

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 Committee on Regulated Industries

BILL: SB 8

INTRODUCER: Senator Galvano

SUBJECT: Gaming

DATE: January 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 8 addresses gaming, and revises ch. 24, F.S., State Lotteries, Part II of ch. 285, F.S., Gaming Compact, ch. 550, F.S., Pari-mutuel Wagering, ch. 551, F.S., Slot Machines, and s. 849.086 (authorized cardrooms) in ch. 849, F.S., Gambling. The bill also creates the Fantasy Contest Amusement Act, consisting of ss. 546.11 through 546.18, in ch. 546, F.S.

The bill allows limited use of “point-of-sale terminals” for the sale of lottery tickets or games, provided that a purchaser is verified to be at least 18 years of age, and that such terminals do not reveal winning numbers. The Department of the Lottery must adopt rules that ensure that the point-of-sale program does not breach the exclusivity provisions of any Indian gaming compact to which the state is a party.

Section 4 of the bill, which is effective upon becoming law, requires that the proposed Gaming Compact between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida executed by the Seminole Tribe and the Governor on December 7, 2015 (the proposed 2015 Gaming Compact), be amended to:

- Become effective as a tribal compact after approval by the U.S. Department of the Interior;
- Require that the current federal litigation between the State and the Seminole Tribe be dismissed with prejudice; and
- Incorporate amendments to exclusivity provisions related to fantasy contests, slot machines, blackjack, designated player games and point-of sale terminals, and all activities authorized and conducted pursuant to Florida law, as amended by the bill, and activities claimed to be violations of the 2010 Gaming Compact in the current federal litigation with the Seminole Tribe.

Incorporation of these amendments must not impact or change the payments required to the State under the proposed 2015 Gaming Compact.

The proposed 2015 Gaming Compact, if amended as required above, supersedes the 2010 Gaming Compact, and is ratified and approved.

The Secretary of the Department of Business and Professional Regulation (DBPR) is required to notify the Governor, President of the Senate, Speaker of the House of Representatives, and the Division of Law Revision and Information the date of publication in the Federal Register of the approval by the United States Department of the Interior. All remaining provisions of the bill are effective on that publication date (*see* Section 53).

The Fantasy Contest Amusement Act is created to regulate fantasy contests. A fantasy contest is a game in which a participant manages a fantasy or simulated sports team composed of athletes from an amateur or professional sports organization. Fantasy contests operated as required involve the skill of participants. Prizes must be known in advance of the fantasy contest and their value may not be determined by the number of participants or the amount of participant entry fees paid. Regulation of fantasy contests would be administered by an Office of Amusements created within the DBPR. Fantasy contest operators must comply with provisions related to consumer protection and public confidence in the integrity of fantasy contests and operators.

Chapter 550, F.S., relating to Pari-mutuel Wagering, is revised. A greyhound racing permitholder, harness racing permitholder, jai alai permitholder, quarter horse permitholder, and thoroughbred horse racing permitholders (with an irrevocable election) may determine whether they will offer live racing or games, but continue to operate their slot machine facility or cardroom. Ending the requirement imposed on permitholders to offer live racing or games, but allowing them to continue to offer authorized slot machine gaming or operate a cardroom, is known as “decoupling.”

The conditions for issuance and revocation of active and inactive pari-mutuel permits, and relocation of permits, are revised. A permit that is revoked for failure to conduct live events within the 24 months preceding the effective date of the act may not be reissued. Certain permitholders are authorized to relocate their facilities to another location within 30 miles, under specified conditions.

The transfer of a limited thoroughbred racing permit to another person or entity is prohibited, but such permits may continue to be relocated. Relocation to another county is allowed with no referendum approval required for the relocation, if the permit location spans more than one county. Any such relocation must be approved under zoning and land use regulations in the new county or municipality.

The tax payable on handle by greyhound racing permitholders is reduced from 5.5 percent to 1.28 percent. Various tax exemptions and a purse pool requirement are deleted.

A pari-mutuel permit reduction program is established, in which the Division of Pari-mutuel Wagering (division) is authorized to purchase and cancel active pari-mutuel permits. Funding for the program, which may not exceed \$20 million, is generated by revenue share payments made by the Seminole Tribe after October 31, 2015. The division must cancel a permit purchased through the program. This provision expires July 1, 2019.

A thoroughbred purse supplement program is established effective July 1, 2019, funded by revenue share payments made by the Seminole Tribe under the Gaming Compact and received by the state after July 1, 2019. The funding for the purse supplement program is \$20 million annually.

Reporting of injuries to greyhounds (excluding service animals, personal pets, or greyhounds that has been adopted as a pet) must be reported to the division. False statements in an injury report or the failure to report an injury subjects licensees of the department to disciplinary action under pari-mutuel, regulatory, and professional practice laws.

Chapter 551, F.S., relating to Slot Machines, is revised. Slot machine gaming is authorized at certain eligible facilities:

- The seven pari-mutuel facilities in Miami-Dade and Broward Counties that existed when the State Constitution was amended and slot machines in these counties were approved by referendum;
- A licensed pari-mutuel facility, if slot machines in the county are approved by voters in a countywide referendum, and if the permitholder conducted a full schedule of live racing for two consecutive years immediately preceding its application for a slot machine license;
- The new Miami-Dade County and Broward County slot machine gaming facilities authorized in Section 43; and
- Pari-mutuel facilities in other counties (except the seven pari-mutuel facilities in Miami-Dade and Broward Counties described above) if approved by referendum, and if associated with a public-private partnership.

The requirement that live racing be conducted by a pari-mutuel permitholder in order to maintain eligibility for issuance of a slot machine license is deleted.

Any slot machine licensee (which includes greyhound racing permitholders, jai alai permitholders, harness racing permitholders, quarter horse racing permitholders, and thoroughbred horse permitholders) that is not running a full schedule of live racing under its pari-mutuel permit must contribute to a thoroughbred purse pool, which remains effective through July 1, 2036. The purse pool is available at slot machine licensees that conduct at least 160 days of live thoroughbred racing. There is a dollar-for-dollar credit for payments made to a horsemen's association under a binding written agreement.

The tax rate on slot machine revenue is reduced to 25 percent from 35 percent.

Two additional slot machine licenses are authorized. One license must be issued for a slot machine facility in Broward County, and one must be issued in a county as defined in s. 125.011, F.S. (currently applies to Miami-Dade County). Any person that is not a slot machine licensee may apply for the license, upon payment of a \$2 million nonrefundable application fee. If there is more than one applicant, the license will be awarded by the division to the applicant that receives the highest score based on specified criteria.

Permitholders are prohibited from leasing facilities from a permitholder that is not conducting a full schedule of live racing. When a permitholder chooses to end live racing at a pari-mutuel

facility, any permitholder leasing that facility may no longer lease it, and must move its racing or games to another facility that is conducting a full schedule of live racing.

The bill authorizes house banked blackjack table games, with a maximum of 25 such tables at each facility, at the eight facilities in Miami-Dade and Broward Counties where the operation of slot machines is currently authorized.

The gaming areas in slot machine facilities may be open 24 hours every day, and complimentary alcoholic beverages may be served to players. Automatic teller machines (ATMs) or similar devices that provide credit or dispense cash may be located in gaming areas.

The requirements for the operation of a cardroom by licensed pari-mutuel permitholders that have a valid pari-mutuel permit and a license to conduct a full schedule of live racing or games are revised. The “90 percent rule” mandating the minimum number of races that must be conducted by a permitholder is deleted. The hours a cardroom may be operated are expanded to 24 hours daily, the same hours that a slot machine gaming area may be open.

The bill (excluding Sections 4 and 53):

- Is effective only if the proposed 2015 Gaming Compact, as amended as required in Section 4, is approved, or deemed approved, by the United States Department of Interior pursuant to the Indian Gaming Regulatory Act; and
- Takes effect upon the date that the approved compact is published in the Federal Register.

The bill has an indeterminate fiscal impact (see Section V, Fiscal Impact Statement).

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

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.⁵ A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds are paid by the lottery to the Educational Enhancement Trust Fund (EETF) for uses

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 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.

pursuant to annual appropriations of the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.⁶

In 2010, a Gaming Compact between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida (compact) was ratified. 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 compact.⁷

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 (division) of the Department of Business and Professional Regulation (DBPR) carries out the state's oversight responsibilities under the compact.⁸

The following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel⁹ wagering at licensed greyhound and horse tracks and jai alai frontons;¹⁰
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;¹¹ and
- Cardrooms at certain pari-mutuel facilities.¹²

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.¹³

⁶ 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.

⁷ See s. 285.710, F.S., especially subsections (3), (13), and (14). The seven tribal locations where gaming is authorized by the 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). Banked card games are not authorized at the Brighton and Big Cypress casinos.

⁸ See s. 285.710(1)(f), F.S.

⁹ 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.

¹⁰ See ch. 550, F.S., relating to the regulation of pari-mutuel activities.

¹¹ See ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.

¹² Section 849.086, F.S. Section 849.086(2)(c), F.S., 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 charges a fee for participation by the operator of such facility.

¹³ 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).

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,¹⁴ bingo,¹⁵ charitable drawings, game promotions (sweepstakes),¹⁶ and bowling tournaments.¹⁷

The Family Amusement Games Act, enacted in 2015, similarly authorizes skill-based amusement games and machines at specified locations.¹⁸ Prevention of expansion of casino-style gambling, as a paramount state interest, mandated clarification of the law to ensure that the regulatory provisions for such devices are not subject to abuse or interpreted to create an exception to the state's general prohibitions against gambling.¹⁹

Except for gaming facilities operating in accordance with the 2010 Gaming Compact with the Seminole Tribe, free-standing, commercial casinos are not authorized, and gaming activity, other than what is expressly authorized, is illegal.

The Indian Gaming Regulatory Act (IGRA)

In 1988, Congress enacted the Indian Gaming Regulatory Act or "IGRA."²⁰ The Act divides gaming into 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.²¹
- Class II gaming" includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.²² Class II gaming may also include certain non-banked card games if permitted by state law or not explicitly prohibited by the laws of the state but the card games must be played in conformity with the laws of the state.²³ A tribe may conduct Class II gaming if:
 - The state in which the tribe is located permits such gaming for any purpose by any person, organization, or entity; and
 - The governing body of the tribe adopts a gaming ordinance which is approved by the Chairman of the National Indian Gaming Commission.²⁴
- "Class III gaming" includes all forms of gaming that are not Class I or Class II, such as house banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, and pari-mutuel wagering.²⁵

¹⁴ See s. 849.085, F.S.

¹⁵ See s. 849.0931, F.S.

¹⁶ See s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

¹⁷ See s. 849.141, F.S.

¹⁸ See s. 546.10, F.S.

¹⁹ See s. 546.10(2), F.S.

²⁰ Indian Gaming Regulatory Act of 1988, 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.*

²¹ 25 U.S.C. s. 2703(6).

²² 25 U.S.C. s. 2703(7).

²³ 25 U.S.C. s. 2703(7)(A)(ii).

²⁴ 25 U.S.C. s. 2710(b)(1).

²⁵ 25 U.S.C. s. 2703(8).

Regulation under IGRA is dependent upon the type of gaming involved. Class I gaming is left to the tribes.²⁶ Class II gaming is regulated by the tribe with oversight by the National Indian Gaming Commission.²⁷ Class III gaming permits a regulatory role for the state by providing for a tribal-state compact.²⁸

IGRA provides that certain conditions must be met before an Indian tribe may lawfully conduct Class III gaming. First, the particular form of Class III gaming that the tribe wishes to conduct must be permitted in the state in which the tribe is located. Second, the tribe must have adopted a tribal gaming ordinance that has been approved by the Indian Gaming Commission or its chairman. Third, the tribe and the state must have negotiated a compact that has been approved by the Secretary of the United States Department of the Interior and is in effect.²⁹

Gaming Compact Authorization

Section 285.712, F.S., authorizes the Governor to enter into an Indian Gaming compact with the federally recognized Indian tribes within the State of Florida for the purpose of authorizing Class III gaming on the Indian lands.

Section 285.710(3), F.S., ratifies and approves the Gaming Compact between the Seminole Indian Tribe of Florida (Seminole Tribe) and the State of Florida that was executed by the Governor and the Seminole Tribe on April 7, 2010.

Section 285.710(7), F.S., designates the division within the DBPR as the agency with the authority to monitor the Seminole Tribe's compliance with the compact.

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

III. Effect of Proposed Changes:

For ease of reference to the 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.

The Seminole Gaming Compact

Present Situation:

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Seminole Tribe) executed a compact governing gambling (2010 Gaming Compact) at the Seminole Tribe's seven tribal

²⁶ 25 U.S.C. s. 2710(a)(1).

²⁷ 25 U.S.C. s. 2710(a)(2).

²⁸ 25 U.S.C. s. 2710(d).

²⁹ 25 U.S.C. s. 2710(d).

facilities in Florida.³⁰ The 2010 Gaming Compact authorizes the Seminole Tribe to conduct Class III gaming.³¹ It was ratified by the Legislature, with an effective date of July 6, 2010.³² The Gaming Compact has a 20-year term.

The 2010 Gaming Compact provides that, in exchange for the its exclusive right to offer slot machine gaming outside of Miami-Dade and Broward Counties and banked card games at five of its seven³³ casinos, the Seminole Tribe will make revenue sharing payments to the state. The state's share increases incrementally from 12 percent for the first \$2 billion in annual net win, to 25 percent for annual net win greater than \$4.5 billion. In Fiscal Year 2015-2016, the Seminole Tribe paid the State \$215.4 million.³⁴

The 2010 Gaming Compact provides that any expanded gaming (beyond what is specifically acknowledged) relieves the Seminole Tribe of its obligations to make substantial revenue sharing payments.³⁵

While the exclusive authorization to conduct banked card games expired July 31, 2015, and has not been renewed, according to the Legislature's Office of Economic and Demographic Research, the Seminole Tribe has continued to transmit monthly payments to the state that include estimated table games revenue.³⁶

³⁰ The Seminole 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-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida* (2010 Gaming Compact) was approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. The executed 2010 Gaming Compact is available at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 23, 2017). Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA), 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.*

³¹ The Indian Gaming Regulatory Act of 1988 divides gaming into three classes: **Class I** means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations. **Class II** 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. **Class III** includes all forms of gaming that are not Class I or Class II, such as house banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

³² See Ch. 2010-29, Laws of Fla.

