

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

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

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 1046

INTRODUCER: Senator Martin

SUBJECT: Gaming Activities

DATE: January 12, 2024

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	_____	_____	<u>AEG</u>	_____
3.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

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

- Supplement the authority of the Florida Gaming Control Commission (commission) regarding seized contraband such as slot machines;
- Provide that false personation of commission staff and agents is a crime;
- Increase the penalties applicable for the offense of illegally keeping a gambling house, and expand such violations to specified circumstances, including when weapons, firearms, persons under 21 and over 65 years of age are present, or when the gambling house is within 1,000 feet of specified locations;
- Prohibit the production and publication of advertisements for use or distribution in Florida of an illegal gambling or gaming operation by any person or property owner;
- Revise penalties for prohibited lotteries and transactions involving slot machines; and
- Revise the information to be considered by a court for determining bail or release of persons arrested for crimes involving controlled substances, a slot machine, or illegal gambling or gaming, including the amount of currency seized that is connected to a violation of ch. 550, F.S., (Pari-Mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling) (gambling laws). As to the issue of bail, the bill includes a statement of legislative purpose and intent that the courts be required to carefully consider the utility and necessity of substantial bail in relation to the amount of proceeds a defendant obtained from violation of the gambling laws.

According to the Florida Gaming Control Commission, the bill has no fiscal impact to state government.<sup>1</sup>

The bill takes effect July 1, 2024.

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<sup>1</sup> See Florida Gaming Control Commission, *2024 Agency Legislative Bill Analysis for SB 1046* at 6 (Jan. 10, 2024) (on file with the Senate Committee on Regulated Industries).

## II. Present Situation:

### Background

In general, gambling is illegal in Florida.<sup>2</sup> Chapter 849, F.S., prohibits keeping a gambling house,<sup>3</sup> running a lottery,<sup>4</sup> or the manufacture, sale, lease, play, or possession of slot machines.<sup>5</sup> However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel<sup>6</sup> wagering at licensed greyhound and horse tracks and jai alai frontons;<sup>7</sup>
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;<sup>8</sup>
- Cardrooms<sup>9</sup> at certain pari-mutuel facilities;<sup>10</sup>
- The state lottery authorized by section 15 of Article X of the State Constitution and established under ch. 24, F.S.;<sup>11</sup>
- Skill-based amusement games and machines at specified locations as authorized by s. 546.10, F.S, the Family Amusement Games Act;<sup>12</sup> and
- The following activities, if conducted as authorized under ch. 849, relating to Gambling, under specific and limited conditions:
  - Penny-ante games;<sup>13</sup>
  - Bingo;<sup>14</sup>
  - Charitable drawings;<sup>15</sup>
  - Game promotions (sweepstakes);<sup>16</sup> and
  - Bowling tournaments.<sup>17</sup>

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.<sup>18</sup>

<sup>2</sup> See s. 849.08, F.S.

<sup>3</sup> See s. 849.01, F.S.

<sup>4</sup> See s. 849.09, F.S.

<sup>5</sup> Section 849.16, F.S.

<sup>6</sup> “Pari-mutuel” is defined in Florida law as “a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. See s. 550.002(22), F.S.

<sup>7</sup> See ch. 550, F.S., relating to the regulation of pari-mutuel activities.

<sup>8</sup> See FLA. CONST., art. X, s. 23, and ch. 551, F.S.

<sup>9</sup> Section 849.086, F.S. See s. 849.086(2)(c), F.S., which defines “cardroom” to mean “a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility.”

<sup>10</sup> See Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023* (Annual Report), at p. 15, at <https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf> (last visited Jan. 10, 2024), which states that of 29 licensed permitholders, 26 operated at a pari-mutuel facility.

<sup>11</sup> Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery; s. 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

<sup>12</sup> See s. 546.10, F.S.

<sup>13</sup> See s. 849.085, F.S.

<sup>14</sup> See s. 849.0931, F.S.

<sup>15</sup> See s. 849.0935, F.S.

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

<sup>17</sup> See s. 849.141, F.S.

