

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 189 Gaming Control

SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Salzman

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	7 Y, 5 N, As CS	Thompson	Anstead
2) Appropriations Committee	19 Y, 8 N	Helpling	Pridgeon
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Gaming Control Commission (Commission), is responsible for exercising all regulatory and executive powers of the state with respect to gambling, excluding the state lottery. The Commission's Division of Gaming Enforcement (Division) is a criminal justice agency tasked with the enforcement of Florida's gambling laws to combat illegal gambling activities, and is the first law enforcement agency with illegal gambling as its primary responsibility. The Division director and all investigators are certified law enforcement officers, have the power to investigate, apprehend, and make arrests for any alleged violation of the state's gambling laws, or any law of this state, and are authorized to seize, store, and test contraband in accordance with the Florida Contraband Forfeiture Act.

Recently, illegal gambling operations using unregulated slot machines have been increasing. The devices are similar to regulated gambling devices, but can be manipulated by the operators to control the outcome and ratio of winnings in a fraudulent manner. The operations (adult arcades or internet cafes), target vulnerable populations, and are often tied to criminal activity, including money laundering, drug trafficking, and violent crime. The Division has participated in numerous enforcement actions along with local law enforcement, including raids, resulting in arrests and closures; however, the activity persists. According to the Commission, Florida law contains many low-level penalties for criminal violations related to illegal gambling, which does not deter the criminal activity and leads to adult arcades operating slot machines illegally across the state.

The bill revises certain criminal penalties in Florida law related to illegal gambling, as follows:

- Prohibits falsely impersonating personnel or representatives of the Commission.
- Increases the penalty for keeping an illegal gambling house from a second degree misdemeanor to a third degree felony.
- Increases the penalty for the manufacture, sale, and possession of illegal slot machines from a second degree misdemeanor to a first degree misdemeanor, and to a felony for managers with prior convictions.
- Makes it a first degree felony for trafficking more than 15 illegal slot machines or any parts thereof, and imposes certain monetary fines.
- Makes it a third degree felony to make a false or misleading statement to facilitate the sale of illegal slot machines, and a second degree felony when such violation involves five or more machines.
- Makes it a first degree misdemeanor to transport five or more persons into or within the state to facilitate illegal gambling, and a third degree felony when violations include a minor or person 65 years old or older, or 12 or more persons.
- Makes it a first degree misdemeanor to make certain gambling or gaming advertisements.
- Prohibits counties, municipalities, or other political subdivisions from regulating gaming, gambling, lotteries, or other activities described in s. 546.10, F.S., or ch. 849, F.S.
- Requires courts to consider the amount of currency seized in connection with certain gambling violations when determining bail conditions.
- Conforms the offense severity ranking chart to the changes made by the bill.

The fiscal impact to the state is indeterminate. The Commission may see an increase in revenues as a result in an increase of confiscated contraband and fines levied pursuant to the bill. See Fiscal Comments.

The effective date of the bill is July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0189a.APC

DATE: 1/31/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Gambling in Florida

Gambling is generally prohibited in Florida, unless specifically authorized. Gambling is defined in Florida law as playing or engaging in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value.¹ The standard jury instructions for criminal cases in Florida provide that in order to prove the crime of gambling, the state must prove the following three elements beyond a reasonable doubt:²

- Playing or engaging in a game of chance.
- Risking money or property on the outcome of the game.
- Expecting to gain or lose money or property as a result of the game.

Florida does not allow gambling on games of skill of all types. Gambling on games of skill is highly regulated, and wagers on such games that are not specifically authorized are considered illegal.

Section 7, Art. X, of the Florida Constitution prohibits lotteries, other than pari-mutuel pools, from being conducted in Florida.

Slot machines that are not operated by a licensed pari-mutuel facility or in accordance with a tribal compact or specific law are illegal in Florida.

Chapter 849, F.S., includes prohibitions against slot machines, keeping a gambling house, engaging in bookmaking, and running a lottery. However, a constitutional amendment approved by voters in 1986 authorized state-operated lotteries, and a constitutional amendment in 2004 authorized slot machines in Miami-Dade and Broward Counties.