³³ See the executed 2010 Gaming Compact available at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Jan. 23, 2017). The 2010 Gaming Compact provides that banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the Gaming Compact, at page 4. In addition, in paragraph B of Part XVI, at page 49, the period of authorization to conduct table games is five years. The State of Florida (State) and the Seminole Tribe are parties to litigation ongoing in federal court concerning the offering of table games by the Seminole Tribe after July 31, 2015; the State has appealed the decision of the district (trial) court to the federal appellate court.

³⁴ See the Executive Summary and Conference Results from the Revenue Estimating Conference (December 7, 2016) available at <http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf> and <http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf> (last visited Jan. 23, 2017).

³⁵ See last sentence in paragraph B of Part XII of 2010 Gaming Compact at page 43.

³⁶ See *Seminole Compact: Revenue Overview (January 2017)*, page 6, available at <http://www.edr.state.fl.us/Content/presentations/gaming/GamingCompactRevenueOverview2017.pdf> (last visited Jan. 23, 2017).

Federal Litigation Concerning the 2010 Gaming Compact

The State of Florida (State) and the Seminole Tribe are parties to litigation in federal court relating to the offering of table games by the Seminole Tribe after July 31, 2015. Separate lawsuits were filed by each party against the other, and the cases were consolidated. The Seminole Tribe alleged in its complaint that:

- It had authority to conduct banked card games for the 2010 Gaming Compact’s full 20-year term; and
- The State breached its duty to negotiate with the Seminole Tribe in good faith.

The State alleged that the Seminole Tribe’s:

- Conduct of banked card games violates the 2010 Gaming Compact; and
- Conducting the games violated the Indian Gaming Regulatory Act (IGRA) though this claim was later dropped by the State.

On November 9, 2016, U.S. District Court Judge Robert L. Hinkle issued an Opinion on the Merits,³⁷ which held:

- The Seminole Tribe may operate banked card games at all seven of its facilities (rather than the 5 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);
- Sovereign immunity barred the court from considering whether the State had failed to negotiate in good faith as to: 1) authorizing roulette and craps; and 2) extending the Compact beyond its 20-year term; and
- A ruling on the issue of whether electronic forms of blackjack are also a banked card game is unnecessary, as the issue was too close to resolve when a ruling is not essential to the outcome of the case.

On January 19, 2017, the DBPR filed a notice of its appeal of Judge Hinkle’s decision to the U.S. Court of Appeals for the Eleventh Circuit.³⁸

Banked Card Games Issue

Under the 2010 Gaming Compact, the Seminole Tribe was authorized to conduct banked card games for five years. The period expired July 31, 2015. An exception in the 2010 Gaming Compact allows the Seminole Tribe to continue to conduct banked card games if “the State permits any other person [except another Indian tribe] to conduct such games.”³⁹

³⁷ See *Seminole Tribe of Florida v. State of Florida*, 2016 U.S. Dist. LEXIS _____ (N.D. Fla. Nov. 9, 2016), Case No.: 4:15-cv-516-RH/CAS, Document 103.

³⁸ See *Seminole Tribe of Florida v. State of Florida*, 2017 U.S. Dist. LEXIS _____ (N.D. Fla. Jan. 19, 2017), Case No.: 4:15-cv-516-RH/CAS, Document 120.

³⁹ See *Seminole Tribe of Florida v. State of Florida*, 2016 U.S. Dist. LEXIS _____ (N.D. Fla. Nov. 9, 2016) Case No.: 4:15-cv-516-RH/CAS, Document 103, at p. 1.

The court found:

- The 2010 Gaming Compact defines ‘Covered Games’ to include ‘banking or banked card games, including baccarat, chemin de fer, and blackjack (21);’⁴⁰
- Under s. 849.086, F.S., licensed pari-mutuel facilities may operate cardrooms, but the statute explicitly forbids “banking” card games;⁴¹
- 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;
- 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 IGRA, banked games include both house banked games and player-banked games.⁴²

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;⁴³
- 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 that 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.

⁴⁰ *Id.* at pp. 4-5.

⁴¹ *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.)

⁴² *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.

⁴³ *Id.* at p. 10.

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 by the Seminole Tribe at all seven of its gaming facilities, for the Compact's full 20-year term (through July 31, 2030).⁴⁴

The Proposed 2015 Gaming Compact

In 2015, Governor Scott and the Seminole Tribe negotiated and executed a proposed gaming compact dated December 7, 2015 (the proposed 2015 Gaming Compact),⁴⁵ The proposed 2015 Gaming Compact is subject to ratification by the Senate and by the House of Representatives.⁴⁶

The proposed 2015 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;
- Authorizes exceptions to the Seminole Tribe's exclusivity to allow pari-mutuel cardrooms in Broward and Miami-Dade County to offer house banked blackjack under certain circumstances, to allow point-of-sale lottery machines, to allow one additional slot machine gaming facility (one each) in Palm Beach and Miami-Dade Counties at a pari-mutuel facility, and to allow designated player games of poker at cardrooms at facilities that are not authorized to offer slot machine gaming;
- Is for 20 years, through June 30, 2036; 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).⁴⁷

After ratification and approval by the Legislature, the proposed 2015 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.⁴⁸

⁴⁴ *Id.* at p. 19, and see 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.

⁴⁵ See the proposed 2015 Gaming Compact, Comparison Chart and transmittal letter from Governor Scott available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/RI/Links/2015_Gaming_Compact_Chart_and_Letter_from_Governor_Scott.pdf (last visited Jan. 23, 2017).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ 25 U.S.C. s. 2710(d)(8)

Compact Comparison

The following table sent by the Governor to the President of the Senate and the Speaker of the House of Representatives⁴⁹ compares the terms of the current 2010 Gaming Compact and the proposed 2015 Gaming Compact:

	PROPOSED 2015 COMPACT	2010 COMPACT
Guarantee Money to State	7-year guarantee worth 3 billion dollars (Starts 7/1/17) 1- \$325 million 2- \$350 million 3- \$375 million 4- \$425 million 5- \$475 million 6- \$500 million <u>7- \$550 million</u> Total: \$3 Billion guaranteed (true-up at end of year 7) → 7-year 3 billion dollar minimum guarantee is largest guarantee ever by an Indian Tribe. 2010 Compact revenue share percentages for year 1	5-year guarantee worth 1 billion dollars 1- \$150 million 2- \$150 million 3- \$233 million 4- \$233 million <u>5- \$234 million</u> Total: \$1 Billion guaranteed
Term	20 years; 7-year minimum guarantee. → Creates long-term revenue certainty and stability	20 years; 5-year minimum guarantee; Banked Card Games exclusivity expires after 5 years.
Jobs/Capital Investment	4,800 new direct and indirect jobs, 14,500 direct and indirect construction jobs, and \$1.8 billion in capital investment	N/A
Revenue Share to State	<u>Revenue Share to State from Tribe's Gaming Revenue</u> \$0-2B: 13% (1% increase) \$2-3B: 17.5% (2.5% increase) \$3-3.5B: 17.5% \$3.5-4B: 20% \$4-4.5B: 22.5% \$4.5B+: 25% → Revenue Share increased	<u>Revenue Share to State from Tribe's Gaming Revenue</u> \$0-2B: 12% \$2-3B: 15% \$3-3.5B: 17.5% \$3.5-4B: 20% \$4-4.5B: 22.5% \$4.5B+: 25%
Recession	Because of the significant Guarantee if there is a recession during the Guarantee Period the Tribe may pay based on percentages vs Guarantee plus 50% of difference between the percentage payment and Guarantee. The other 50% would be due the next year in addition to the payment owed during that year. (May only use once during guarantee period)	N/A
Games	1. Slot Machines 2. Banked Card Games 3. Raffles and Drawings	1. Slot Machines (all Facilities) 2. Banked Card Games (all Facilities except Big Cypress & Brighton)

⁴⁹ See note 46.

	PROPOSED 2015 COMPACT	2010 COMPACT
	4. Any new game authorized for any person except Banked Card Games authorized for another Indian Tribe 5. Live Table Games	3. Raffles and Drawings 4. Any new game authorized for any person except Banked Card Games authorized for another Indian Tribe
Exclusivity Received for Payments	<u>Statewide:</u> Banked & Banking Card Games; Live Table Games <u>Outside Miami-Dade/Broward:</u> Slot Machines	<u>Statewide:</u> Banked Card Games <u>Outside Miami-Dade/Broward:</u> Slot Machines
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
Change in Facilities	<ul style="list-style-type: none"> Tribe may expand or replace existing Facilities; Express limits on additional gaming positions at Tribe's Facilities on its Reservations → Hard caps on gaming in Florida 	<ul style="list-style-type: none"> Tribe may expand or replace existing Facilities; No limit on additional gaming positions at Tribe's Facilities on its Reservations
State Oversight	State Compliance Agency allowed 16 hours of inspection over course of two days per facility, per month, capped at 1,600 hours annually. Tribe pays annual oversight payment of \$400,000, increased for inflation. → Increased funding and hours for 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.
Exclusivity (Banked & Banking Card Games authorized at existing Miami-Dade/Broward pari-mutuels)	If Banked & Banking Card Games authorized: <ul style="list-style-type: none"> Revenue Share Payments Cease until gaming activities are no longer authorized; except Legislature can exercise its power to add blackjack at the Pari-mutuels in Miami-Dade and Broward subject to some limitations without an impact on the compact. If the market shifts to slot machines with banked card game themes instead of traditional tables the Tribe has the option to waive its exclusivity in Broward and Miami-Dade Counties after fiscal year 2024 if the Tribe's Net Win from all table games in Broward County is less than its Net Win from Banked Card Games in Broward County during this fiscal year. If the Tribe waives its exclusivity the Legislature could exercise its power and limitlessly expand gaming in Broward and Miami-Dade Counties with no effect on the Compact. Revenue Share Payments calculated by excluding Net Win from Broward Facilities.	If Banked Card Games offered; AND Tribe's annual Net Win from Broward Facilities for next 12 mos is less than Net Win from preceding 12 mos; THEN <ul style="list-style-type: none"> Guaranteed Minimum Payments cease; and Revenue Share Payments calculated by reducing Net Win from Broward Facilities by 50% of the Net Win reduction. If Net Win increases later above point of offering Banked Card Games, then Revenue Share Payments calculated without any reduction.
Exclusivity Violation (Class III Gaming authorization at	If Class III Gaming at non-PMW locations in Miami-Dade/Broward authorized THEN:	If Class III Gaming at non-PMW locations in Miami-Dade/Broward

	PROPOSED 2015 COMPACT	2010 COMPACT
locations in Miami-Dade/Broward other than existing pari-mutuels)	<ul style="list-style-type: none"> Guaranteed Minimum Payments cease; and All Revenue Share Payments cease; except Legislature may add 1 location in Miami-Dade with 750 Slot machines and 750 Instant Racing Terminals at a \$5 bet limit over three year period with no effect on the Compact. 	offered THEN: <ul style="list-style-type: none"> Guaranteed Minimum Payments cease; and Revenue Share Payments calculated by excluding Net Win from Broward Facilities.
Violation Exclusivity (Class III Gaming authorized outside of Miami-Dade/Broward)	If Class III Gaming authorized outside of Miami-Dade/Broward THEN: <ul style="list-style-type: none"> All exclusivity payments under the Compact cease; except Legislature may add 1 location in Palm Beach with 750 Slot machines and 750 Instant Racing Terminals at a \$5 bet limit over a three year period with no effect on the Compact. 	If Class III Gaming offered outside of Miami-Dade/Broward THEN: <ul style="list-style-type: none"> All exclusivity payments under the Compact cease.
Pari-Mutuel Policy Choices for Legislature	Explicitly states that the following do not violate exclusivity: <ul style="list-style-type: none"> Lower taxes for pari-mutuels as low as 25% on Slot Machine Revenue Decoupling for pari-mutuels Additional Slot Licenses in Miami Dade and Palm Beach Counties. Blackjack for Pari-mutuels in Broward and Miami Dade with some limitations Expansion of hours Placement of ATMs on slot floor Non-slot operating Pari-mutuels offering Designated Player Games with some restrictions → Maintains Legislature’s prerogatives on gaming in the State of Florida	
Internet Gaming	Tribe recognizes that internet gaming is illegal in Florida. If State authorizes internet gaming, THEN→ <ul style="list-style-type: none"> Guaranteed Minimum Payments cease; but Revenue Share Payments continue. If Tribe offers internet gaming to players in Florida then Guaranteed Minimum Payments continue. Affirmative recognition by Tribe that internet gaming is illegal in Florida.	If State authorizes internet gaming and Tribe’s Net Win from all Facilities drops more than 5% below Net Win from previous year THEN → <ul style="list-style-type: none"> Guaranteed Minimum Payments cease; but Revenue Share Payments continue If Tribe offers internet gaming then Guaranteed Minimum Payments continue.
Florida Lottery	Maintains consumer and employee protections. → New point-of sale system for Florida Lottery for sales at gas pumps	
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	Tribe will make annual \$250,000 donation per Facility to the Florida Council on

	PROPOSED 2015 COMPACT	2010 COMPACT
	a voluntary exclusion list. → Maintains support for compulsive gaming resources regardless of Tribe’s decisions to open or close facilities.	Compulsive Gambling and maintain a voluntary exclusion list.
Alcohol Abuse	Tribe will maintain proactive approaches to prevent improper alcohol sales, drunk driving, and underage drinking.	Tribe will maintain proactive approaches to prevent improper alcohol sales, drunk driving, and underage drinking.
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 March 31, 2014.	Florida may enter into a Compact with another federally-recognized Tribe that has land in trust in the State as of February 1, 2010.

Effect of Proposed Changes:

Effective on becoming law, **Section 4** amends s. 285.710, F.S., and:

- Requires the Gaming Compact between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida executed by the Seminole Tribe and the Governor on December 7, 2015 be amended to:
 - Become effective as a tribal compact after approval by the U.S. Department of the Interior;
 - Require that the current litigation between the State and the Seminole Tribe be dismissed with prejudice; and
 - Incorporate amendments to the exceptions from exclusivity on December 7, 2015, related to:
 - Fantasy contests, slot machines, blackjack, designated player games and point-of sale terminals,⁵⁰ and all activities authorized and conducted pursuant to Florida law, as amended by the bill; and
 - Activities claimed to be violations of the 2010 Gaming Compact in the litigation with the Seminole Tribe.