<sup>18</sup> See s. 550.1625(1), F.S., “...legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state.” See also, *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA

The 1968 State Constitution states that “[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . .” are prohibited.<sup>19</sup> 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.<sup>20</sup>

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

In 2021, the Legislature updated Florida law for authorized gaming in the state, and for enforcement of the gambling laws and other laws relating to authorized gaming.<sup>21</sup> The Office of Statewide Prosecution in the Department of Legal Affairs is authorized to investigate and prosecute, in addition to gambling offenses, any violation of ch. 24, F.S., (State Lotteries), part II of ch. 285, F.S., (Gaming Compact), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), which are referred to the Office of Statewide Prosecution by the Florida Gaming Control Commission (commission).<sup>22</sup>

In addition to the enhanced authority of the Office of Statewide Prosecution, the commission was created<sup>23</sup> within the Department of Legal Affairs. The commission has two divisions, including the Division of Gaming Enforcement (DGE), and the Division of Pari-mutuel Wagering (DPMW) which was transferred from the Department of Business and Professional Regulation effective July 1, 2022 (as discussed below).

The commission must do all of the following:<sup>24</sup>

- Exercise all of the regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the State Constitution or law, excluding state lottery games as authorized by the State Constitution.
- Establish procedures consistent with ch. 120, F.S., the Administrative Procedure Act, to ensure adequate due process in the exercise of the commission’s regulatory and executive functions.

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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).

<sup>19</sup> The pari-mutuel pools that were authorized by law on the effective date of the State Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

<sup>20</sup> The Department of the Lottery is authorized by s. 15, Art. X of the State Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

<sup>21</sup> See ch. 2021-268, Laws of Fla., (Implementation of 2021 Gaming Compact between the Seminole Tribe of Florida and the State of Florida); ch. 2021-269, Laws of Fla., (Gaming Enforcement), ch. 2021-270, Laws of Fla., (Public Records and Public Meetings), and 2021-271, Laws of Fla., (Gaming), as amended by ch. 2022-179, Laws of Fla., (Florida Gaming Control Commission). Conforming amendments are made to the section in ch. 2022-7, Laws of Fla., (Reviser’s Bill) and ch. 2023-8, Laws of Fla., (Reviser’s Bill).

<sup>22</sup> Section 16.56(1)(a), F.S.

<sup>23</sup> Section 16.71, F.S.

<sup>24</sup> Section 16.712, F.S. The commission also administers the Pari-mutuel Wagering Trust Fund. *See* s. 16.71(6), F.S.

- Ensure that the laws of this state are not interpreted in any manner that expands the activities authorized in ch. 24, F.S. (State Lotteries), part II of ch. 285, F.S. (Gaming Compact), ch. 546, F.S. (Amusement Facilities), ch. 550, F.S. (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling).
- Review the rules and regulations promulgated by the Seminole Tribal Gaming Commission for the operation of sports betting and propose to the Seminole Tribe Gaming Commission any additional consumer protection measures it deems appropriate. The proposed consumer protection measures may include, but are not limited to, the types of advertising and marketing conducted for sports betting, the types of procedures implemented to prohibit underage persons from engaging in sports betting, and the types of information, materials, and procedures needed to assist patrons with compulsive or addictive gambling problems.
- Evaluate, as the state compliance agency or as the commission, information that is reported by sports governing bodies or other parties to the commission relating to:
  - Any abnormal betting activity or patterns that may indicate a concern about the integrity of a sports event or events;
  - Any other conduct with the potential to corrupt a betting outcome of a sports event for purposes of financial gain, including, but not limited to, match fixing; suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, or use of false identification; and
  - The use of data deemed unacceptable by the commission or the Seminole Tribal Gaming Commission.
- The commission must provide reasonable notice to state and local law enforcement, the Seminole Tribal Gaming Commission, and any appropriate sports governing body of non-proprietary information that may warrant further investigation of nonproprietary information by such entities to ensure integrity of wagering activities in the state.
- Review any matter within the scope of the jurisdiction of the Division of Pari-mutuel Wagering.
- Review the regulation of licensees, permitholders, or persons regulated by the Division of Pari-mutuel Wagering and the procedures used by that division to implement and enforce the law.
- Review the procedures of the Division of Pari-mutuel Wagering which are used to qualify applicants applying for a license, permit, or registration.
- Receive and review violations reported by a state or local law enforcement agency, the Department of Law Enforcement, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of the Lottery, the Seminole Tribe of Florida, or any person licensed under ch. 24, F.S. (State Lotteries), part II of ch. 285, F.S. (Gaming Compact), ch. 546, F.S. (Amusement Facilities), ch. 550, F.S. (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling), and determine whether such violation is appropriate for referral to the Office of Statewide Prosecution.
- Refer criminal violations of ch. 24, F.S., (State Lotteries), part II of ch. 285, F.S., (Gaming Compact), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling) to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.