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

- Pari-mutuel³ wagering;⁴
- Gaming on tribal reservations in accordance with the federal Indian Gaming Regulatory Act and the 2021 Gaming Compact with the Seminole Tribe of Florida;
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;⁵ and
- Cardrooms⁶ at certain pari-mutuel facilities.

Under the Florida Contraband Forfeiture Act,⁷ gambling proceeds, paraphernalia, and property may be seized as contraband. For example, a vehicle used for transporting an illegal slot machine is subject to seizure.⁸

¹ S. 849.08, F.S.

² The Florida Bar, Criminal Jury Instructions Chapter 22, 22.1 Gambling, <https://www.floridabar.org/rules/florida-standard-jury-instructions/criminal-jury-instructions-home/criminal-jury-instructions/sji-criminal-chapter-22/> (last visited Jan. 2, 2024).

³ “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.

⁴ *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

⁵ *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.

⁶ S. 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 charged a fee for participation by the operator of such facility.”

⁷ Ss. 932.701-932.706, F.S., comprise the Florida Contraband Forfeiture Act.

⁸ S. 849.36, F.S.

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,⁹ bingo,¹⁰ charitable drawings,¹¹ game promotions (sweepstakes),¹² bowling tournaments,¹³ and skill-based amusement games and machines at specified locations.¹⁴

Florida Gaming Control Commission

The Florida Gaming Control Commission (Commission) is a five-member regulatory body that is responsible for exercising all regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts, and other forms of gambling authorized by the State Constitution or law, excluding the state lottery.¹⁵ The Commission is also the State Compliance Agency responsible for monitoring compliance with the provisions of the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.¹⁶

The Division of Gaming Enforcement (Division) is a criminal justice agency¹⁷ tasked with the enforcement of Florida's gambling laws to combat illegal gambling activities.¹⁸ While every law enforcement officer in the state of Florida has the authority to make arrests for violations of Florida's gambling laws, the Division is the first law enforcement agency with illegal gambling as its primary responsibility.¹⁹

The Division director and all investigators are certified and designated law enforcement officers, and have the power to detect, apprehend, and arrest for any alleged violation of the state's gambling laws, or any law of this state.²⁰ 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.²¹

Such officers have the authority, without warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring. Investigators employed by the Commission are required to 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.²²

The Division and its investigators are specifically authorized to seize, store, and test any contraband²³ in accordance with the Florida Contraband Forfeiture Act.²⁴

According to the Commission, the Division:²⁵

⁹ S. 849.085, F.S.

¹⁰ S. 849.0931, F.S.

¹¹ S. 849.0935, F.S.

¹² S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

¹³ S. 849.141, F.S.

¹⁴ S. 546.10, F.S.

¹⁵ See ss. 16.71-16.716, F.S.

¹⁶ S. 285.710, F.S.

¹⁷ S. 16.711(1), F.S.

¹⁸ Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023*, pg. 6, <https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf> (last visited Jan. 2, 2024).

¹⁹ Florida Gaming Control Commission, *Gaming Enforcement*, <https://flgaming.gov/enforcement/> (last visited Jan. 3, 2024).

²⁰ S. 16.711(3), F.S.

²¹ *Id.*

²² *Id.*

²³ The term “contraband” has the same meaning as the term “contraband article” in s. 932.701(2)(a)2, F.S., which is defined as “any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, attempted to be used, or intended to be used in violation of the gambling laws of the state, including any violation of chapter 24, part II of chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849.”

²⁴ S. 16.711(4), F.S.

²⁵ *Id.*

- Participates in direct enforcement activities involving proactive investigations initiated by reports of illegal gambling, confidential sources, and investigative leads. Upon obtaining sufficient evidence, agents execute search warrants, resulting in arrests and the seizure of illegal gambling devices and contraband.
- Serves as a valuable resource for state and local law enforcement partners, providing expert guidance on the intricacies of Florida's gambling laws and regulations. Agents share their knowledge and experience, assisting other law enforcement agencies in identifying illegal gambling activities, gathering evidence, and building strong cases for prosecution. This collaborative approach ensures that illegal gambling operations are effectively investigated and disrupted.