Incorporation of these amendments must not impact or change the payments required to the State under the compact executed December 7, 2015.

- Ratifies and approves the Gaming Compact executed December 7, 2015, if amended as required by the bill.
- Provides that the ratified and approved Gaming Compact, if amended as required by the bill, supersedes the 2010 Gaming Compact.
- Requires the Secretary of the Department of Business and Professional Regulation to notify the Governor, President of the Senate, Speaker of the House of Representatives, and the Division of Law Revision and Information of the date of publication in the Federal Register of the approval (or deemed approval) of the Gaming Compact, as amended.

⁵⁰ Discussion of the amendments to the proposed 2015 Gaming Compact required by the bill are described in the Effect of Proposed Changes section for the following topics: Point-of-sale terminals, fantasy contests, slot machines, blackjack, and designated player games.

Section 5 amends s. 285.710(13), F.S., to remove the provision that limits the Seminole Tribe to conducting banked or banking card games only at its Broward, Collier, and Hillsborough County facilities and to permit the Seminole Tribe to conduct the following games at all of its facilities:

- Dice games, such as craps and sic-bo; and
- Wheel games, such as roulette and big six.

Section 6 corrects an incorrect, federal statutory reference.

The Florida Lottery

Present Situation:

Section 15 of Article X of the State Constitution (1968) allows lotteries to be operated by the state. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The Department of the Lottery (department) shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens,”⁵¹ for the benefit of public education.⁵² The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.⁵³ Retailers receive commissions of five percent of the ticket price, one percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.⁵⁴ Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.⁵⁵

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.⁵⁶ Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. Contracting with a retailer with a felony criminal history is prohibited,⁵⁷ and the authority to act as a retailer may not be transferred.⁵⁸

⁵¹ See s. 24.104, F.S.

⁵² See s. 24.121(2), F.S.

⁵³ See s. 24.105(17), F.S.

⁵⁴ See *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2014), (hereinafter referred to as *OPPAGA Report 14-06*) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> page 2 (last visited Jan. 23, 2017).

⁵⁵ See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature (Jan. 2015), (hereinafter referred to as *OPPAGA Report 15-03*) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf>, page 1, (footnote 3) (last visited Jan. 23, 2017).

⁵⁶ See s. 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

⁵⁷ See s. 24.112(3)(c), F.S.

⁵⁸ See s. 24.112(4), F.S.

Retailers may not extend credit or lend money to a person to purchase a lottery ticket. The use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods) is allowed, if the lottery ticket purchase is part of a purchase transaction for other goods and services that cost \$20 or more.⁵⁹

The department may establish by rule a system to verify and pay winning lottery tickets:⁶⁰

- Any lottery retailer, as well as any department office, may redeem a winning ticket valued at less than \$600.⁶¹ Payments less than \$50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.
- Only a department office may redeem a winning ticket valued at \$600 or more.⁶² Winning tickets are paid at the claimant's option in a combination of cash, check, or lottery tickets (with a limitation of \$200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.⁶³ Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the drawing or the end of the lottery game in which the prize was won.

The department may adopt rules governing the types of lottery games to be conducted,⁶⁴ including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”⁶⁵

In 2013, the department introduced full service vending machines (FSVMs) that allow both terminal and scratch-off tickets to be sold in retail stores across the state. The department's most recent Financial Audit indicates that total FSVMs sales in Fiscal Year 2015 were \$257 million.⁶⁶

⁵⁹ See s. 24.118(1), F.S.

⁶⁰ See s. 24.115, F.S., and Fla. Admin. Code R. 53ER15-31, (2015).

⁶¹ The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

⁶² Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

⁶³ See s. 24.115(1)(f), F.S.

⁶⁴ See s. 24.105(9)(a), F.S.

⁶⁵ Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, Laws of Fla., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

⁶⁶ See *Financial Audit of the Department of the Lottery, for the Fiscal Year Ended June 30, 2015, and 2014*, Report No. 2016-080, State of Florida Auditor General (January 2016), at page 8 (2015 Financial Audit) available at http://www.myflorida.com/audgen/pages/pdf_files/2016-080.pdf (last visited Jan. 19, 2017).

The 2010 Gaming Compact and the Lottery

The 2010 Gaming Compact states that the exclusivity authorization granted to the Seminole Tribe is not impacted by the operation by the Florida Lottery of the types of lottery games authorized by Florida law on February 1, 2010; however such authorized games do not include “(i) any player-activated or operated machine or device other than a lottery vending machine, or (ii) any banked or banking card or table game.”⁶⁷

The 2010 Gaming Compact further states that:

- No more than ten lottery vending machines may be installed at any facility or location; and
- No lottery vending machine that dispenses electronic instant tickets may be installed at any licensed pari-mutuel location.⁶⁸

Under the 2010 Gaming Compact, three types of “lottery vending machines” may not allow a player to redeem a ticket, including machines that dispense:

- Pre-printed paper instant lottery tickets (e.g., scratch-off tickets);
- Pre-determined electronic instant lottery tickets and reveal the outcome; or
- Paper lottery tickets with numbers selected by the player or randomly by the machine, with the winning number selected in a drawing by the department.⁶⁹

The 2010 Gaming Compact also includes language about not using a lottery vending machine to redeem winning tickets, which is consistent with similar language in s. 24.112(15)(c), F.S.⁷⁰

Proposed 2015 Gaming Compact and the Lottery

The proposed 2015 Gaming Compact provides that the exclusivity granted to the Seminole Tribe is not impacted by the operation by the Florida Lottery of the types of lottery games authorized by Florida law on July 1, 2015; however such authorized games do not include (i) any player-activated or operated machine or device other than a “lottery vending machine,” or (ii) any banked or banking card or table game.⁷¹ No more than ten lottery vending machines may be installed at any facility or location; and no lottery vending machine that dispenses electronic instant tickets may be installed at any licensed pari-mutuel location.⁷²

Pursuant to the terms of the proposed 2015 Gaming Compact, three types of lottery vending machines may not allow a player to redeem a ticket. These are machines that dispense:

- Pre-printed paper instant lottery tickets (e.g., scratch-off tickets);
- Pre-determined electronic instant lottery tickets and reveal the outcome; or
- Paper lottery tickets with numbers selected by the player or randomly by the machine, with the winning number selected in a drawing by the department.⁷³

⁶⁷ See subparagraph 8 of paragraph B of Part XII of the 2010 Gaming Compact at page 42.

⁶⁸ Id.

⁶⁹ See paragraph R of Part III of the 2010 Gaming Compact at page 10.

⁷⁰ Section 24.112(15)(c), F.S., provides that a vending machine that dispenses a lottery ticket “may dispense change to a purchaser but may not be used to redeem any type of winning lottery ticket.”

⁷¹ See subparagraph 8 of paragraph C of Part XII of the a page 49.

⁷² Id. at pp. 49-50.

⁷³ See paragraph W of Part III of the proposed 2015 Gaming Compact at page 10.

The proposed 2015 Gaming Compact also includes language about not using a lottery vending machine to redeem winning tickets, which is consistent with similar language in s. 24.112(15)(c), F.S.⁷⁴

In addition, the definition of “Lottery Vending Machine” is amended in the proposed 2015 Gaming Compact to include a point-of-sale system to sell tickets for draw lottery games at gasoline pumps at retail fuel stations (point-of-sale terminals), provided that the system must:

- Dispense a paper lottery receipt after the purchaser uses a credit card or debit card to purchase the ticket;
- Process transactions through a platform that is certified or otherwise approved by the Florida Lottery;
- Not directly dispense money or permit payment of winnings at the point-of-sale terminal; and
- Not include or make use of video reels or mechanical reels or other slot machine or casino game themes or titles.⁷⁵

Effect of Proposed Changes:

Section 1 amends s. 24.103, F.S., to define “point-of sale terminal” as another type of vending machine for the sale of lottery tickets at retail locations. Payments for lottery tickets at point-of-sale terminals may be made by credit card, debit card, or other similar charge cards.

Section 2 amends s. 24.105, F.S.; to authorize the department to allow the purchase of lottery tickets at point-of-sale terminals by persons at least 18 years old.

A point-of-sale terminal could have multiple uses (e.g., purchase of lottery tickets incidental to the purchase of other retail goods or services), while current lottery vending machines dispense lottery tickets only. Rules on point-of-sale devices must: a) limit the dollar amount of lottery tickets purchased; b) create a process to enable a customer to restrict or prevent his or her own access to lottery tickets or games; and c) ensure that the program does not breach the exclusivity provisions of any Indian gaming compact.

Section 3 amends s. 24.112, F.S.; to provide that point-of-sale terminals selling lottery tickets or games, consistent with the proposed 2015 Gaming Compact, must:

- Dispense a paper lottery ticket with numbers selected by the player or randomly by the machine;
- Not reveal the winning numbers;
- Not use of mechanical reels or video depictions of slot machine or casino game themes or titles; and
- Not redeem winning tickets.

Point of sale devices must use a valid driver license or other process to verify that the purchaser is at least 18 years of age.

⁷⁴ Section 24.112(15)(c), F.S., provides that a vending machine that dispenses a lottery ticket “may dispense change to a purchaser but may not be used to redeem any type of winning lottery ticket.”

⁷⁵ See subparagraph 4 of paragraph W of Part III of the proposed 2015 Gaming Compact at pp. 10 - 11.

Amusement Games and Fantasy Contests

Present Situation:

Family Amusement Games Act

In 2015, the Legislature enacted the Family Amusement Games Act, to authorize skill-based amusement games and machines at specified locations;⁷⁶ prevent expansion of casino-style gambling; and clarify the law to ensure that the regulatory provisions for such devices are not subject to abuse or interpreted to create an exception to the state's general prohibitions against gambling.⁷⁷

Section 546.10, F.S., specifies types of amusement games, methods for activating amusement games and for the award of coupons, points, or prizes; limits upon prize values; and locations authorized for the operation of amusement games. In addition to the use of a coin, an amusement game may be activated by currency, card (not a credit or debit card), coupon, point, slug, token, or similar device, and is played by application of skill.

Amusement games are classified as Types A, B, or C:

- Type A amusement games enable a player to receive free replays of the game without further activation or payment for a game (up to a maximum of 15 accumulated replays); no tickets or merchandise may be awarded to the player;
- Type B amusement games enable a player to receive a coupon or point that may be accumulated and used to redeem merchandise onsite; and
- Type C amusement games allow a player to manipulate a claw or similar device within an enclosure and receive merchandise directly from the game.

The maximum redemption value of coupons or points a player may receive for a single play of a Type B amusement game is \$5.25, with a maximum value of 100 times that amount (\$525) for an item of merchandise that may be obtained onsite using accumulated coupons or points won by a player. The maximum wholesale cost of merchandise dispensed directly to a player by a Type C amusement game is \$52.50. Maximum values are adjusted annually, based on changes in the consumer price index, beginning January 1, 2018.

The authorized locations for amusement games to be operated are restricted. Type A amusement games may be operated at any location.

Type B amusement games may be operated at:

- Certain timeshare facilities⁷⁸ under the control of a timeshare plan;
- A public lodging establishment or public food service establishment licensed by the Division of Hotels and Restaurants of the DBPR pursuant to ch. 509, F.S.;

⁷⁶ See s. 546.10, F.S.

⁷⁷ See s. 546.10(2), F.S.

⁷⁸ "Facility" is defined in s. 72105(17), F.S., as "any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan."

The following premises, if the owner or operator of the premises has a current license issued by the DBPR:⁷⁹

- An arcade amusement center;
- A bowling center, as defined in s. 849.141, F.S.; or
- A truck stop.

Type C amusement games may be operated at:

- Certain timeshare facilities⁸⁰ under the control of a timeshare plan;
- An arcade amusement center;
- A bowling center, as defined in s. 849.141, F.S.;
- The premises of a retailer, as defined in s. 212.02, F.S.;
- A public lodging establishment or public food service establishment licensed by the Division of Hotels and Restaurants of the DBPR pursuant to ch. 509, F.S.;
- A truck stop; or
- The premises of a veterans' service organization granted a federal charter under Title 36, U.S.C., or a division, department, post, or chapter of such organization, for which an alcoholic beverage license has been issued.

The Family Amusement Games Act limits who may bring actions to enjoin the operation of an amusement game for an alleged violation of s. 546.10, F.S., or chapter 849, F.S., to the Florida Attorney General, state attorneys, certain sovereign tribes, the Florida Department of Agriculture and Consumer Services, the DBPR, and certain substantially affected persons. Sanctions for violation of s. 546.10, F.S., are provided that are in addition to other existing civil, administrative, and criminal sanctions.

In addition to other civil, administrative, and criminal sanctions, s. 546.10, F.S., provides penalties for violations that mirror the penalties for violations of ch. 849, F.S., on gambling, as follows:

- A conviction on a first offense is a second degree misdemeanor (punishable pursuant to ss. 775.082 or 775.083, F.S., by not more than 60 days in jail and up to a \$500 fine);
- A second conviction is a first degree misdemeanor (punishable pursuant to ss. 775.082 or 775.083, F.S., by not more than 1 year in jail and up to a \$1,000 fine);
- After 2 convictions, the third conviction is a third degree felony (punishable pursuant to ss. 775.082 or 775.083, F.S., by not more than 5 years in jail and up to a \$5,000 fine); an enhancement in sentencing is possible (up to 10 years in jail), but only if the court finds the violator is an habitual felony offender after a second felony conviction, and the court finds it is necessary to do so for the protection of the public.

⁷⁹ Qualifying licenses are those issued pursuant to ch. 509, F.S., (Lodging and Food Service Establishments), ch. 61, F.S., (Beverage Law: Administration), ch. 562, F.S., (Beverage Law: Enforcement), ch. 563, F.S., (Beer), ch. 564, F.S., (Wine), ch. 565, F.S., (Liquor), ch. 567, F.S., (Local Option Elections), or ch. 568, F.S., (Intoxicating Liquors in Counties Where Prohibited).

⁸⁰ "Facility" is defined in s. 72105(17), F.S., as "any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan."