- Exercise all other powers and perform any other duties prescribed by the Legislature, and adopt rules to implement the above.

### ***Commissioners***

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

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

Section 16.711, F.S., sets forth the duties of the Division of Gaming Enforcement (DGE) within the commission.<sup>25</sup> The DGE is a criminal justice agency, as defined in s. 943.045, F.S. The commissioners must appoint a director of the DGE who is qualified by training and experience in law enforcement or security to supervise, direct, coordinate, and administer all activities of the DGE.<sup>26</sup>

The DGE director and all investigators employed by the DGE must meet the requirements for employment and appointment provided by s. 943.13, F.S., and must be certified as law enforcement officers, as defined in s. 943.10(1), F.S. The DGE director and such investigators must be designated law enforcement officers and must have the power to detect, apprehend, and arrest for any alleged violation of ch. 24, F.S., (State Lotteries), part II of ch. 285, F.S., (Gaming Compact), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), or any rule adopted pursuant thereto, or any law of this state.<sup>27</sup>

Such law enforcement officers may enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any necessary equipment, and such entry does not constitute a trespass. In any instance in which there is reason to believe that a violation has occurred, such officers have the authority, without warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring.<sup>28</sup>

Further, any such officer may, consistent with the United States and Florida Constitutions, seize or take possession of any papers, records, tickets, currency, or other items related to any alleged violation. Investigators employed by the commission also have access to, and the right to inspect, premises licensed by the commission, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons licensed by the commission.<sup>29</sup>

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<sup>25</sup> For a summary of DGE investigations and actions in Fiscal Year 2022-2023, see Annual Report, *supra* n. 11 at p.5.

<sup>26</sup> Section 16.711(2), F.S.

<sup>27</sup> Section 16.711(3), F.S.

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

<sup>29</sup> *Id.*

The DGE and its investigators are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. The term “contraband” has the same meaning as the term “contraband article” in s. 932.701(2)(a)2., F.S.<sup>30</sup> The DGE is specifically authorized to store and test any contraband that is seized in accordance with the Florida Contraband Forfeiture Act and may authorize any of its staff to implement this provision. The authority of any other person authorized by law to seize contraband is not limited by these provisions.<sup>31</sup>

Section 16.711(5), F.S., requires the Florida Department of Law Enforcement (FDLE) to provide assistance in obtaining criminal history information relevant to investigations required for honest, secure, and exemplary gaming operations, and such other assistance as may be requested by the commission’s executive director and agreed to by FDLE’s the executive director. Any other state agency, including the DBPR and the Department of Revenue, must, upon request, provide the commission with any information relevant to any investigation conducted as described above, and the commission must reimburse any agency for the actual cost of providing any such assistance.<sup>32</sup>

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

The commission has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. The Division of Pari-Mutuel Wagering (DPMW) is a program area of the commission which is charged with the regulation of Florida’s pari-mutuel, cardroom, and slot gaming industries, as authorized by ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), and ch. 849, F.S., (Gambling), as well as collecting and safeguarding associated revenues due to the state. The DPMW supports the commission in meeting the commission’s obligations as the State Compliance Agency (SCA)<sup>33</sup> in carrying out the state’s oversight responsibilities under the provisions of the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.<sup>34</sup>

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

**Section 1** amends s. 16.712, F.S., relating to the commission, to exempt the commission from the requirements of ch. 255, F.S., relating to Public Property and Publicly Owned Buildings, such as building specifications, bidding, and similar legal requirements for public buildings and property and leased buildings and property. The bill provides that the commission may purchase, lease, exchange, or otherwise acquire any land, property interests, buildings, or other improvements, including personal property within such buildings or on such lands, which are necessary or

<sup>30</sup> Section 16.711(4), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> Section 16.711(5), F.S.

