension, determination of abandonment of interest in a permit or validity of the permitholder's license or permit. While this amendment applies to all thoroughbred permitholders, it appears that the only permitholder likely to be assisted by the reprieve is Hialeah Park. It is unlikely that Hialeah Park will be able to conduct live racing during their race meet scheduled to begin in March.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

Janet Clark Morris

M. Paul Liepshutz