Fantasy Sports Gaming

The operation of fantasy sports activities in Florida has recently 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,⁸¹ as there are millions of participants.⁸²

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.

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,⁸³ provides that a person who wagers any “thing of value” upon the result of a contest of skill or endurance of 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.⁸⁴

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.⁸⁵ Based on 2012 U.S. Census data, participation in fantasy sports leagues in the prior 12 months (nearly 9 million adults), and those who participate two or more times weekly (nearly 3 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.⁸⁶

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

In 1992, the U.S. Congress enacted the Professional and Amateur Sports Protection Act, which provides that it is unlawful for a governmental entity⁸⁷ or any person to sponsor, operate, advertise, or promote:

⁸¹ 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) (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited Jan. 23, 2017)), and Jonathan Griffin, *The Legality of Fantasy Sports*, National Conference of State Legislatures Legisbrief (Sep. 2015) (on file with the Committee on Regulated Industries).

⁸² 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 “roisserie 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. 23, 2017).

⁸³ See Fla. AGO 91-03 (Jan. 8, 1991) available at <http://myfloridalegal.com/. . . 91-03> (last visited Jan. 23, 2017)).

⁸⁴ 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.

⁸⁵ 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. 23, 2017).

⁸⁶ *Id.*, Figure 22 at p. 67.

⁸⁷ Governmental entities are also prohibited from licensing such activities or authorizing them by law or compact. See <https://www.gpo.gov/fdsys/pkg/USCODE-2008-title28/html/USCODE-2008-title28-partVI-chap178-sec3702.htm> (last visited Jan. 23, 2017).

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.

The prohibited activity is generally known as “sports betting.” However, PASPA does not apply to pari-mutuel animal racing or jai alai games. 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.

The prohibition against sporting 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.

Opinion of Florida Attorney General relating to Fantasy Sports League

In 1991, Florida Attorney General Robert A. Butterworth issued a formal opinion⁸⁸ 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.

Florida case law addresses the distinction between a "purse, prize or premium" and a "stake, bet or wager."⁸⁹ As each contestant paid \$100 to participate by managing one of eight teams, and the

⁸⁸ See Fla. AGO 91-03 (Jan. 8, 1991) available at <http://myfloridalegal.com/. . . 91-03> (last visited Jan. 23, 2017).

⁸⁹ The distinction was reaffirmed in *Creash v. State*, 179 So. 149, 152 (Fla. 1938) as follows: "In gamblers' lingo, 'stake, bet or wager' are synonymous and refer to the money or other thing of 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 . . . chance, it is so considered. . . It is also banned as gambling if created . . . by . . . 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."

resulting \$800 in proceeds were used for prizes, Attorney General Butterworth determined the proceeds qualified as a "stake, bet or wager" on the result of a contest of skill. Specifically, the prizes were paid based upon the performance of the individual professional football players in actual games. Based on the language in s. 849.14, F.S. above, the operation of fantasy sports leagues as described would violate Florida law, in the opinion of Attorney General Butterworth.

Effect of Proposed Changes:

Section 7 creates s. 546.16, F.S., the "Fantasy Contest Amusement Act" (Act) consisting of ss. 546.11 - 546.19, F.S.

Section 8 creates s. 546.12, F.S., and provides legislative intent that fantasy contests operated pursuant to the requirements in the act (qualified fantasy contests) involve skill.

Section 9 creates s. 546.13, F.S., and provides definitions.

Qualified "fantasy contests" are those in which:

- The value of all prizes and awards must be established and disclosed in advance of the fantasy game;
- The value of all prizes and awards is not determined by the number of participants or the amount of entry fees;
- All winning outcomes reflect the relative knowledge and skill of game participants and are determined predominantly by accumulated statistical results of the performance of the athletes who perform in multiple sporting or other events; and
- A winning outcome is not based on the score, point spread, or performance of a single team or any combination of teams, on any single performance of an athlete or player in a single sporting or other event, or on a live pari-mutuel event.

Two types of contest operators are defined. A distinction is made between fantasy contests in which the operator returns only a portion of the funds collected from participants (entry fees) as cash prizes, and contests in which the (noncommercial) operator returns all entry fees as prizes to the participants

Section 10 creates s. 546.14, F.S., and creates the Office of Amusements in the DBPR.

Section 11 creates s. 546.15, F.S., and requires licensure of all operators of qualified fantasy or simulation sports games or contests which offer fantasy contests for play by participants in the state, through the Office of Amusements.

The initial license application fee is \$500,000, and the annual license renewal fee is \$100,000. A distinction is drawn between contest operators who offer fantasy contests for a cash prize to the public, and noncommercial contest operators who organize and conduct a fantasy contest with all participant entry fees distributed in full by the same person as prizes to the participants. Lower fees apply to smaller fantasy contest operators, whose fees may not exceed 10 percent of the total entry fees collected (related to the operation of fantasy contests in Florida), less those amounts

paid to participants. The bill provides methods to establish appropriate fees payable by a contest operator, for both initial licensure and renewal of a license.

The Office's duties include administering and enforcing the act and any rules adopted to enforce the Act. A completed licensee application must be granted or denied within 120 days after receipt or is otherwise deemed approved. Requirements for license applications are specified.

A person or entity is not eligible for licensure as a contest operator or licensure renewal if he or she or an officer or director of the entity is determined by the Office of Amusements, after investigation, not to be of good moral character, or if found to have been convicted of a felony.

A contest operator must provide evidence of a surety bond in the amount of \$1 million, payable to the state.

Sections 12 and 13 create s. 546.16 and 546.17, F.S., and require game operators to implement procedures intended to protect consumers; prohibit game operators from specified activities; require contest operators offering fantasy contests to annually contract with a third party to perform an independent audit and submit the audit results to the Office; maintain specified books and records; and file quarterly reports with the Office containing specified materials and information.

Section 14 creates s. 546.1018, F.S., and authorizes penalties for violation of the act. A contest operator, or an employee or agent thereof, who violates the act is subject to a civil penalty not to exceed \$5,000 for each violation, not to exceed \$100,000 in the aggregate, which shall accrue to the state. The penalty provisions do not apply to contest operators who apply for a license within 90 days after the effective date and receive a license within 240 days after the effective date. Fantasy contests conducted by a contest operator or noncommercial contest operator in accordance with the act are not subject to s. 849.01, s. 849.08, s. 849.09, s. 849.11, s. 849.14, or s. 849.25, relating to gambling, lotteries, games of chance, contests of skill, or bookmaking.

Section 15 directs the Division of Law Revision and Information to replace references to the effective date of **Section 14** in that section with the actual date the section becomes law.

Regulation of Pari-Mutuel Wagering

Present Situation:

Background

Pari-mutuel wagering is regulated by the division in the DBPR. 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 12 license suspensions, and \$92,400 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2015-2016.⁹⁰

In 2016⁹¹ there were 39 pari-mutuel permitholders with operating licenses in Florida, operating at 12 greyhound tracks, six jai alai frontons, five quarter horse tracks, three thoroughbred tracks, and one harness track.⁹² One jai alai permitholder voluntarily relinquished its permit in October 2015.⁹³

Of the 19 greyhound racing permitholders with operating licenses during Fiscal Year 2016-2017, six permitholders conducted races at leased facilities.⁹⁴ Five pari-mutuel facilities have two permits operating at those locations.⁹⁵ One greyhound racing permitholder's operating license was suspended late in 2014.⁹⁶

⁹⁰ See the 84th Annual Report for Fiscal Year 2014-2015 issued by the division *available at* <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2014-2015--84th--20160408.pdf> (last visited Jan. 23, 2017). The 85th Annual Report for Fiscal Year 2015-2016 has not yet been issued by the division.

⁹¹ *Id.* at page 3.

⁹² See Pari-Mutuel Wagering Permitholders With 2016-2017 Operating Licenses map dated July 15, 2016, *available at* <http://www.myfloridalicense.com/dbpr/pmw/documents/MAP-Permitholders--WITH--2016-2017-OperatingLicenses--2016-07-15.pdf> (last visited Jan. 23, 2017).

⁹³ See the Stipulation and Consent Order *available at* <http://www.floridagamingwatch.com/wp-content/uploads/Hamilton-Jai-Alai-Consent-Order.pdf> (last visited Jan. 23, 2017).

⁹⁴ According to information in the 2014-2015 Annual Report from the Division of Pari-Mutuel Wagering, *available at* <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2014-2015--84th--20160408.pdf>, at pp. 29 - 36 of the online Annual Report (equivalent to pp. 25-34 of the printed Annual Report), (last visited Jan. 23, 2017), 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.

⁹⁵ 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.

⁹⁶ See <http://www.myfloridalicense.com/dbpr/pmw/documents/CurrentPermitholdersList.pdf> (last visited Jan. 23, 2017) 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. 23, 2017).

There are 12 permitholders that do not have operating licenses for Fiscal Year 2016-2017: two greyhound,⁹⁷ three jai alai,⁹⁸ one limited thoroughbred,⁹⁹ and six quarter horse.¹⁰⁰

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.¹⁰¹

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, and number of days during which pari-mutuel operations may be conducted at the specified location.¹⁰²

The Definition of a “Full Schedule of Live Racing or Games”

Current law provides complex requirements for what constitutes of 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;

⁹⁷ Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).

⁹⁸ Gadsden Jai-alai (Chattahoochee), Tampa Jai Alai, and West Flagler Associates (Miami).

⁹⁹ 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).

¹⁰⁰ ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), St. Johns Racing (St. Johns County), and Tampa Bay Downs (Oldsmar).

¹⁰¹ See s. 550.054(2), F.S.

¹⁰² See s. 550.054(9)(a), F.S.

- 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.¹⁰³

A “performance” is a minimum of eight consecutive live races.¹⁰⁴ At least three live performances must be held at a track each week.¹⁰⁵ When a permitholder conducts at least three live performances in a week,¹⁰⁶ 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).¹⁰⁷ In order to receive an operating license, permitholders must have conducted a full schedule of live racing during the preceding year.¹⁰⁸

¹⁰³ See s. 550.002(11), F.S.

¹⁰⁴ Section 550.002(25), F.S.

¹⁰⁵ Section 550.002(11), F.S.

¹⁰⁶ 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.

¹⁰⁷ Section 550.09514(2)(c), F.S.

¹⁰⁸ 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.

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 suspend¹⁰⁹ 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.¹¹⁰

The conduct of a full schedule of live racing or games is a condition of licensure for a slot machine licensee,¹¹¹ and the conduct of a minimum number of live races is a condition of renewal for a cardroom license.¹¹²

Effect of Proposed Changes:

The Definition of a “Full Schedule of Live Racing or Games”

Section 16 amends s. 550.002, F.S., and revises the definition of the term “full schedule of live racing or games.” to:

- Delete outdated references to converted greyhound permits and partial-year racing dates.
- Reduce the minimum number of required live performances from 100 to 58 for summer jai alai permitholders who do not operate slot machines or meet other financial requirements but retains the current law requirement that a jai alai permitholder that operates slot machines in its pari-mutuel facility must conduct at least 150 performances.

License Applications by Permitholders and Decoupling

Section 17 amends s. 550.01215, F.S., and deals with operating license applications filed annually with the division by pari-mutuel permitholders for licenses for the next fiscal year (July 1 through June 30).

All 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 for greyhound racing permitholders, jai alai permitholders, harness racing permitholders, quarter horse racing permitholders, and thoroughbred horse racing permitholders. Permitholders accepting wagers on broadcast events are required to disclose the dates of all those events in their license application.

Certain greyhound racing permitholders,¹¹³ harness horse racing and quarter horse permitholders,¹¹⁴ and jai alai permitholders¹¹⁵ 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

¹⁰⁹ After Jefferson County Kennel Club failed to conduct scheduled performances, its operating license was suspended September 22, 2014 under a consent order available at http://www.myfloridalicense.com/dbpr/pmw/documents/Licenses/PMW--ConsentOrder--JEFFERSON_COUNTY_KENNEL_CLUB_INC--146--2014-09-23--20141023.pdf (last visited Jan. 23, 2017).

¹¹⁰ Section 550.01215(4), F.S.

¹¹¹ Section 551.104(4)(c), F.S.

¹¹² Section. 849.086(5)(b), F.S.

¹¹³ 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.

¹¹⁴ Those that have had an operating license for at least 5 years and a cardroom license for at least 2 years.

¹¹⁵ Those that have had an operating license for at least 5 years.

racing or games (i.e., decouple), while they continue to operate their licensed slot machine facilities and/or cardrooms pursuant to ch. 551, F.S., and s. 849.086, F.S., as amended by the bill.

Thoroughbred horse racing permitholders that have conducted live racing for at least 5 years and had an average annual handle of less than \$5 million in the last two state fiscal years may discontinue live racing, if the permitholder elects to discontinue live racing during the 30-day period after the effective date of the bill (i.e., partial decoupling). A permitholder that makes the election must specify in its future operating license applications that it does not intend to conduct live racing. The bill specifies the circumstances under which a decoupled thoroughbred permitholder with a slot machine license 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.

A greyhound racing permitholder is authorized to receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility pursuant to s. 550.475, F.S.; however, the permitholders must be located within 35 miles of each other.

The division may approve changes in racing dates for Fiscal Year 2017-2018, if the requests are received before August 31, 2017.

A summer jai alai permitholder is authorized to operate a jai alai fronton only for the summer season each year, on dates selected by the permitholder between May 1 and November 30. Summer jai alai permitholders are subject to all taxes, rules, and provisions of ch. 550, F.S., that apply to winter jai alai permitholders, but are not eligible to operate a cardroom or operate a slot machine facility. Winter and summer jai alai permitholders are prohibited from operating on the same days or in competition with each other, but leasing of a winter jai alai facility for the operation of a summer meet is authorized.

Existing law authorizing the conversion of certain permits is repealed; this provision allowed a permit originally converted from a jai alai permit to a greyhound racing permit, to convert back to a jai alai permit if greyhound racing was never conducted or the permitholder had not conducted greyhound racing for 12 consecutive months.

