

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Regulated Industries Committee

BILL: SB 2004

SPONSOR: Senator Garcia

SUBJECT: Thoroughbred Racing

DATE: March 30, 2005

REVISED: _____

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

I. Summary:

This bill amends s. 550.5251, F.S., to provide that thoroughbred permitholders who conducted racing between January 1, 1987 and January 1, 2005 would be eligible to apply for and receive thoroughbred racing days and dates as part of the "Florida Thoroughbred Racing Season." The bill changes the requirement that thoroughbred permitholders must operate the full number of racing days and dates as set forth in the issued license for its license and permit to be valid. The bill would allow a thoroughbred racing permit to remain valid and be in full force and effect regardless of any action or potential action brought against the permit by the Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation. A thoroughbred permit would no longer escheat to the state for reissue.

The bill appears to be an attempt to revive the Hialeah Racing Association, LLC thoroughbred racing permit which was revoked by the division on November 3, 2004 for failure to operate a full racing schedule during the prior three seasons.¹

This bill substantially amends section 550.5251, Florida Statutes.

II. Present Situation:

Chapter 14832, L.O.F.,² authorized pari-mutuel wagering on thoroughbred horses, harness horses, and greyhounds. Pari-mutuel wagering was authorized for jai-alai performances in 1935³

¹ *Department of Business and Professional Regulation v. Hialeah Racing Association, LLC*, BPR -2004-04877, Final Order, Department of Business and Professional Regulation, November 3, 2004.

² Provisions dealing with pari-mutuel wagering are now codified in ch. 550, F.S.

³ Chapter 17074, L.O.F. (1935).

and for quarter horses in 1941.⁴ The state has traditionally enforced a wide range of regulatory controls over the daily operations of pari-mutuel permitholders.

The original legislation authorizing pari-mutuel wagering on thoroughbreds prohibited head-to-head competition between thoroughbred tracks located in the same county and the Racing Commission in existence at that time was required to set non-conflicting racing dates to ensure that the tracks did not operate at the same time. The governing statute at that time did not require a permitholder to operate all authorized performances and did not provide for the revocation of a permit for a permitholder's failure to operate all authorized performances.

Numerous amendments to ch. 550, F.S., have been implemented in more recent years, including the repeal of the Racing Commission, repeal of the prohibition for head-to-head competition, and implementation of a uniform tax rate for thoroughbreds. In addition, current law contains provisions that require the division to seek the revocation of thoroughbred permits and harness horse permits for failure to operate but does not contain similar forfeiture provisions for greyhound or jai alai permitholders.⁵

Currently, between December 15 of each year and January 4 of the following year, a thoroughbred permitholder must file an application for licensure specifying the dates and times the permitholder intends to operate in the upcoming Thoroughbred Racing Season, which runs from June 1 of one year until May 31 of the next year.⁶ If the permitholder remains eligible to hold a permit, the division must issue a license on or before February 15. The permitholder can amend the application until March 31 of each year, but, thereafter, the permitholder must operate a full schedule of live racing as specified in its license as a condition precedent to preserving the validity of the license and the right to retain the permit. If the permitholder fails to operate a full schedule of live racing for two consecutive state fiscal years, the permit becomes void and escheats to the state for reissue.⁷

On April 23, 2003, the division filed an administrative complaint with the Division of Administrative Hearings to deny Hialeah Racing Association's (Hialeah) application for an annual racing license for the 2003-2004 thoroughbred racing season.⁸ The complaint alleged that Hialeah had been licensed to conduct performances from March 17, 2002 through May 22, 2002 and January 3, 2003 through April 13, 2003 and had not conducted any of the performances in violation of s. 550.5251, F.S. By violating those provisions, the division alleged that Hialeah was ineligible to receive a license to conduct performances for the 2003-04 thoroughbred racing season and its license should be denied. It also alleged that Hialeah had lost its right to retain its permit and that its thoroughbred racing permit should be revoked. The Administrative Law Judge

⁴ Chapter 25354, L.O.F. (1941).

⁵ *Legalized Gambling in Florida – the Competition in the Marketplace*, Interim Report No. 2005-155, Florida Senate Committee on Regulated Industries, November 2004.

⁶ Section 550.5251, F.S.

⁷ Section 550.09515(3)(a) and (b), F.S.

⁸ *Department of Business and Professional Regulation v. Hialeah Racing Association, LLC*, Administrative Complaint and Notice to Deny License, DBPR Case No. 2003004303, April 23, 2003.

entered a Recommended Order denying the license and revoking the permit.⁹ The decision is currently on appeal to the Third District Court of Appeal.¹⁰

III. Effect of Proposed Changes:

This bill amends s. 550.5251, F.S., to provide that thoroughbred permitholders who conducted racing between January 1, 1987 and January 1, 2005 would be eligible to apply for and receive thoroughbred racing days and dates as part of the "Florida Thoroughbred Racing Season." The bill changes the requirement that thoroughbred permitholders must operate the full number of racing days and dates as set forth in the issued license as a condition to maintain the validity of its license and the right to retain its permit. Accordingly, thoroughbred permitholders may no longer be obligated to run performances on dates that are specifically requested by the permitholder. Consequently, a thoroughbred racing permit would retain its validity, be in full force and effect, regardless of any action or potential action brought against the permit by the division and consequently, the permit would no longer escheat to the state for reissue.

According to the division, the bill may affect the regulation and operation of the pari-mutuel industry in the following ways:

- the division may be unable to adequately plan for and staff events to complete all licensing, sample collection, and other regulatory functions;
- it may be difficult for horsemen and horse associations to timely deliver an adequate number of racing animals;
- breeders' and owners' awards may be unfairly disbursed; and
- it may create confusion for patrons.

Additionally, the division maintains that the bill decreases the enforcement authority the division has over violations of ch. 550, F.S. or s. 849.086, F.S, by any thoroughbred permitholder. Furthermore, the division indicates it may be unable to accomplish its full regulatory mission as a result of insufficient enforcement authority.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ *Department of Business and Professional Regulation v. Hialeah Racing Association, LLC*, Recommended Order, Case No. 03-1459, Division of Administrative Hearings, September 30, 2004.

¹⁰ *Hialeah Racing Association v. Dept. of Business and Prof. Regulation*, No. 3D04-1103 (Fla. 3d DCA).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill would allow Hialeah Racing Association, LLC, to apply for a license to conduct live racing for the Thoroughbred Racing Season and retain its thoroughbred racing permit.

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
