

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: SPB 7080

INTRODUCER: For Consideration by the Regulated Industries Committee

SUBJECT: Requirements for Pari-mutuel Permitholders to Conduct Live Racing or Games

DATE: April 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>

I. Summary:

SPB 7080 updates provisions in Florida law that are inconsistent with the prohibition of live racing of greyhounds codified in s. 32 of Art. X of the State Constitution, titled “Prohibition on Racing of and Wagering on Greyhounds or other Dogs.”

The bill revises requirements for greyhound permitholders, jai alai permitholders, and harness horse permitholders to conduct live racing or games, by amending ch. 550, F.S. (Pari-Mutuel Wagering), ch. 551, F.S. (Slot Machines), and ch. 849, F.S. (Gambling). The bill also includes technical drafting changes, conforming changes, and eliminates obsolete language related to requirements for live racing or games.

See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2021.

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

- Pari-mutuel⁵ wagering at licensed greyhound and horse tracks and jai alai frontons;⁶

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.

⁵ “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.

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

- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;⁷ and
- Cardrooms⁸ at certain pari-mutuel facilities.⁹

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.¹⁰

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.¹¹ A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.¹²

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,¹³ bingo,¹⁴ charitable drawings,¹⁵ game promotions (sweepstakes),¹⁶ and bowling tournaments.¹⁷ The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.¹⁸

Regulation of Pari-mutuel Wagering

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. 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 eight license suspensions, and \$19,075 in fines

⁷ See FLA. CONST., art. X, s. 23, and ch. 551, F.S.

⁸ Section 849.086, F.S. See s. 849.086(2)(c), F.S., which defines “cardroom” to mean “a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility.”

⁹ The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 Operating Licenses to operate 27 cardrooms. See <http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/> (last visited Apr. 7, 2021).

¹⁰ 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).

¹¹ The pari-mutuel pools that were authorized by law on the effective date of the State Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

¹² The Department of the Lottery is authorized by s. 15, Art. X of the State Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

¹³ See s. 849.085, F.S.

¹⁴ See s. 849.0931, F.S.

¹⁵ See s. 849.0935, 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.

assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2019-2020.¹⁹

Ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,²⁰ two jai alai permitholders,²¹ one limited thoroughbred permitholder,²² and five quarter horse permitholders.²³

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.²⁴

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,

¹⁹ See the 89th Annual Report for Fiscal Year 2019-2020 issued by the division at:

<http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2019-2020--89th--20210224.pdf> at page 5 (equivalent to page 3 of the printed Annual Report) (last visited Apr. 7, 2021).

²⁰ Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).

²¹ Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.

²² 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), which was licensed to operate in 2019-2020, and Ocala Thoroughbred Racing (Marion County), which was not licensed to operate.

²³ ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County). See http://www.myfloridalicense.com/dbpr/pmw/documents/PermitholdersList_2020-2021.pdf (last visited Apr. 7, 2021).

²⁴ See s. 550.054(2), F.S.

and number of days during which pari-mutuel operations may be conducted at the specified location.²⁵

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, and may impose a civil penalty against the permitholder or license up to \$1,000 for each offense.

Slot Machine Gaming Locations and Operations

Section 32 of Art. X of the State Constitution, adopted pursuant to a 2004 initiative petition, authorized slot machines in licensed pari-mutuel facilities in Broward and Miami-Dade, if approved by county referendum. The voters in Broward and Miami-Dade counties approved slot machine gaming. Slot machine gaming in the state is limited to Broward and Miami-Dade counties, and as authorized by federal law, in the tribal gaming facilities of the Seminole Tribe.

Sections 551.104, F.S., addresses slot machine gaming operations, and:

- Restricts the issuance of slot machine licenses to licensed pari-mutuel permitholders, for slot machine gaming only at the facility where pari-mutuel wagering is authorized to be conducted by the permitholder;
- Requires the licensee to be in compliance with chs. 551 and 550, F.S.;
- Conducts a full schedule of live racing or games as defined in s. 550.002(11), F.S.; and
- Provides other requirements regarding ownership, law enforcement access, computer systems, security, records, and audits.

Cardrooms

Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.²⁶ In Fiscal Year 2021-2022, 27 cardrooms are licensed to operate.²⁷ 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.²⁸ A cardroom may be open 18 hours per day on Monday through Friday, and 24 hours per day on Saturday and Sunday.²⁹ An initial cardroom license may be issued to a pari-mutuel permitholder only after its facilities are in place and it has conducted its first day of live racing. In order to renew a cardroom license, the licensee must have requested, as part of its annual pari-mutuel license application, to conduct at least 90 percent of the total performances it had conducted in the prior fiscal year.

²⁵ See s. 550.054(9)(a), F.S.

²⁶ Section 849.086, F.S. Section 849.086(2)(c), F.S., defines “cardroom” to mean a facility where authorized 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.

²⁷ See <http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/> (last visited Apr. 7, 2021).

²⁸ *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, 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). 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.”

²⁹ Section 849.086(7)(b), F.S.