Annual Report by Division

Present Situation:

An annual report must be made by the division to the Governor, of its own actions, receipts from activities under ch. 550, F.S., and any suggestions to accomplishing the purposes of the pari-mutuel wagering act.¹¹⁶

Effect of Proposed Changes:

Section 18 amends s. 550.0251, F.S., to expand the required content of the annual report from the division, and require that the report be provided to the President of the Senate and the Speaker of the House of Representatives, as well as to the Governor. The report must include, at a minimum:

¹¹⁶ See s. 550.0251(1), F.S.

- Recent events in the gaming industry, including pending litigation involving permitholders; pending permitholder, facility, cardroom, slot, or operating license applications; and new and pending rules;
- Actions of the DBPR relating to the implementation and administration of ch. 550, F.S., (Pari-Mutuel Wagering, ch. 551, F.S., (Slot Machines), and ch. 849, F.S., (Gambling);
- The state revenues and expenses associated with each form of authorized gaming; revenues and expenses associated with pari-mutuel wagering must be further delineated by the class of license;
- The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot machine licensee;
- A summary of disciplinary actions taken by the department; and
- Any suggestions to more effectively achieve the purposes of the Pari-Mutuel Wagering Act (ch. 550, F.S.).

Pari-Mutuel Permit Relocation and Conversion, and Violations by Permitholders

Present Situation:

The permit of a harness horse permitholder or thoroughbred horse permitholder who does not pay tax on handle for live performances for a full schedule of live races during any 2 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.¹¹⁷ Financial hardship of the permitholder does not constitute just cause for either failure.¹¹⁸

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.

In lieu of suspending or revoking a permit or license, the division may impose a civil penalty against the permitholder or licensee for a violation of ch. 550 or any rule adopted by the division. An administrative fine may not exceed \$1,000 for each count or separate offense. All fines imposed and collected are deposited to the General Revenue Fund.

Section 550.0555, F.S., addresses relocation of greyhound racing pari-mutuel wagering permits under specified circumstances, in order to protect the revenue-producing ability of greyhound racing permitholder and the associated state revenues derived from greyhound racing.

Section 550.0475, F.S., concerns conversions of pari-mutuel wagering permits from one class to another, in limited circumstances. The prohibitions in other sections of ch. 550, F.S., preventing the location and operation of jai alai frontons within a specified distance from the location of another jai alai fronton or other permittee, or the issuance of any permit by the division at a location within a certain designated area, do not apply and do not prevent the issuance an operating license under s. 550.475, F.S.

¹¹⁷ See s. 550.09512(3), F.S. and s. 550.09515(3), F.S.

¹¹⁸ *Id.*

Effect of Proposed Changes:

Section 19 amends s. 550.054, F.S., relating to applications for pari-mutuel wagering permits and:

- Requires 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.
- Provides that a new pari-mutuel permit may not be approved or issued *30 days after the effective date of the act* (i.e., the publication of the proposed 2015 Gaming Compact, as amended as required by the bill, in the Federal Register), and a revoked permit is void and may not be reissued.
- Allows a permit to be placed in inactive status for 12 months for good cause and allows renewal of inactive status for up to 12 months; however, a permit may not be inactive for more than 24 consecutive months, and entities with inactive permits are not eligible for licensure for pari-mutuel wagering, slot machines, or cardrooms.
- Provides 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 and deletes authority for the transfer of a thoroughbred permit to another racetrack and for conversion of a jai alai permit to a greyhound racing permit.
- Repeals provisions authorizing conversion and relocation of pari-mutuel permits under specified conditions (*see Section 20*).

Section 20 amends s. 550.0555, F.S., relating to the procedures for relocation by certain permitholders to another location within 30 miles under certain revised conditions. Permitholders eligible to seek approval to move their pari-mutuel operations include any holder of a valid and outstanding:

- Greyhound racing permit previously converted from a jai alai permit;
- Greyhound racing permit in a county with only one greyhound permit; or
- Jai alai permit in a county with only one jai alai permit.

The conditions for a new location include:

- The move does not cross county boundaries;
- The new location must be at least 10 miles from any existing pari-mutuel facility, as determined by the division;
- The new location, if within a county with three or more pari-mutuel permits, must be at least 10 miles from the Atlantic Ocean; and
- The relocation is approved under the zoning regulations of the county or municipality in which the permit is to be relocated.

Section 21 repeals s. 550.0745, F.S., relating to the procedure to convert a pari-mutuel permit to a summer jai alai permit.

Taxation of Pari-mutuel Wagering and Permit Revocation for Failure to Pay Taxes

Present Situation:

Section 550.002(13), F.S., defines “handle” as the aggregate contributions (bets or wagers) to pari-mutuel pools. There are four types of handle detailed in annual reports¹¹⁹ of the division:

- Live ontrack, from live races or games at a track/fronton;
- Simulcast, from live races or games originating out-of-state and broadcast to a Florida track or fronton;
- Intertrack, from a Florida track or fronton (acting as host) broadcasting live races or games to other Florida tracks or frontons; and
- Intertrack simulcast, from rebroadcasting of simulcast signals received by a Florida track or fronton to other Florida tracks or frontons.

The stated tax rates on greyhound racing handle (i.e., on live ontrack, simulcast, intertrack, and intertrack simulcast handle as described above) vary considerably. Section 550.0951(3), F.S., specifies rates of 5.5 percent, 7.6 percent, 3.9 percent, and 0.5 percent of handle that depend on the type of wager (and the location of the tracks involved in any intertrack wagering).

Intertrack wagering is taxed at the rate of 7.1 percent if the host track is a jai alai fronton. The rate drops significantly to a rate of 0.5 percent (one-half of one percent) if: (1) both the host and guest tracks are thoroughbred permitholders, or (2) a guest track is located more than 25 miles away from the host track and within 25 miles of a thoroughbred permitholder currently conducting live racing.

Each permitholder receives a tax credit based on the number of live races conducted in the previous year multiplied by the daily license fee.¹²⁰ This works out to a 100 percent refund of daily license fees for every live race conducted. The daily license credit may also be transferred for payment in full by a host track to a transferring permitholder.

As provided in s. 550.09514(1), F.S., all greyhound racing permitholders that conduct a full schedule of live racing in a year are eligible for tax exemptions in the form of a credit that directly reduces their state taxes, in the following amounts:

- \$500,000 annually to each permitholder that conducted a full schedule of live racing in 1995, and “are closest to another state that authorizes greyhound pari-mutuel wagering.” These requirements qualify three greyhound racing permitholders (Washington County Kennel Club (Ebro), Pensacola Greyhound, and Jefferson County Kennel Club (Monticello)); and
- \$360,000 annually to each of the other greyhound racing permitholders.

If a permitholder cannot use its full tax exemption amount, then it may transfer the unused portion of the exemption to another permitholder that has acted as a host track by accepting intertrack wagering.¹²¹ The transfer may occur only once per state fiscal year, and there must be a dollar-for-dollar payment (no discount) by the host track.

¹¹⁹ See, <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2014-2015--84th--20160408.pdf>, at page 2 (last visited Jan. 23, 2017).

¹²⁰ Section 550.0951(1)(a), F.S.

¹²¹ Section 550.0951(1)(b), F.S.

Section 550.09512, F.S., imposes a 0.5 percent tax on the handle from harness horse racing. If a harness horse permitholder fails to pay taxes on a full schedule of live races during any 2 consecutive state fiscal years, the permit is void and escheats to (is forfeited) and becomes the property of the state, unless the failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to operate and pay tax on handle.

The permit of a thoroughbred horse racing permitholder who does not pay tax on handle for live thoroughbred horse performances for a full schedule of live races during any 2 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.¹²² Financial hardship of the permitholder does not constitute just cause for either failure.¹²³

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.¹²⁴

Section 550.1645, F.S., provides that after one year, the winnings from all unclaimed pari-mutuel tickets become property of the state, and permitholders must pay the unclaimed (escheated) winnings to the state. The funds are deposited into the State School Fund and are used for the maintenance of public free schools. Section 550.1647, F.S., provides that permitholders who pay escheated winnings to the state are entitled to a 100 percent credit equal to the escheated winnings payment, to be credited in the next fiscal year against greyhound racing taxes; however, the permitholder must pay an amount equal to 10 percent of the escheat credit to qualified greyhound adoption programs.

Effect of Proposed Changes:

Section 22 amends s. 550.0951, F.S., on the payment of daily license fee and taxes and:

- Deletes the tax exemption specified in s. 550.09514(1), F.S., of \$360,000 or \$500,000 for each greyhound racing permitholder, and deletes other tax credits.
- Deletes current law allowing transfer of the tax exemption or other credits among greyhound racing permitholders.
- Reduces the tax on handle for greyhound racing to 1.28 percent from 5.5 percent.
- Imposes a tax of 0.5 percent if the host and guest tracks are thoroughbred racing permitholders, or if the guest track is located outside the market area of a host track that is not a greyhound racing track and within the market of a thoroughbred racing permitholder currently conducting a live meet.

¹²² See s. 550.09515(3), F.S.

¹²³ *Id.*

¹²⁴ See ss. 550.09512(3)(b) and 550.09515(3)(b), F.S.

Section 23 amends s. 550.09512, F.S., on harness horse racing and:

- Requires the division to revoke a harness horse racing permit that has not paid the tax due on the handle for a full live schedule of harness 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.
- Repeals a provision allowing reissuance of a revoked harness horse permit that has been revoked for nonpayment of taxes.

Section 24 amends s. 550.09514, F.S., on greyhound racing taxes and purse requirements and:

- Removes available tax credits of \$360,000 and \$500,000.
- Requires greyhound racing permitholders that conduct live racing during a fiscal year to pay an additional purse amount annually of \$60 for each live race conducted in the preceding fiscal year.
- Deletes requirements for purses equal to 75 percent of the daily license fees.
- Requires purses be disbursed weekly during the permitholder's race meet.
- Clarifies that the tax rate on handle for intertrack wagering is provided in ch. 2000-354, s. 6, Laws of Fla.

Section 25 amends s. 550.09515, F.S., on thoroughbred racing taxes and:

- Requires the division to revoke a thoroughbred racing permit that has not paid the tax due on handle for a full live schedule of thoroughbred horse performances 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.
- Repeals a provision allowing reissuance of a thoroughbred horse permit that has been revoked for nonpayment of taxes.

Section 26 amends s. 550.1625, F.S., relating to greyhound racing taxes to repeal a reference to a greyhound racing permitholder paying the breaks tax.

Section 27 repeals s. 550.1647, F.S., relating to unclaimed, uncashed, or abandoned pari-mutuel tickets which have remained in the custody of a greyhound racing permitholder.

Greyhound Adoption and Reporting of Injuries to Racing Greyhounds

Present Situation:

Section 550.1648, F.S., requires each operating greyhound racing permitholder to provide for a greyhound adoption booth to be located at the track facility. The greyhound adoption booth must be operated on weekends by personnel or volunteers from a bona fide organization that promotes or encourages the adoption of greyhounds as defined in s. 550.1647, F.S.

Information pamphlets and application forms shall be provided to the public upon request. In addition, the kennel operator or owner shall notify the permitholder that a greyhound is available for adoption, and the permitholder shall provide information concerning the adoption of a greyhound in each race program. Adoption information must be posted at conspicuous locations

throughout the track facility. Any greyhound that is participating in a race and that will be available for future adoption must be noted in the race program. The permitholder shall allow greyhounds to be walked through the track facility to publicize the greyhound adoption program.

A greyhound racing permitholder may fund the greyhound adoption program by holding a charity racing day designated as “Greyhound Adopt-A-Pet Day.” All profits derived from the operation of the charity day must be placed into a fund used to support activities at the track facility which promote the adoption of greyhounds. Proceeds from this authorized charity day may not be used to pay the amounts required to be paid to a bona fide organization pursuant to s. 550.1647, F.S.,

The division may impose a penalty for violations, including suspension or revocation of a permit, and may require the permitholder to take corrective action. Administrative fines may not exceed \$1,000 for each count or separate offense. All fines imposed and collected are deposited to the General Revenue Fund. Imposition of the above penalties does not exclude a prosecution for cruelty to animals or for any other criminal act.

Effect of Proposed Changes:

Section 28 amends s. 550.1648, F.S., to require, as a condition of greyhound adoption, that a bona fide organization must provide sterilization of greyhounds by a licensed veterinarian before relinquishing custody of the greyhound to the adopter; the sterilization fee may be included in adoption cost adoption.

Section 31 creates s. 550.2416, F.S., and requires specified, detailed reporting of racing greyhound injuries. The bill requires greyhound track veterinarians to prepare and sign detailed reports under oath, on a form adopted by the division, of all injuries to racing greyhounds that occur while the greyhounds are on a racetrack. Penalties for false reporting are provided.

Pari-Mutuel Permit Reduction Program

Present Situation:

Current law does not provide for the reduction of pari-mutuel permits.

Effect of Proposed Changes:

Section 29 creates s. 550.1752, F.S., and establishes a \$20 million pari-mutuel permit reduction program and authorizes the division to purchase and cancel active pari-mutuel permits. Funding for the program would be generated by revenue share payments made by the Seminole Tribe under the Gaming Compact received by the State after October 31, 2015 (i.e., funds held in reserve related to banked card games). Funding the program is calculated monthly, until the division determines sufficient funds are available

A pari-mutuel permitholder may not submit an offer to sell its permit unless it is actively conducting racing or jai-alai required by law and satisfies all applicable permit requirements. The value of the permit must be based upon the permit’s fair market value by one or more independent appraisers selected by the division and may not include the valuation of real estate

or personal property. The division may establish a lower value for a permit than the amount determined by the independent appraiser, but not a higher value.

The division must accept the offer or offers that best use the available funding, but, may also accept offers that it determines are the most likely to reduce gaming in Florida. A permit purchased through the program must be cancelled. This section expires July 1, 2019, unless reenacted.

Thoroughbred Purse Pool Contributions

Present Situation:

Section 550.2625, F.S., describes the requirements for contributions to purses and breeders' and owners' awards by horse racing permitholders (harness, quarter horse, and thoroughbred permitholders).