<sup>33</sup> See s. 285.710, F.S. Until June 30, 2022, the DPMW was designated as the SCA, prior to that division’s transfer to the commission from the Department of Business and Professional Regulation, as set forth in ch. 2021-269, Laws of Fla.

<sup>34</sup> See s. 285.710(3)(b), F.S., which provides that the Gaming Compact between the Seminole Tribe of Florida and the State of Florida (2021 Gaming Compact), executed by the Governor and the Tribe on April 23, 2021, as amended on May 17, 2021, is ratified and approved. The 2021 Gaming Compact may be accessed at <https://www.flgov.com/wp-content/uploads/pdfs/2021%20Gaming%20Compact.pdf> (last visited Jan. 10, 2024). The May 17, 2021 amendment states that Part XVIII.A [relating to certain negotiations within 36 months] is deleted in its entirety and replaced with “Reserved”, and that the Seminole Tribe of Florida agrees that it will not commence Sports Betting, as defined in Park III.CC, prior to October 15, 2021 (on file with the Senate Regulated Industries Committee).

useful in securing or storing any seized slot machine or any other contraband. Any such property must be held in the name of the state.

**Section 2** amends s. 843.08, F.S., relating to the obstruction of justice, to provide that a person who falsely assumes or pretends to be, and acts as any personnel or representative of the commission, commits a third degree felony.<sup>35</sup>

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

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

**Section 3** amends s. 849.01, F.S., relating to the keeping of gambling houses, to increase the penalty for that offense from a second degree misdemeanor (up to 60 days/\$500 fine)<sup>38</sup> to a third degree felony (up to five years/\$5,000 fine).<sup>39</sup> Current law provides, in part, that the keeping of a gambling house includes any person, servant, clerk, or agent who:

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

Under the bill, the penalty for the keeping of a gambling house is further enhanced to a second degree felony (up to 15 years/\$10,000 fine),<sup>40</sup> when the illegal gambling or gaming house is located within 1,000 feet of any of the following:

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

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

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

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

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

<sup>40</sup> Section 775.082, F.S., provides a felony of the second degree is punishable by a term of imprisonment not to exceed 15 years. Section 775.083, F.S., provides a felony of the second degree is punishable by a fine not to exceed \$10,000. Under s. 775.084, F.S., an habitual felony offender is subject to enhanced penalties.

- A physical place of worship.
- A public or private elementary, middle, or secondary school.
- The real property comprising a public or private college, university, or other postsecondary educational institution.
- The real property of a child care facility as defined in s. 402.302, F.S.
- The real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. The term “community center” means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public.
- The real property comprising a mental health facility, as that term is used in ch. 394, F.S.
- The real property of a health care facility licensed under ch. 395, F.S., which provides substance abuse treatment.
- The real property of a licensed service provider as defined in s. 397.311(44), F.S. A service provider includes a public agency, a private for-profit or not-for-profit agency, a person who is a private practitioner, or a hospital licensed under ch. 397, F.S., relating to Substance Abuse Services or exempt from licensure under this chapter.
- The real property of a facility providing services that include clinical treatment, intervention, or prevention as those terms are defined in s. 397.311(26), F.S.
- A recovery residence as defined in s. 397.311(38), F.S., to mean “a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.”
- An assisted living facility as defined in s. 429.02, F.S.
- A pain-management clinic as defined in s. 458.3265(1)(a)1.c., F.S.
- The real property of a public housing facility at any time.<sup>41</sup>
- A convenience business as defined in s. 812.171, F.S.<sup>42</sup>

A person who violates s. 849.01, F.S., and while at or on the premises of an illegal gambling or gaming house actually or constructively possesses a destructive device or a weapon other than a firearm,<sup>43</sup> commits a second degree felony (up to 15 years/\$10,000 fine).

A person who violates s. 849.01, F.S., and while at or on the premises of an illegal gambling or gaming house, actually or constructively possesses a firearm, commits a first degree felony (up

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<sup>41</sup> The bill provides such real property means “real property, as defined in s. 421.03(12), F.S., of a public corporation created as a housing authority,” pursuant to part I of ch. 421, F.S., relating to Public Housing.