Sections 849.086(5) and (6), F.S., provide that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit 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.³⁰ Such games must be played in a non-banking manner,³¹ 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 conducting live races or games must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.³²

Prohibition on Racing of and Wagering on Greyhounds or other Dogs

Amendment 13 was adopted in 2018 with 69.06 percent support of the electorate. The amendment, titled "Prohibition on Racing of and Wagering on Greyhounds or other Dogs, is codified in s. 32, Art. X of the Florida Constitution.³³ The amendment bans all racing of and wagering on live dog racing in Florida after December 31, 2020, and allows greyhound permitholders to stop racing after December 31, 2018 without affecting other pari-mutuel activities as authorized by law. The Legislature is directed to specify civil or criminal penalties for violations.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 550.002, F.S., to revise live racing requirements affected by the adoption of s. 32, Art. X of the State Constitution (popularly known as Amendment 13). The constitutional amendment prohibits, after December 31, 2020, the conduct of live racing of greyhounds in Florida by gaming or pari-mutuel permitholders, and wagering by any person on the outcome of such racing in the state. Technical drafting changes, conforming changes, and elimination of obsolete language are also included.

Section 2 of the bill is a technical revision amending s. 550.0115, F.S., relating to operating licenses, to clarify references to annual operating licenses.

Section 3 of the bill amends s. 550.01215, F.S., relating to operating license applications filed annually with the Division of Pari-Mutuel Wagering (division) of the Florida Department of Business and Professional Regulation (DBPR), for the conduct of pari-mutuel wagering, including intertrack and simulcast wagering. The application of each permitholder must indicate whether the permitholder intends to accept wagers on intertrack and simulcast events.

The requirement for pari-mutuel permitholders to conduct live racing or games is revised by the bill to provide:

- A greyhound permitholder may not conduct live racing, as such racing is prohibited in Florida after December 31, 2020.

³⁰ See s. 849.086(2)(a), F.S.

³¹ *Id.*

³² See s. 849.086(13)(d), F.S.

³³ See <http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32> (last visited Dec. 15, 2020).

- A jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder may elect not to conduct live racing or games.
- A thoroughbred permitholder must conduct live racing.

A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games:

- Retains its permit;
- Is a pari-mutuel facility as defined in s. 550.002(23), F.S.
- Is eligible, but not required, to be a guest track, and if the permitholder is a harness horse racing permitholder, is eligible to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305; and
- Remains eligible for a cardroom license.

For a greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games, but has been issued a slot machine license, the facility where such permit is located:

- Remains an eligible facility as defined in s. 551.102(4), F.S.;
- Continues to be eligible for a slot machine license pursuant to s. 551.104(3), F.S.; and
- Is exempt from ss. 551.104(4)(c) and (10), F.S., and s. 551.114(2) and (4); F.S.

The bill further provides that for Fiscal Year 2021-2022 only, the division may approve changes to a permitholder's operating dates if the request is received before July 1, 2021.

The bill repeals an obsolete provision relating to greyhound racing permits.

Section 4 of the bill is a technical revision amending s. 550.0235, F.S., to substitute the term “a permitholder licensed to conduct pari-mutuel wagering,” and delete the obsolete term “a permittee conducting a racing meet.”

Section 5 of the bill amends s. 550.0351, F.S., to delete the authorization for a “dogracing” permitholder to hold charity or scholarship racing days. In addition, the authorization for “hound dog derby” racing events at greyhound permitholder facilities is deleted.

Section 6 of the bill amends s. 550.0425, F.S., relating to the attendance of minors to pari-mutuel events, to delete an exception for the minor children of greyhound trainers, kennel operators, or other licensees employed in the kennel, when supervised by a parent or legal guardian.

Section 7 of the bill amends s. 550.054, F.S., to revise the obsolete term “dograces” to “pari-mutuel wagering,” and to delete subsection (14), relating to conversion of permits to conduct greyhound racing.

Section 8 of the bill amends s. 550.09511(4), F.S., to delete a requirement for payment of daily license fees and tax on admissions and bets, if fewer than 100 live jai alai games are conducted in a calendar year.

Section 9 of the bill amends s. 550.09512, F.S., to amend a provision relating to taxes payable by harness horse permitholders who conduct live racing.

Section 10 of the bill is a technical revision amending s. 550.105, F.S., related to occupational licenses, to delete references to kennels, kennel helpers, and greyhound racing.

Section 11 of the bill is a technical revision amending s. 550.1155, F.S., related to stewards and judges, to delete references to dog tracks and dogtrack judges.

Section 12 of the bill is a technical revision amending s. 550.1647, F.S., related to unclaimed pari-mutuel tickets, to delete references to greyhound racing.

Section 13 of the bill repeals s. 550.1648, F.S., related to obsolete provisions concerning greyhound adoption booths at pari-mutuel facilities and associated charity racing days.

Section 14 of the bill is a technical revision amending s. 550.175, F.S., related to a county's revocation of a permit, to substitute the term "pari-mutuel wagering" for "racing."