Thoroughbred racing permitholders must contribute:

- 7.5 percent of all pari-mutuel wagering handle;
- An additional 0.625 percent on thoroughbred racing conducted between January 3 and March 16;
- An additional 0.225 percent on thoroughbred racing conducted between March 17 and May 22; and
- An additional 0.85 percent on thoroughbred racing conducted between May 23 and January 2.¹²⁵

Any thoroughbred permitholder whose total handle on live performances during the 1991-1992 state fiscal year was not greater than \$34 million is not subject to the additional purse payments above 7.5 percent.¹²⁶

A thoroughbred permitholder may withhold from the handle an additional amount equal to 1 percent on exotic wagering for use as owners' awards, and may withhold from the handle an amount equal to 2 percent on exotic wagering for use as overnight purses. No permitholder may withhold in excess of 20 percent from the handle without withholding all of the amounts listed above.¹²⁷

A portion of purses generated through intertrack wagering and interstate simulcasting equal to 8.5 percent is used for owners awards; certain thoroughbred permitholders may be exempt from this requirement.¹²⁸ Each horseracing permitholder conducting any thoroughbred race, including any intertrack or interstate simulcast races taken by the permitholder, must pay a sum equal to 0.955 percent on all pari-mutuel pools conducted during any such races for the payment of authorized breeders', stallion, or special racing awards, including Breeder's Cup races conducted outside Florida.

¹²⁵ Section 550.2625(2)(a), F.S.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Section 550.2625(2)(e), F.S.

On any race originating live in this state which is broadcast out-of-state to any location at which wagers are accepted, the host track is required to pay 3.475 percent of the gross revenue derived from such out-of-state broadcasts as breeders', stallion, or special racing awards. The Florida Thoroughbred Breeders' Association is authorized to receive these payments from the permitholders and make payments of awards earned. The Florida Thoroughbred Breeders' Association has the right to withhold up to 10 percent of the permitholder's payments as a fee for administering the payments of awards and for general promotion of the industry.¹²⁹

Effect of Proposed Changes:

Section 30 creates s. 550.1753, F.S., and establishes a long-term thoroughbred purse supplement program, effective July 1, 2019, to maintain an active and viable live thoroughbred racing, owning, and breeding industry in Florida.

Funding for the program is generated by revenue share payments made by the Seminole Tribe under the Gaming Compact and received by the State after July 1, 2019. Funding the program is calculated monthly, until the division determines sufficient funds are available; the funding limit is \$20 million. The purse supplement program expires June 30, 2036, the day the proposed 2015 Gaming Compact, as amended, will expire.

Funds are distributed by the division on a pro rata basis based upon the number of live race days to be conducted by each thoroughbred permitholder per its annual racing license. If a permitholder fails to conduct a race day, then the allocated funds associated with that day must be returned to the division, so that it may reapportion the allocation of funds.

Limited Thoroughbred Racing Permits Transfer and Relocation

Present Situation:

The issuance of limited thoroughbred racing permits (through conversion from a quarter horse permit as allowed by ch. 2010-29, Laws of Fla/), is addressed in s. 550.3345, F.S. The State provided a limited opportunity for 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.¹³⁰

Effect of Proposed Changes:

Section 33 amends s. 550.3345, F.S., relating to the issuance of limited thoroughbred racing permits (through conversion from a quarter horse permit as allowed by ch. 2010-29, Laws of Fla.) and:

- Prohibits the transfer of a limited thoroughbred racing permit to another person or entity.
- Removes obsolete language.

¹²⁹ *Id.*

¹³⁰ *See* s. 550.2625(3), F.S.

- Retains existing law allowing for relocation of the permit, but allows relocation to another county without a referendum, if the permit “is situated in such a manner that it is located in more than one county.” A relocation remains subject to the requirement in s. 550.3345(2)(d), F.S., that the relocation be approved under zoning and land use regulations in the new county or municipality.

Leasing of Pari-mutuel Facilities

Present Situation:

Section 550.475, F.S., provides that 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 are entitled to lease any and all of their facilities to any other permitholder of a same class with a valid permit for jai alai games, greyhound racing, or thoroughbred or harness (standardbred) horse racing, 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 35 amends s. 550.475, F.S., to prohibit permitholders from leasing facilities from a permitholder that is not conducting a full schedule of live racing.¹³¹

Thoroughbred Permitholder Applications for Operating Licenses

Present Situation:

Section 550.5251, F.S., regulates the applications for thoroughbred permitholders, which are required annually.

Effect of Proposed Changes:

Section 36 repeals s. 550.5251(1), F.S., which requires thoroughbred permitholders to annually file applications to conduct race meetings that specify the number and dates of all performances that the permitholder intends to conduct. **Section 17** amends s. 550.01215(1), F.S., to require all pari-mutuel permitholders to apply for an annual operating license. In addition, certain thoroughbred permitholders may elect not to conduct live racing, as provided under **Section 17**.

¹³¹ According to information in the latest available Fiscal Year 2014-2015 Annual Report from the Division of Pari-Mutuel Wagering, 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 Jai Alai conducts games at Dania Jai Alai; Tropical Park conducts races at Calder Race Course. Available at <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2014-2015--84th--20160408.pdf>, at pp. 25-34 (last visited Jan. 23, 2017).

Intertrack Wagering and Simulcast Wagering

Present Situation:

Section 550.615(2), F.S., allows any permitholder that has conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers on any type of pari-mutuel race or game conducted by other licensed pari-mutuel permitholders in the state. This type of wagering is defined as “intertrack wagering.”¹³²

Wagering on a simulcast event occurs when a wager is placed on: (1) a live race or game that is broadcast outside the state from an in-state location, or (2) a live race or game that occurs outside the state but is broadcast to a permitholder in the state.¹³³

Effect of Proposed Changes:

Section 34 amends s. 550.3551, F.S., relating to transmission of racing and jai alai information, to remove an outdated reference and to remove a reference to live racing requirements for intertrack wagering by harness horse permitholders.

Section 37 amends s. 550.615, F.S., relating to intertrack wagering, as to which tracks or frontons may receive broadcasts of any type of race or game, and accept wagering on them. Only tracks that have conducted a full schedule of live racing for at least five consecutive years since 2010 may receive such broadcasts. Section 550.615(4), F.S., is amended to provide that a greyhound racing permitholder which accepts intertrack wagers is not required to obtain the written consent of another greyhound racing permitholder within its market area.

Section 550.615(9), F.S., is created to address the acceptance of pari-mutuel wagers by a greyhound racing permitholder that has conducted a full schedule of live racing for at least five consecutive years since 2010, but has requested and been issued an operating license that specifies no live racing will be conducted. Wagering on live races conducted at out-of-state greyhound tracks may be accepted, but only on the days when the permitholder receives broadcasts of all live races that any Florida greyhound host track makes available

Sections 550.615(6) and (7), F.S., are deleted; those provisions:

- Limit intertrack wagering where there are three or more horserace permitholders within 25 miles of each other, and require the consent of a permitholder where there are only two permits (greyhound racing and jai alai) in the county; and
- Require a greyhound racing permitholder that accepts intertrack wagers on live greyhound signals to obtain written consent from any operating greyhound racing permitholder within its market area.

¹³² Section 550.002(17), F.S.

¹³³ Section 550.002(32), F.S.

Limited Intertrack Wagering License

Present Situation:

Under s. 550.6308, F.S., a limited amount of intertrack wagering is authorized by statute for one permanent thoroughbred sales facility.¹³⁴ In order to qualify for a license, the facility must have at least 15 days of thoroughbred horse sales at a permanent sales facility in this state for at least three consecutive years. Additionally, the facility must have conducted at least one day of nonwagering thoroughbred racing in this state, with a purse structure of at least \$250,000 per year for two consecutive years before application for a license.

A limited intertrack wagering licensee is limited to conducting intertrack wagering during:

- The 21 days in connection with thoroughbred sales;
- Between November 1 and May 8;
- Between May 9 and October 31, if:
 - No permitholder within the county is conducting live events.
 - Permitholders operating live events within the county consent.
 - For the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet.

The licensee is further limited to intertrack wagering on thoroughbred racing, unless all permitholders in the same county consent.¹³⁵ The licensee must pay 2.5 percent of total wagers on jai alai or greyhound racing to thoroughbred permitholders operating live races for purses.¹³⁶

Effect of Proposed Changes:

Section 38 amends s. 550.6308, F.S., to:

- Reduce the required number of days of sales to eight days from fifteen days; and
- Remove the requirement to conduct at least one day of nonwagering thoroughbred racing with a \$250,000 purse per year for two consecutive years.

Certain restrictions and requirements for intertrack wagering are deleted, including the requirements that intertrack wagering must be conducted:

- For up to 21 days in connection with sales;
- Between November 1 and May 8;
- Only with the consent of other permitholders that run live racing in the county, between May 9 and October 31; and
- During the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet conducted after May 8 and before November 1.

¹³⁴ Section 550.6308, F.S.

¹³⁵ See s. 550.6308(4), F.S.

¹³⁶ See s. 550.6308(5), F.S.

The following requirements imposed on the limited intertrack wagering permitholder are deleted:

- That intertrack wagering must be conducted only on thoroughbred racing, unless the consent of all thoroughbred, jai alai, and greyhound racing permitholders in the same county is obtained; and
- That a contribution to a purse pool of 2.5 percent be made for intertrack wagering on greyhound or jai alai.

Slot Machines, Thoroughbred Purse Pools, and Horsemen’s Agreements

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.¹³⁷ 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 2004.¹³⁸

The Florida Supreme Court has under review, in *Gretna Racing, LLC v. Department of Business and Professional Regulation, Division of Pari-mutuel Wagering*, whether additional licenses to conduct slot machine gaming may be issued for pari-mutuel locations in counties other than Broward and Miami-Dade Counties.¹³⁹ Previously, the First District Court of Appeal (First DCA) affirmed the denial by the division of Gretna Racing’s application for a license to conduct slot machine gaming that was filed by Gretna Racing in 2013.¹⁴⁰ Gretna Racing’s facilities are located in Gadsden County, which held a countywide non-binding vote, in which a majority of the voters favored slot machines at pari-mutuel facilities in the county.¹⁴¹ The First DCA held that “nothing in the language, structure, or history of slot machine legislation, . . . provides authorization for the holding of slot machine referenda in counties other than Miami-Dade and Broward counties,” including the Gadsden County referendum.¹⁴²

Effect of Proposed Changes:

Section 39 amends s. 551.101, F.S., to allow eligible slot machine facilities to conduct slot machine gaming pursuant to a pari-mutuel permit or license issued pursuant to s. 551.1043 (*see Section 43*) and to delete provisions referring to the eligibility requirements for a slot machine license under the state constitution.

¹³⁷ See ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.

¹³⁸ See FLA. CONST., art. IX, s. 23 (1968).

¹³⁹ For information about the documents filed by the parties, see

http://jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2015&p_casenum=1929&psCourt=FSC&psSearchType= (last visited Jan. 23, 2017).

¹⁴⁰ See *Gretna Racing, LLC v. Dep’t of Bus. & Prof’l Regulation, Div. of Pari-Mutuel Wagering*, 178 So. 3d 15 (Fla. 1st DCA 2015).

¹⁴¹ *Id.* at p. 16.

¹⁴² *Id.*

Section 40 amends the definition of “eligible facility” in s. 551.102, F.S., for the conduct of slot machine gaming to include (1) any licensed pari-mutuel facility or (2) any facility authorized to conduct slot machine gaming pursuant to s. 551.1043, F.S., (*see Section 43*), either of which meets the requirements of s. 551.104(2) (*see Section 41*). The bill also amends the definitions of “slot machine license” and “slot machine licensee” to include a licensee authorized under s. 550.1043, F.S.

Section 41 amends s. 551.104, F.S., to:

- Authorize approval by the division of applications for a license to conduct slot machine gaming for:
 - The seven pari-mutuel facilities in Miami-Dade and Broward Counties that existed when the State Constitution was amended and slot machines in these counties were approved by county referenda;
 - A licensed pari-mutuel facility, if slot machines in the county are approved by voters in a countywide referendum, and if the permitholder conducted a full schedule of live racing for two consecutive years immediately preceding its application;¹⁴³
 - The additional authorized slot machine gaming facilities (one in Miami-Dade County and one in Broward County (*see Section 43*)); or
 - Pari-mutuel facilities in other counties (except the seven pari-mutuel facilities in Miami-Dade and Broward Counties) by referendum if associated with a public-private partnership.
- Disqualify permitholders from receiving a slot machine license, if a permitholder includes, or previously included, an ultimate equitable owner whose permit was voluntarily or involuntarily surrendered, suspended, or revoked by the division within 10 years before the date of the permitholder’s application for a slot machine license.
- Revise 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).

If a slot machine licensee is not running a full schedule of live racing under its pari-mutuel permit, then the licensee must contribute the lesser of \$2 million or 3 percent of the permitholder’s prior fiscal year slots revenue to the thoroughbred purse pool created in s. 551.04((c)(2), F.S. This requirement is repealed July 1, 2036 (the day after the proposed 2015 Gaming Compact ends). The purse pool is for the benefit of slot machine licensees that conduct at least 160 days of live thoroughbred racing. There is a dollar-for-dollar credit for payments made to a horsemen’s association under a binding written agreement entered into by the permitholder pursuant to s. 551.104(10), F.S. The requirement in existing law for a thoroughbred racing permitholder to have a horsemen’s agreement governing the payment of purses on live thoroughbred racing does not apply to a summer thoroughbred racing permitholder.

- Allow live racing or games to be conducted at a leased facility of a permitholder pursuant to s. 550.475, F.S, if the leasing permitholder has operated its live races or games by lease for at least 10 consecutive years prior to its slot machine license application.

¹⁴³ As of November 2016, eight counties have adopted referenda approving slot machines: Brevard, Duval, Gadsden, Hamilton, Lee, Palm Beach, St. Lucie, and Washington.

- Delete the requirement that a quarter horse racing permitholder have a horsemen's agreement governing the payment of purses on live quarter horse races.

Section 42 creates s. 551.1042, F.S., to prohibit the relocation of a slot machine facility.

Section 43 creates s. 551.1043, F.S., to provide two additional slot machine licenses in Broward County or a county as defined in s. 125.011, F.S.,¹⁴⁴ for the purpose of enhancing live pari-mutuel activity. Only one of these licenses may be issued in each county.

Any person that is not a slot machine licensee may apply for one of the two additional licenses, upon payment of a \$2 million nonrefundable application fee. The fee must be used by the division and the Department of Law Enforcement for investigations, the regulation of slot machine gaming, and the enforcement of slot machine gaming under ch. 551, F.S. In the event of a successful award of the license to a licensee, the license application fee will be credited against the license application fee required by s. 551.106, F.S.