<sup>42</sup> Section 812.171, F.S., the term convenience business” is one that is “primarily engaged in the retail sale of groceries, or both groceries and gasoline, that is open for business at any time between the hours of 11 p.m. and 5 a.m., and that is licensed by the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation pursuant to chapter 210, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, or chapter 569, as applicable,” and excludes the following: (1) a business that is solely or primarily a restaurant; (2) a business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.; (3) a business that has at least 10,000 square feet of retail floor space; and (4) a business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

<sup>43</sup> The term “destructive device or weapon” is defined in s. 790.001, F.S., and includes items such as bombs and other similar explosive devices but not firearm ammunition.



to 30 years/\$10,000 fine).<sup>44</sup> Under current law, the term firearm is defined to mean “any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun.”<sup>45</sup>

A person who violates s. 849.01, F.S., and, during the course of the violation, an individual under the age of 21 or 65 years of age or older is present at or on the premises of the illegal gambling or gaming house, commits a second degree felony (up to 15 years/\$10,000 fine).<sup>46</sup> A violator’s ignorance of an individual’s age, an individual’s misrepresentation of his or her age, or a bona fide belief of an individual’s consent may not be raised as a defense to a violation of this section.

A person who violates s. 849.01, F.S., and, during the course of the violation, an individual under the age of 21 or 65 years of age or older is present at or on the premises of the illegal gambling or gaming house, and is participating in any illegal gambling or gaming activity, commits a first degree felony (up to 30 years/\$10,000 fine).<sup>47</sup> A violator’s ignorance of an individual’s age, an individual’s misrepresentation of his or her age, or a bona fide belief of an individual’s consent may not be raised as a defense to a violation of this section.

A person who violates s. 849.01, F.S., and serves or allows to be served any alcoholic beverage<sup>48</sup> at or on the premises of the illegal gambling or gaming house, regardless of whether the location of the illegal gambling or gaming house is licensed by the state to serve or sell alcoholic beverages pursuant to ch. 561, F.S., commits a second degree felony (up to 15 years/\$10,000 fine).<sup>49</sup>

**Section 4** creates s. 849.011, F.S., relating to gambling or gaming advertising, making it unlawful for a person to: “write, typewrite, print, publish, or disseminate in any way any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice of an illegal gambling or gaming operation or any other matter or thing in any way related to or in connection with illegal gambling or gaming.”

The bill provides it is unlawful to set up any type of plate for any advertisement in relation to or connection with, illegal gambling or gaming to be used or distributed in Florida or sent outside of the state. In addition, except as otherwise provided by law, it is unlawful for the owner or lessee of a house, shop, office, building, or any other establishment of any kind in Florida to

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<sup>44</sup> Section 775.082, F.S., provides a felony of the first degree is punishable by a term of imprisonment not to exceed 30 years. Section 775.083, F.S., provides a felony of the first degree is punishable by a fine not to exceed \$10,000.

<sup>45</sup> Section 790.001, F.S., which provides a firearm does not include an antique firearm unless the antique firearm is used in the commission of a crime.

<sup>46</sup> Section 775.082, F.S., provides a felony of the second degree is punishable by a term of imprisonment not to exceed 15 years. Section 775.083, F.S., provides a felony of the second degree is punishable by a fine not to exceed \$10,000. Under s. 775.084, F.S., an habitual felony offender is subject to enhanced penalties.

<sup>47</sup> Section 775.082, F.S., provides a felony of the first degree is punishable by a term of imprisonment not to exceed 30 years. Section 775.083, F.S., provides a felony of the first degree is punishable by a fine not to exceed \$10,000.

<sup>48</sup> Section 561.01(4), F.S., defines the term “alcoholic beverages” to mean distilled spirits and all beverages containing one-half of one percent or more alcohol by volume.

<sup>49</sup> Section 775.082, F.S., provides a felony of the second degree is punishable by a term of imprisonment not to exceed 15 years. Section 775.083, F.S., provides a felony of the second degree is punishable by a fine not to exceed \$10,000. Under s. 775.084, F.S., an habitual felony offender is subject to enhanced penalties.

knowingly permit the printing, typewriting, writing, publishing, or any other dissemination of any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice of any activity in relation to, or connection with, illegal gambling or gaming.

Further, the bill provides it is unlawful for the owner or lessee of a house, shop, office, building, or any other establishment kind in Florida to knowingly permit the setting up of any type of plate for gambling purposes to be used or distributed in Florida or to be sent outside of the state.