Section 15 of the bill is a technical revision amending s. 550.1815, F.S., relating to a prohibition against holding a pari-mutuel permit, to substitute the term "greyhound permit" for "dogracing permit."

Section 16 of the bill amends s. 550.24055, F.S., relating to the prohibited use of controlled substances and alcohol by occupational licensees officiating at or participating in a race or game, to delete a reference to dogtracks.

Section 17 of the bill amends s. 550.2415, F.S., relating to testing of racing animals for medications and other substances, to delete provisions relating to greyhounds and to training and euthanizing greyhounds.

Section 18 of the bill amends s. 550.3551, F.S., relating to broadcasting of racing and jai alai information, to conform references to permitholders and to delete a limitation on the number of broadcasts that may be received from outside the state by certain greyhound permitholders. The bill amends current law that all permitholders conduct at least eight live races or games on a race day, and meet certain minimum live racing or games requirements, to limit application of those requirements to permitholders who conduct live races or games. The bill deletes the requirement that a permitholder obtain authorization from the division for special racing events, and deletes the associated approval process and limits on such authorization.

Section 19 of the bill amends s. 550.3615, F.S., relating to bookmaking on the grounds of a permitholder, to refer to tracks and frontons as pari-mutuel facilities.

Section 20 of the bill amends s. 550.475, F.S., relating to the leasing of pari-mutuel facilities by permitholders, to conform references to permitholders and to ensure a lessee may conduct intertrack wagering.

Section 21 of the bill amends s. 550.615, F.S., relating to intertrack wagering, to conform references to pari-mutuel facilities and live racing or games requirements, and to provide that a permitholder that has met the live racing or games requirement applicable to that permitholder under s. 550.01215(1)(b), F.S., is qualified to receive broadcasts of any class of pari-mutuel races or games and to accept wagers on such races or games. The bill provides any greyhound permitholder licensed under ch. 550, F.S., to conduct pari-mutuel wagering is qualified to, at any time, receive broadcasts and accept wagers on any class of pari-mutuel race or game.

Section 22 of the bill is a technical revision amending s. 550.6305, F.S., relating to intertrack wagering, to delete certain pari-mutuel pool accounting requirements for greyhound permitholders.

Section 23 of the bill amends s. 551.104(4)(c), F.S., relating to the requirement that a permitholder conduct full schedule of live racing or games as a condition for eligibility to obtain a license to conduct slot machine gaming. The live racing requirements for such eligibility are applicable only to thoroughbred permitholders, as under the bill, greyhound permitholders may not conduct live racing, jai alai permitholders may elect not to conduct live games, and harness horse and quarter horse permitholders may elect not to conduct live racing.

Section 24 of the bill amends s. 551.114, F.S., relating to slot machine gaming areas, respecting the locations at which designated slot machine gaming areas may be located. The undefined term “live gaming facility” in current law is no longer applicable to greyhound permitholders prohibited from conducting live racing after December 31, 2020. The bill provides that slot machine gaming areas must be located at the location specified in the licensed permitholder’s operating license. Provisions relating to the types of buildings and the connection of such buildings to the live gaming facility are deleted as obsolete.

Section 25 of the bill amends s. 565.02, F.S., relating to the licensing of caterers, to remove a reference to dog racetracks.

Section 26 of the bill amends s. 849.086, F.S., relating to cardrooms, to:

- Delete a requirement that pari-mutuel permitholders seeking renewal of a cardroom operating license must have conducted a certain number of live races or games in the previous year (the 90 percent rule);
- Revise provisions in current law that are no longer applicable to greyhound permitholders prohibited from conducting live racing after December 31, 2020; and
- Revise provisions relating to required contributions to purse pools, and required horsemen’s agreements, to clarify that such contributions and agreements are required only if a permitholder conducts live races or games.

Section 27 of the bill re-enacts s. 380.0651, F.S., relating to developments of regional impact, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. A pari-mutuel facility continues to be subject to certain statewide guidelines and standards for developments of regional impact, as set forth in s. 380.06, F.S.

Section 28 of the bill re-enacts s. 402.82, F.S., relating to the electronic benefits transfer program, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. The use of electronic benefits transfer cards continues to be prohibited at pari-mutuel facilities.

Section 29 of the bill re-enacts s. 480.0475, F.S., relating to certain overnight hours that massage establishments are prohibited from operating, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. Massage establishments at pari-mutuel facilities continue to be exempt from the prohibition, and may operate between the hours of midnight and 5 a.m.

Section 30 of the bill provides it takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons associated with jai alai, harness horse, and quarter horse racing will be affected by the election by permitholders to conduct or not conduct live racing or games.

C. Government Sector Impact:

There may be impacts to the state contingent upon the election of certain authorized permitholders to conduct or not conduct live racing or games. The Revenue Estimating Conference has not yet reviewed this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.56 and 285.710.

This bill creates the following sections of the Florida Statutes: 16.71 and 16.715.

The bill creates undesignated sections of Florida law.

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.