If there is more than one applicant for the additional slot machine gaming license in a county, the license will be awarded by the division to the applicant that receives the highest score based on legislatively specified criteria; however, the relative value or points the division must assign to the selection criteria are not specified.

The division must complete its evaluations at least 120 days after the submission of applications and notice its intent to award the license within that time. Any protest of the intent to award the license will be heard by the Division of Administrative Hearings under an expedited schedule. Any appeal of a license denial must be made to the First District Court of Appeal and must be accompanied by the posting of a supersedeas bond in an amount determined by the division to be equal to the projected annual slot machine revenue to be generated by the successful licensee.

The division is authorized to adopt emergency rules to implement this section.

The additional slot machine gaming licensees are authorized to operate a cardroom and to operate up to 25 house banked blackjack tables notwithstanding that the licensee does not have a pari-mutuel permit, under the same wagering requirements and tax rate as set forth in **Section 45**, and are exempt from ch. 550 (Pari-Mutuel Wagering). The licensees are also exempt from certain requirements relating to pari-mutuel permitholders operating a slot machine facility which are contained in s. 551.104(3), (4)(b) and (c)(1), (5) and (10), and s. 551.114(4), F.S.

An applicant shall submit an application to the division, with the same disclosures as required of persons seeking to conduct pari-mutuel wagering in the state. Any person prohibited from holding any horseracing or greyhound permit or jai alai fronton permit pursuant to s. 550.1815, F.S., is ineligible to apply for the additional slot machine license.

¹⁴⁴ Currently, the only county that meets the definition in s. 125.011, F.S., is Miami-Dade County.

House Banked Blackjack

Present Situation:

The conduct of house banked blackjack is authorized pursuant to the 2010 Gaming Compact only at five of the seven¹⁴⁵ tribal casinos the Seminole Tribe for a five-year period that ended on August 31, 2015.

The playing of house banked blackjack under limited circumstances is an exception to the exclusivity provided to the Seminole Tribe under the proposed 2015 Gaming Compact.¹⁴⁶ Not more than fifteen blackjack card game tables are authorized, limited to the locations of the eight pari-mutuel facilities in Broward and Miami-Dade Counties (the Broward and Miami-Dade slot machine facilities), provided the facility has a current operating license for Fiscal Year 2015-2016.¹⁴⁷

Other limitations on the conduct of house banked blackjack in pari-mutuel facilities under the proposed 2015 Gaming Compact include:

- The maximum bet allowed for such games may not exceed \$15.00 for each initial two card wager;
- All wagers on splits and/or double downs may not exceed the initial two card wager;
- With the exception of a single side bet of not more than \$1.00, no bonus or progressive components are permitted;
- Each blackjack card game table must have a maximum of seven betting spots;
- Such licenses may not be transferred or otherwise used to move or operate blackjack card game tables at any other location; and
- The operation of blackjack card tables must be approved by a county-wide referendum held after the effective date of the proposed 2015 Gaming Compact.

In addition under the proposed 2015 Gaming Compact, the Broward and Miami-Dade slot machine facilities may be authorized by state law to add not more than ten additional blackjack card game tables at each such facility, subject to all of the above limitations above, except that the maximum bet allowed for the additional blackjack card game tables shall not exceed \$25.00 for each initial two card wager. These ten additional blackjack card game tables may not be authorized until the fiscal year after the combined total of all annual revenue generated by the Seminole Tribe from its banking or banked card games at its facilities in Broward County and all blackjack card game tables operated by the pari-mutuel facilities in Broward and Miami-Dade Counties has increased by at least 40 percent above the revenue generated by such banking or banked card games and blackjack card tables during the "base fiscal year."¹⁴⁸

¹⁴⁵ See the executed 2010 Gaming Compact available at http://www.myfloridalicense.com/dbpr/pm/w/documents/2010_Compact-Signed1.pdf (last visited Jan. 23, 2017). The 2010 Gaming Compact provides that banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the 2010 Gaming Compact, at page 4. In addition, in paragraph B of Part XVI, at page 49, the period of authorization to conduct table games is five years. F

¹⁴⁶ See subparagraph 3 of paragraph C of Part XII of the proposed 2015 Gaming Compact at pp. 46-47.

¹⁴⁷ *Id.*

¹⁴⁸ The "base fiscal year" means the first fiscal year after both of the following conditions have been satisfied: (a) the Broward and Miami-Dade slot machine facilities have each offered 15 blackjack card tables for a full fiscal year, and (b) the

Changes to the tax rate paid to the state by pari-mutuel permitholders for the operation of slot machines and/or blackjack will not violate the exclusivity granted to the Seminole Tribe, provided that the effective tax rate is not less than 25 percent.¹⁴⁹

Effect of Proposed Changes:

Section 44 creates s. 551.1044, F.S., to authorize house banked blackjack table games, with a maximum of 25 such tables at each facility, at:

- The seven facilities in Miami-Dade and Broward counties that are eligible under the slot machines constitutional amendment where live racing or games were conducted during calendar years 2002 and 2003; and
- The facilities located in a county defined under s. 125.011, F.S., where a full schedule of live horse racing has been conducted for two consecutive years.

Each of the two new slot machine gaming facilities authorized under **Section 43** also could operate the same number of house banked blackjack tables.

Wagers may not exceed \$100 for each initial two card wager. Subsequent wagers on splits or double downs are allowed, but may not exceed the initial two card wager. Single side bets of not more than \$5 are also allowed.

Each pari-mutuel permitholder offering banked blackjack (as well as the two new slot machine gaming facilities authorized under **Section 43**) must pay a tax to the state of 25 percent of the blackjack operator's monthly gross receipts.

Slot Machines Tax Rate Reduction

Present Situation:

The tax rate on slot machine revenues is 35 percent pursuant to 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.

Tribe's expansion projects at the Seminole Hard Rock Hotel & Casino - Tampa and Seminole Hard Rock Hotel & Casino - Hollywood have been fully completed and are open to the public. *See* subparagraph 3 of paragraph C of Part XII of the proposed 2015 Gaming Compact at p. 66-47.

¹⁴⁹ If the effective tax rate on the operation of slot machines and/or blackjack is less than 25%, then the Seminole Tribe shall be relieved of its obligations to make guaranteed minimum payments and any further guaranteed revenue sharing cycle payment, but instead shall make payments to the state for all future revenue sharing cycles based on the percentage payments in the proposed 2015 Gaming Compact, exclusive of all revenue generated by slot machines at the Seminole Tribe's facilities in Broward County. *See* subparagraph 1 of paragraph F of Part XII of the proposed 2015 Gaming Compact at pp. 51-52.

Effect of Proposed Changes:

Section 45 amends s. 551.106, F.S., to:

- Reduce the tax on slot machine revenues from 35 percent to 25 percent.
- Remove obsolete language relative to the slot machine license fee for Fiscal Year 2010-2011.
- Provide that slot machine revenues associated with a slot machine licensee licensed because it is associated with a public-private partnership be deposited into the Pari-mutuel Wagering Trust Fund and that 90 percent of those revenues be transferred to the Educational Enhancement Trust Fund and 10 percent be transferred to the responsible public entity for the public-private partnership of the licensee.

Slot Machine Regulations**Present Situation:**

Section 551.108, F.S., currently prohibits contracts that provide for revenue sharing calculated on a percentage of slot machine revenues.

Provisions in ss. 551.114, 551.116 and 551.121, F.S., (1) Require slot machine licensees display pari-mutuel races or games to slot machine patrons in slot machine gaming areas; (2) Require slot machine gaming areas be within current live gaming areas or within a building contiguous or connected to the live gaming area; (3) Limit slot machine gaming to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays; and (4) Prohibit serving complimentary or reduced cost alcoholic beverages to persons playing slot machines.

Effect of Proposed Changes:

Section 46 amends s. 551.108, F.S., relating to prohibited relationships, to address contracts between slot machine licensees and a manufacturer or distributor and to exempt contracts related to a progressive system used in conjunction with slot machines to allow a revenue sharing provision. Currently that section prohibits contracts that provide for revenue sharing calculated on a percentage of slot machine revenues.

Section 47 amends s. 551.114, F.S., to require slot machine licensees to display pari-mutuel races or games and offer slot machine patrons the ability to engage in wagering on live, intertrack, and simulcast races conducted or offered to patrons “if such races or games are available to the slot machine licensee.” The revised requirement is conditioned upon whether the races or games “are available” to the licensee; however, the term “are available” is not defined.

A limitation on the location of slot machine gaming areas is revised to allow a gaming area to be located anywhere within the property described in the licensee’s pari-mutuel permit. Existing law requires that a gaming area be located within the live gaming facility or in an existing building that is contiguous and connected to the facility.

Section 48 amends s. 551.116, F.S., to extend the number of hours that a slot machine gaming area may be open on weekdays, from 18 hours to 24 hours, the same allowed for weekend operating hours.

Section 49 amends s. 551.121, F.S., to allow complimentary or reduced-costs alcoholic beverages to be served to a person playing a slot machine and allow slot machine licensees to authorize automatic teller machines (ATMs) or similar devices designed to provide credit or dispense cash, to be located in the gaming area.

Cardrooms and Designated Player Games

Present Situation:

Chapter 849, F.S., authorizes cardrooms at certain pari-mutuel facilities.¹⁵⁰ In Fiscal Year 2016-2017, 24 cardrooms are authorized to operate.¹⁵¹ Cardrooms are operated by 14 greyhound permitholders, four jai alai permitholders, one harness horse permitholder, three quarter horse permitholders, and two thoroughbred permitholders.¹⁵² 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.¹⁵³

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.¹⁵⁴ Such games must be played in a non-banking manner, where the participants play against each 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 be used to supplement greyhound purses, and quarter horse permitholders must also have a contract with a horsemen's association governing the payment of purses on live quarter horseraces conducted by the permitholder.¹⁵⁵

¹⁵⁰ Section 849.086, F.S. Section 849.086(2)(c), F.S., 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 charges a fee for participation by the operator of such facility.

¹⁵¹ See <http://www.myfloridalicense.com/dbpr/pmw/documents/MAP-Permitholders--WITH--2016-2017-OperatingLicenses--2016-07-15.pdf> (last visited Jan. 23, 2017).

¹⁵² 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.), 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.).

¹⁵³ 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).

¹⁵⁴ See s. 849.086(2)(a), F.S.

¹⁵⁵ See s. 849.086(13)(d), F.S.

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.¹⁵⁶ 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.¹⁵⁷

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.¹⁵⁸

There is only one harness horse 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.¹⁵⁹ As a result of the “90 percent rule,” the required minimum of live performances for the harness horse permitholder is 126 performances.¹⁶⁰

Four 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.¹⁶¹

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.¹⁶²

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.¹⁶³

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.¹⁶⁴

Banking games are defined as those in which the house is a participant.¹⁶⁵ Designated player¹⁶⁶ games, if conducted as defined in Rule 61D-11.002(5), F.A.C., are not considered by the DBPR to be banking games. 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:

¹⁵⁶ See s. 849.086(5)(b), F.S.

¹⁵⁷ *Id.*

¹⁵⁸ Telephone interview with division staff (Jan. 23, 2017).

¹⁵⁹ See s. 849.086(5)(b), F.S.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See s. 849.086(5)(b), F.S.

¹⁶⁵ Section 849.086(2)(b), F.S.

¹⁶⁶ Rule 61D-11.001(17), F.A.C., defines “designated player” as the “player identified by the button as the dealer in the player position.”

- 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.¹⁶⁷

The conducting of designated player games by cardroom operators is one of the issues in the federal court litigation between the State of Florida and the Seminole Tribe of Florida (Seminole Tribe); the federal district court (trial) decision was appealed by the State to the United States Court of Appeals for the Eleventh Circuit on January 19, 2017. The U.S. district court found that the exclusivity granted to the Seminole Tribe was reduced by the State's actions to allow designated player games because such games violated the exclusivity granted to the Seminole Tribe as to banked card games in the 2010 Gaming Compact. As a result, the court held 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). The 2010 Gaming Compact permitted the Seminole Tribe to conduct banked card games at only five of its seven gaming locations for five years, unless the State authorized others to conduct banked games.¹⁶⁸ (See section on *Federal Litigation Regarding 2010 Gaming Compact*, above.)

The playing of poker in a nonbanking manner pursuant to state law,¹⁶⁹ is an exception to the exclusivity provided to the Seminole Tribe under the proposed 2015 Gaming Compact, however, any game “that involves banking by the house or any player, other than Designated Player Games . . .”¹⁷⁰ is not authorized. A designated player is defined in the proposed 2015 Gaming Compact as “the player identified by a button as the player in the dealer position, seated at any traditional player position in a Designated Player Game, who is not required to cover all wagers.”¹⁷¹

Designated player game(s) are defined in the proposed 2015 Gaming Compact as “games consisting of at least three (3) cards in which players compare their cards only to those cards of the player in the dealer position, who also pays winners and collects from losers,” and the ranking of poker hands in such games must be consistent with the definition of traditional poker hand rankings provided in Hoyle's Modern Encyclopedia of Card Games, 1974 Ed.¹⁷²

The following conditions apply to designated player games at cardrooms under the proposed 2015 Gaming Compact:¹⁷³

- The maximum wager in any such designated player game may not exceed \$25;
- A player participating as a designated player must occupy a playing position at the table;
- Each player participating in a designated player game must be offered, in a clockwise rotation, the opportunity to be the designated player after each hand;

¹⁶⁷ See Rules 61D-11.002(3) and (5), F.A.C.

¹⁶⁸ See *Seminole Tribe of Florida v. State of Florida*, 2016 U.S. Dist. LEXIS _____ (N.D. Fla. Nov. 9, 2016) Case No.: 4:15-cv-516-RH/CAS, Document 103. at p. 19.

¹⁶⁹ Section 849.086(2)(a), F.S.

¹⁷⁰ See subparagraph 7 of paragraph C of Part XII of the proposed 2015 Gaming Compact at pp. 48-49.

¹⁷¹ *Id.* at paragraph I of Part III of the proposed 2015 Gaming Compact at p. 5.

¹⁷² *Id.* at paragraph J of Part III of the proposed 2015 Gaming Compact at p. 5.