Under the bill, the printing or producing within Florida any advertisement for gambling or gaming conducted in any other state or nation where such gambling or gaming is permitted, or the sale of such materials by manufacturers in this state to any person or entity conducting or participating in such gambling or gaming in any other state or nation, is not prohibited. However, the bill provides that this provision in the bill does not authorize any advertisement within Florida relating to any gambling or gaming of any other state or nation, or the sale or resale of anything related to gambling or gaming within Florida.

A person who violates s. 849.011, F.S., as set forth in the bill, commits a second degree felony (up to 15 years/\$10,000 fine).<sup>50</sup>

**Section 5** revises s. 849.03, F.S., relating to the renting of property for gambling purposes, to provide that the presence of one or more slot machines or devices<sup>51</sup> at such property creates a rebuttable presumption that an individual is knowingly renting such property (i.e., a house, room, booth, tent, shelter, or other place) for the purpose of gambling or gaming.

**Section 6** revises s. 849.04, F.S., relating to permitting minors and persons under guardianship to gamble, to increase the penalty for the violation. Under current law, the proprietor or owner of any keno, pool table, billiard table, wheel of fortune, or other game of chance for the purpose of betting, who willfully and knowingly allows a minor or person who is mentally incompetent or under guardianship to play at such game or to bet on such game of chance, commits a third degree felony (up to five years/\$5,000).<sup>52</sup> The bill provides the penalty is increased to a second degree felony (up to fifteen years/\$10,000).<sup>53</sup>

**Section 7** revises s. 849.07, F.S., relating to permitting gambling on billiard or pool table by a licensed billiard or pool table operator, to increase the penalty for permitting a person to play billiards or pool or any other game for money, or any other thing of value. Under the bill, the

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<sup>50</sup> Section 775.082, F.S., provides a felony of the second degree is punishable by a term of imprisonment not to exceed 15 years. Section 775.083, F.S., provides a felony of the second degree is punishable by a fine not to exceed \$10,000. Under s. 775.084, F.S., an habitual felony offender is subject to enhanced penalties.

<sup>51</sup> See s. 849.16, F.S., for the technical definition of the term "slot machine or device."

<sup>52</sup> Section 775.082, F.S., provides a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>53</sup> Section 775.082, F.S., provides a felony of the second degree is punishable by a term of imprisonment not to exceed 15 years. Section 775.083, F.S., provides a felony of the second degree is punishable by a fine not to exceed \$10,000.

penalty for that offense is increased from a second degree misdemeanor (up to 60 days/\$500 fine)<sup>54</sup> to a third degree felony (up to five years/\$5,000 fine).<sup>55</sup>

**Section 8** revises s. 849.09, F.S., relating to prohibited lotteries, to clarify that participation in any nationally advertised contest, drawing, game, or puzzle of skill or chance for a prize or prizes is not prohibited, unless it can be construed as a lottery under this section. However, exemptions for national contests do not apply to any such contest based upon the outcome or results of any horserace, harness race, dograce, or jai alai game.

Under current law, violators convicted of engaging in various acts concerning lotteries are subject to new or differing penalties based on the act in question. For clarity, this analysis discusses multiple acts together that are penalized similarly:

- For those convicted of violating the following provisions, the penalty is increased in the bill to a second degree felony (up to fifteen years/\$10,000)<sup>56</sup> from the penalty of a third degree felony (up to five years/\$5,000):<sup>57</sup>
  - Setting up, promoting, or conducting any lottery for money or for anything of value;
  - Disposing of any money or other property of any kind whatsoever by means of any lottery;
  - Conducting any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertising any such lottery scheme or device in any newspaper or by circulars, posters, pamphlets, radio, telegraph, telephone, or otherwise; or
  - Aiding or assisting in the setting up, promoting, or conducting of any lottery or lottery drawing, whether by writing, printing, or in any other manner whatsoever, or be interested in or connected in any way with any lottery or lottery drawing.
- For those convicted of violating the following provisions, the penalty is a first degree misdemeanor (up to one year/\$1,000 fine):<sup>58</sup>
  - Attempting to operate, conduct, or advertise any lottery scheme or device;
  - Having in her or his possession any lottery wheel, implement, or device whatsoever for conducting any lottery or scheme for the disposal by lot or chance of anything of value;
  - Selling, offering for sale, or transmitting, in person or by mail or in any other manner whatsoever, any lottery ticket, coupon, or share, or any share in or fractional part of any lottery ticket, coupon, or share, whether such ticket, coupon, or share represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played; or

<sup>54</sup> Section 775.082, F.S., provides a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides a misdemeanor of the second degree is punishable by a fine not to exceed \$500. The enhanced penalties for this violation increase to imprisonment not to exceed five years and a fine not to exceed \$5,000.