¹⁷³ *Id.* at subparagraph 7 of paragraph C of Part XII of the proposed 2015 Gaming Compact at pp. 48-49.

- Any player participating as a designated player for thirty (30) consecutive hands must subsequently play as a non-designated player for at least two (2) consecutive hands before resuming play as a designated player;
- Designated players may not be required to cover more than ten (10) times the minimum posted bet for players seated during any one game;
- Pari-mutuel locations that offer slot machines and/or Video Race Terminals¹⁷⁴ may not offer designated player games; and
- Pari-mutuel cardroom locations offering designated player games may not have designated player game tables in excess of 25 percent of the total poker tables authorized at that cardroom.

Effect of Proposed Changes:

Section 50 amends s. 849.086, F.S., to:

- Allow operation 24 hours daily, (currently 8 hours Monday through Friday and 24 hours on Saturday and Sunday); the same hours that a slot machine gaming area may be open pursuant to the amendments in **Section 48**.
- Remove the ability of a permitholder to amend a renewal application for a cardroom,
- Delete 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 have a contract with a thoroughbred permitholder that conducts live racing and does not possess a slot machine gaming license; the contract must provide that the (decoupled) permitholder will pay four percent of gross cardroom receipts to the thoroughbred permitholder for use as purses during its next racing meet.
- 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.

A designated player game is defined 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.” All cardroom operators may offer designated player games.

The cardroom operator may not serve as a designated player, but may collect a rake as posted at the table. If there are multiple designated players at a table, the dealer button must be rotated clockwise after each hand. A cardroom operator may not allow a designated player to pay an opposing player who holds a lower ranked hand.

¹⁷⁴ The offering of video race terminals is permitted to certain permitholders in limited conditions as an exception to exclusivity granted to the Seminole Tribe under the proposed 2015 Gaming Compact; “Video Race Terminal” means “an individual race terminal linked to a central server as part of a network-based video game, where the terminals allow pari-mutuel wagering by players on the results of previously conducted horse races, but only if the game is certified in advance by an independent testing laboratory licensed or contracted by the Division of Pari-Mutuel Wagering as complying with all of the following requirements” See subparagraph 4 of paragraph C of Part XII of the proposed 2015 Gaming Compact at pp. 47-48 and paragraph KK of Part III of the proposed 2015 Gaming Compact at page 14.

Prohibited activities are revised to address banking game issues. A designated player game is deemed a banking game if any of the following elements apply:

- Any designated player is required by the rules of a game or by the rules of a cardroom to cover all wagers posted by opposing players;
- The dealer button remains in a fixed position without being offered for rotation;
- The cardroom, or any cardroom licensee, contracts with or receives compensation other than a posted table rake from any player to participate in any game to serve as a designated player; and
- In any designated player game in which the designated player possesses a higher ranked hand, the designated player is required to pay on an opposing player's wager who holds a lower ranked hand.

Transfer or relocation of a cardroom is prohibited.

Revocation of Pari-Mutuel Permits

Present Situation:

Section 550.1815, F.S., addresses the revocation and suspension of pari-mutuel permits, and provides that the division must refuse to issue or renew, or suspend as appropriate, any permit if the permitholder or affiliated persons has been convicted of a felony in Florida or in any other state, or convicted of a felony under the laws of the United States.

The permit of a harness horse permitholder or thoroughbred horse permitholder who does not pay tax on handle for live performances for a full schedule of live races during any 2 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.¹⁷⁵ Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to operate and pay tax on handle.¹⁷⁶

Effect of Proposed Changes:

Section 51 provides that the division must revoke any permit to conduct pari-mutuel wagering if a permitholder has not conducted live events within the 24 months preceding the effective date of the bill, unless the permit is a limited thoroughbred racing permit that was issued under s. 550.3345, F.S. A permit revoked for failure to conduct live events within the 24 months preceding the effective date of the bill may not be reissued.

Directives to Division of Law Revision and Information

Section 52 directs the Division of Law Revision and Information to replace references to the "effective date of this act" throughout the bill with the actual date the bill is effective.

¹⁷⁵ Section 550.09512(3), F.S. and s. 550.09515(3), F.S.

¹⁷⁶ *Id.*

Effective Dates

The bill (excluding **Sections 4** and **53**):

- Is effective only if the proposed 2015 Gaming Compact, as amended as required in Section 4, is approved, or deemed approved, by the United States Department of Interior pursuant to the Indian Gaming Regulatory Act; and
- Takes effect upon the date that the approved compact is published in the Federal Register.

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:**

SB 8 has not been reviewed by the Revenue Estimating Conference.

The bill requires the proposed 2015 Gaming Compact between the Seminole Tribe of Florida (the Seminole Tribe) and the State of Florida, executed by the Seminole Tribe and the Governor on December 7, 2015, (the proposed 2015 Gaming Compact) be amended to incorporate additional exceptions from the exclusivity to be provided to the Seminole Tribe under the proposed 2015 Gaming Compact, without any impact or change to the payments to the state under the proposed 2015 Gaming Compact. Whether Seminole Tribe will agree to the amendments to the proposed 2015 Gaming Compact required by the bill is unknown.

With two exceptions, SB 8 is effective only if the proposed 2015 Gaming Compact, as amended, is approved or “deemed approved” by the United State Department of Interior under the Indian Gaming Regulatory Act of 1988. The bill takes effect upon the date that the approved compact is published in the Federal Register. Whether the U. S. Department of Interior will approve the proposed 2015 Gaming Compact, as amended, and publish the required notice also is unknown.

SB 8 is similar to SBs 7072 and 7074 from the 2016 Regular Session and also contains provisions similar to CS/SB 832 from the 2016 Regular Session. During the 2016 Regular Session, the Revenue Estimating Conference held an impact conference on SBs 7072 and 7074 (2016). The Conference determined that the overall impact of SBs 7072

and 7074 was plus or minus indeterminate “[b]ecause [the bills’] provisions contemplate a significant renegotiation of the Compact executed by the Governor and the [Seminole] Tribe on December 7, 2015, [and] the final impact to the state from the interaction of the two bills is currently unknown.” The Conference did not hold an impact conference on CS/SB 832 (2016).

Accordingly, the fiscal impact of SB 8 is likely to be indeterminate, as well.

However, during the 2016 Regular Session, the Revenue Estimating Conference estimated the impacts of individual elements of SB 7072 (2016). The impacts of the individual elements of SB 7072 (2016) included within SB 8 are shown below, with the following caveats:

1. The impact analysis for SBs 7072 and 7074 was based on revenue forecasts from December 2015 that have been subsequently revised.
2. The impact analysis for SBs 7072 and 7074 was based on one potential new slots gaming facility in Miami-Dade , while SB 8 includes the potential for new slots gaming facilities in Broward and Miami-Dade.
3. The impact analysis for SBs 7072 and 7074 assumed six referendum counties would add slots facilities; there are now eight.
4. While Blackjack was authorized for certain facilities in SBs 7072 and 7074, it was not clear how it would be taxed or what tax rate would apply. SB 8 establishes a tax rate of 25 percent of the blackjack operator’s monthly gross receipts.

When taken into consideration, the caveats described above produce both independent and interactive effects that will change the estimates developed in 2016.

SB 8 Fiscal Impact (based upon Fiscal Impact of SB 7072 (2016))¹			
<ul style="list-style-type: none"> Assuming proposed 2015 Gaming Compact Payments are unchanged All estimates are compared to current estimates, including 2010 Gaming Compact revenues 			
Issue	First Fiscal Year after USDOJ approval of proposed 2015 Compact, as amended (\$ millions)	Recurring Impact 5th Fiscal Year after USDOJ approval of proposed 2015 Compact, as amended (\$ millions)	Affected Fund
Indian Gaming Revenue from ratification of proposed 2015 Compact, as amended²	201.3	342.7	GR
Slot Machine Tax Rate Reduction	(55.8)	(59.2)	EETF
New Slot Machine Facilities in Referendum Counties ³	0.0	82.1	EETF
New Slot Machine Facilities in Broward and Miami-Dade Counties	0.0	3.3	EETF
Slot Machine License Fees ⁴	0.0	16.0	PMWTF
New Slot Machine Facilities Broward and Miami Dade - Application Fees ⁵	4.0	0.0	PMWTF
Diverted Sales Tax	0.0	(20.1)	GR
Permit Reduction Program - Thoroughbred Purse Supplement Program	(20.0)	(20.0)	GR
Pari-mutuel Decoupling	2.1	2.6	PMWTF
Escheated Ticket Loss	0.0	(0.3)	SSTF
Point-of-Sale Lottery Terminals	**	**	EETF
House Banked Blackjack ⁶	**	**	PMWTF
Deactivated Permits	(**)	(**)	PMWTF
Construction-Related Sales Tax	**	**	GR
Total-Non Indian Gaming Revenue:			
	(20.0)	(40.1)	GR
	(55.8)	26.2	EETF
	0.0	(0.3)	SSTF
	6.1	18.6	PMWTF
GR=General Revenue Fund; EETF=Educational Enhancement Trust Fund; SSTF=State School Trust Fund; PMWTF=Pari-mutuel Wagering Trust Fund			
** = Positive Indeterminate (**) = Negative Indeterminate			
¹ Except where noted, the first year impact is that for SB 7072 (2016) for FY 2016-17; recurring impact is the recurring impact for SB 7072 (2016) 5 fiscal years thereafter.			
² Indian Gaming Revenues shown are the difference between the Minimum Guarantee Payment under the proposed 2015 Gaming Compact for Fiscal Year 2017-2018 (Recurring is Fiscal Year 2022-2023) and the estimated net revenues for Indian Gaming projected for that Fiscal Year under the 2010 Gaming Compact, by the December 2016 REC. First Year impact does <i>not</i> include non-recurring impact of amounts paid for banking games under the 2010 Gaming Compact placed in GR reserve due to pending federal litigation; \$152.5 million, as of 11.30.2016.			
³ Projected revenues are based on the 6 counties which had passed slot machine referenda when SB 7072 (2016) was considered; as of November 2016, 8 counties have approved slot machines in referenda.			
⁴ Adjusted to reflect 8 counties now, rather than 6 counties when the SB 7072 (2016) impact estimate was done.			
⁵ Adjusted to reflect 2 facilities in SB 8, rather than only 1 in SB 7072 (2016).			
⁶ SB 8 includes a 25% tax on blackjack operators' monthly gross; SB 7072 (2016) did not include any tax. So, the impact is now positive indeterminate.			

B. Private Sector Impact:

The bill creates additional gambling opportunities for Floridians and visitors. It allows certain pari-mutuel permitholders to offer slot machines or blackjack, creates two additional slot machine facilities (one in each county) to be located in Broward County or a county defined in s. 125.011, F.S., (presently only Miami-Dade County), and expands the hours slot machine facilities and cardrooms may operate. By allowing pari-mutuel permitholders to decouple their live racing and games from cardrooms and slot machine operations, the bill may adversely affect employees and businesses that support live racing and games. The thoroughbred purse supplement program, however, will benefit the thoroughbred racing industry in the state.

Pari-mutuel permitholders who hold active, dormant, and inactive permits must evaluate the impact of the provisions of the bill on their operations and business interests. Greyhound racing permitholders, jai alai permitholders, harness racing permitholders, and quarter horse racing permitholders must determine, on an annual basis, whether to offer live racing or games at their pari-mutuel facilities, (i.e., decoupling), but may continue to offer slot machines or cardrooms. Tax rates are lowered for pari-mutuel permitholders and slot machine licensees.

Certain thoroughbred horse racing permitholders may elect to discontinue live racing within the 30-day period after the effective date of the bill (i.e., partial decoupling), but continue to operate their licensed slot machine facilities and/or cardrooms.

Any of the eight pari-mutuel permitholders in Broward and Miami-Dade Counties that have a slot machine license may operate up to 25 house banked blackjack tables at their facilities, but must pay a 25% tax on gross receipts associated with wagering on those table games.

C. Government Sector Impact:

The Division of Pari-mutuel Wagering (division) must implement the provisions of the bill, and adopt forms and procedures for the pari-mutuel permit reduction program, and for the issuance of additional slot machine licenses in the eight counties which have approved slot machine gaming (Brevard, Duval, Gadsden, Hamilton, Lee, Palm Beach, St. Lucie, and Washington), as well as for the two additional slot machine facilities (one in each county) to be located in Broward County or a county defined in s. 125.011, F.S., (presently only Miami-Dade County).

An analysis of the bill has not been issued by the DBPR.

The Department of the Lottery indicates it is likely that the implementation of **Sections 1, 2, and 3** of the bill relating to the point-of-sale terminals for the sale of lottery tickets or games will result in some increase in sales of lottery products as well as transfers to

education, although the amount is undetermined.¹⁷⁷ Any increase in sales would result in increased sales commissions to retailers in an undetermined amount.¹⁷⁸

VI. Technical Deficiencies:

The bill provides that the penalty provisions do not apply to a fantasy contest operator who applies for a license within 90 days after the effective date of the act and receives a license within 240 days after the effective date of the act; see lines 970 to 974. However, the bill does not address penalties that may be imposed against licensed fantasy contest operators for violations of the act after they are licensed.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 24.103, 24.105, 24.112, 285.710, 285.712, 550.002, 550.01215, 550.0251, 550.054, 550.0555, 550.0951, 550.09512, 550.09514, 550.09515, 550.1625, 550.1648, 550.26165, 550.3345, 550.3551, 550.475, 550.5251, 550.615, 550.6308, 551.101, 551.102, 551.104, 551.1042, 551.1043, 551.1044, 551.106, 551.108, 551.114, 551.116, 551.121, and 849.086.

This bill creates the following sections of the Florida Statutes: 546.11, 546.12, 546.13, 546.14, 546.15, 546.16, 546.17, 546.18, 550.1752, 550.1753, 550.2416, 551.1042, 551.1043, and 551.1044.

This bill repeals the following sections of the Florida Statutes: 550.0745 and 550.1647.

This bill creates three undesignated sections of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

¹⁷⁷ See 2017 Agency Legislative Bill Analysis issued by the Department of the Lottery for SB 8, dated January 20, 2017 (on file with Senate Committee on Regulated Industries) at page 3.

¹⁷⁸ *Id.* at page 4.