<sup>55</sup> Section 775.082, F.S., provides a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>56</sup> Section 775.082, F.S., provides a felony of the second degree is punishable by a term of imprisonment not to exceed 15 years. Section 775.083, F.S., provides a felony of the second degree is punishable by a fine not to exceed \$10,000.

<sup>57</sup> Section 775.082, F.S., provides a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>58</sup> Section 775.082, F.S., provides a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

- Having in her or his possession any so-called “run down sheets,” tally sheets, or other papers, records, instruments, or paraphernalia designed for use, either directly or indirectly, in, or in connection with, the violation of Florida law prohibiting lotteries and gambling.
- For those convicted of violating the following provisions, the penalty is a second degree felony (up to fifteen years/\$10,000 fine):<sup>59</sup>
  - Having in her or his possession any lottery ticket, or any evidence of any share or right in any lottery ticket, or in any lottery scheme or device, whether such ticket or evidence of share or right represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played;
  - Aiding or assisting in the sale, disposal, or procurement of any lottery ticket, coupon, or share, or any right to any drawing in a lottery; or
  - Having in her or his possession any lottery advertisement, circular, poster, or pamphlet, or any list or schedule of any lottery prizes, gifts, or drawings.

**Section 9** revises s. 849.10, F.S., relating to the printing of lottery tickets, to provide that the penalty for violation of this section is increased to a second degree felony (up to fifteen years/\$10,000 fine)<sup>60</sup> from a third degree felony (up to five years/\$5,000 fine).<sup>61</sup>

**Section 10** revises s. 849.13, F.S., relating to increased penalties after a second conviction for the same offense. Under the bill, a person who, after conviction of an offense forbidden by law in connection with lotteries, commits the same offense, has committed a felony of the next higher degree. Under current law, the penalty for a second conviction is a first degree misdemeanor (up to one year/\$1,000 fine).<sup>62</sup>

**Section 11** revises s. 849.15, F.S., relating to the prohibited manufacture, sale, or possession of slot machines or devices. For those convicted of violating s. 849.15, F.S., the offense and respective penalties are:

- For a first conviction, a third degree felony;
- For a second conviction, a second degree felony;
- For a third or subsequent conviction, a first degree felony;
- For a conviction that involved the use of more than one but fewer than five slot machines, a second degree felony; and
- For a conviction that involved the use of five or more slot machines, a first degree felony.

Notwithstanding any provision of s. 849.15, F.S., as revised by the bill, any person convicted of violating that section, who is not a manager, supervisor, or owner of any location at which a slot machine is offered for play, commits a first degree misdemeanor (up to one year/\$1,000). Under

<sup>59</sup> Section 775.082, F.S., provides a felony of the second degree is punishable by a term of imprisonment not to exceed 15 years. Section 775.083, F.S., provides a felony of the second degree is punishable by a fine not to exceed \$10,000.

<sup>60</sup> Section 775.082, F.S., provides a felony of the second degree is punishable by a term of imprisonment not to exceed 15 years. Section 775.083, F.S., provides a felony of the second degree is punishable by a fine not to exceed \$10,000.

<sup>61</sup> Section 775.082, F.S., provides a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>62</sup> Section 775.082, F.S., provides a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

the bill, a person is a manager, a supervisor, or an owner if he or she is working at the location where a slot machine is offered for play, has supervisory duties at the location where a slot machine is offered for play, or has any ownership interest in the business where a slot machine is located.

**Section 12** revises s. 849.23, F.S., to increase the severity of the penalties for violations ss. 849.14 to 849.22, F.S.,<sup>63</sup> the first six of which primarily relate to slot machines, with s. 849.21, F.S., relating to injunctions, and s. 849.22, F.S., relating to fees of the clerk of circuit court and sheriff.

Under the bill, the applicable penalty for a first violation, when no penalty is specified in the statutory section, is a third degree felony (up to five years/\$5,000),<sup>64</sup> rather than a second degree misdemeanor (up to 60 days/\$500) under current law.<sup>65</sup>

For a second violation, the applicable penalty, when no penalty is specified in the statutory section, is a second degree felony (up to fifteen years/\$10,000),<sup>66</sup> rather than a second degree misdemeanor (up to 60 days/\$500) under current law.<sup>67</sup>

For those previously convicted twice, the applicable penalty, when no penalty is specified in the statutory section, is a first degree felony (up to 30 years/\$10,000),<sup>68</sup> rather than a third degree felony (up to five years/\$5,000).<sup>69</sup>

**Section 13** revises s. 903.046, F.S., relating to the purpose of and criteria for bail determination, to revise considerations to be considered by a court for determining bail or release of persons arrested for crimes involving controlled substances, a slot machine, or illegal gambling or gaming, including the amount of currency seized that is connected to a violation of ch. 550, F.S. (Pari-Mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling) (gambling laws).

The bill includes a finding of the Legislature that any violation of the gambling laws:  
[I]s of serious social concern, that the flight of defendants to avoid  
prosecution is of similar serious social concern, and that frequently such

<sup>63</sup> Six of the provisions relate to slot machines (s. 849.15, F.S., relating to prohibited manufacture, sale, possession, etc., of slot machines or devices; prohibited.; s. 849.16, F.S., relating to machines or devices which come within provisions of gambling; s. 849.17, F.S., relating to confiscation of machines by arresting officer; s. 849.18, F.S., relating to the disposition of machines upon conviction; s. 849.19, F.S., relating to property rights in confiscated machines; and s. 849.20, F.S., relating to machines and devices declared a nuisance, and place of operation subject to lien for fine).

<sup>64</sup> Section 775.082, F.S., provides a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>65</sup> Section 775.082, F.S., provides a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

<sup>66</sup> Section 775.082, F.S., provides a felony of the second degree is punishable by a term of imprisonment not to exceed 15 years. Section 775.083, F.S., provides a felony of the second degree is punishable by a fine not to exceed \$10,000.

<sup>67</sup> Section 775.082, F.S., provides a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

<sup>68</sup> Section 775.082, F.S., provides a felony of the first degree is punishable by a term of imprisonment not to exceed 30 years. Section 775.083, F.S., provides a felony of the first degree is punishable by a fine not to exceed \$10,000.

<sup>69</sup> Section 775.082, F.S., provides a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides a felony of the third degree is punishable by a fine not to exceed \$5,000.

defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, it is the intent of the Legislature that courts be required to carefully consider the utility and necessity of substantial bail in relation to the amount of proceeds a defendant obtained from any violation of [the gambling laws].

**Section 14** revises s. 921.0022, F.S., relating to the offense severity ranking chart of the Criminal Punishment Code, to reflect the increased severity of the lottery offenses listed in s. 849.09(1)(a) - (d), F.S., (to a second degree felony (Level 2) from a third degree felony (Level 1)).

**Section 15** provides that the bill takes effect July 1, 2024.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who violate the gambling laws will be subject to increased penalties applicable to:

- The offense of illegally keeping a gambling house, which are expanded to include violations in specified circumstances, including when weapons, firearms, persons

under 21 and over 65 years of age are present, or when the gambling house is within 1,000 feet of specified locations;

- For producing or publishing advertisements for use or distribution in Florida of an illegal gambling or gaming operation by any person or property owner;
- For offenses related to prohibited lotteries and transactions involving slot machines;

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

**C. Government Sector Impact:**

According to the Florida Gaming Control Commission, the bill has no fiscal impact to state government.<sup>70</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 16.712, 843.08, 849.01, 849.03, 849.04, 849.07, 849.09, 849.10, 849.13, 849.15, 849.23, 903.046, and 921.0022.

This bill creates section 849.011 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.

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

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<sup>70</sup> See Florida Gaming Control Commission, *2024 Agency Legislative Bill Analysis for SB 1046* at 6 (Jan. 10, 2024) (on file with the Senate Committee on Regulated Industries).