Illegal Gambling Machines

According to the American Gaming Association, “there are a growing number of companies that design, manufacture, sell, or operate machines that mimic regulated gambling devices but operate without complying with state and federal laws. These games are extremely similar to regulated gambling devices, using drums or reels with insignia or other symbols that players “spin” to win prizes, including money. The manufacturers of such machines argue that their games are “skill-based” or operate in other “gray areas” of the law, thereby exempting them from regulation. However, these machines function similarly to traditional slot machines, and in fact, many consumers do not know the difference between regulated gambling devices and these “skill-based” or “gray” machines.”²⁶

These machines have been found to put consumers at risk by targeting the most vulnerable populations. In addition, they are often tied to criminal activity, including money laundering, drug trafficking, violent crime, and more.²⁷

Regulated gambling device manufacturers that seek to manufacture, sell, or ship a gambling device in interstate commerce are required by the federal Johnson Act to register annually with the U.S. Department of Justice.²⁸ The Johnson Act makes it unlawful to transport a gambling device in interstate or foreign commerce, unless the device is shipped to a state or tribal jurisdiction that has otherwise made such shipment or operation of these games lawful.

Gambling devices are defined in the Johnson Act as any slot machine or other machine or device that is designed primarily for use in gambling, where as a result of application of an element of chance and any money or property, a person may be entitled to win money or property.²⁹

Failure to comply with the Johnson Act carries penalties of fines up to \$5,000 and up to two years of imprisonment, along with forfeiture of the unregistered gambling devices.³⁰

Allied Veterans of the World

In March 2013, a three-year, multi-state, multi-agency investigation into the operations of illegal gambling at so-called Internet cafes affiliated with Allied Veterans of the World (Allied Veterans)

²⁶ American Gaming Association, *Re: Comments Requested on Registration Under the Gambling Devices Act of 1962*, 86 Fed. Reg. 53, 682, OMB No. 1123-0010, <https://www.americangaming.org/wp-content/uploads/2022/03/AGA-Comment-Gambling-Devices-Act-Nov.-29-202198.pdf> (last visited Jan. 23, 2024).

²⁷ See American Gaming Association, *SKILLED AT DECEPTION: How Unregulated Gaming Machines Endanger Consumers and Dilute Investments in Local Economies*, <https://www.americangaming.org/wp-content/uploads/2021/04/Unregulated-Gaming-Machines-White-Paper-Final.pdf> (last visited Jan. 3, 2024).

²⁸ Gambling Devices Act of 1962, 15 U.S.C. §§ 1171–78 (the “Johnson Act”).

²⁹ 15 U.S.C. § 1171(a).

³⁰ 15 U.S.C. §§ 1176, 1177

concluded with the arrest of 57 people, and seizure of about 300 bank accounts and approximately \$64.7 million. Charges included racketeering and money laundering.³¹

The Florida Attorney General's Office of Statewide Prosecution, alleged that the establishments purported to provide customers with access to the Internet. Customers purchased prepaid cards that they could use for Internet time, and while on the computer could participate in contests that were similar to playing a slot machine. Winnings were posted to the prepaid cards, which could be turned in for cash.³²

Allied Veterans operated centers out of about 50 strip malls throughout Florida. Prosecutors said the centers were mini-casinos, and most people who bought Internet time didn't use it because they came to gamble. Defense attorneys said the centers offered sweepstakes, not gambling.³³ Under Florida law, sweepstakes may be conducted in connection with and incidental to the sale of consumer products or services, and in which the elements of chance and prize are present, only after filing, and providing certain information regarding winnings, with the Department of Agriculture and Consumer Services.³⁴ This allows businesses such as McDonald's to offer games of chance without being in violation of illegal gambling.

In spite of the large number of people arrested, only one person was sentenced to prison after being found guilty of racketeering, helping to run a lottery, and possession of an illegal slot machine or device. The conviction was subsequently overturned by the Fifth District Court of Appeal, and the Florida Supreme Court declined to overturn the appellate court's decision and reinstate the conviction.³⁵

As a result of the arrests, in 2013, the legislature clarified that Internet café style gambling machines were illegal in the state. The Legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prizes are prohibited slot machines.³⁶

In 2015, the Legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida's limitations on gambling and prevent the expansion of casino-style gambling. The Legislature clarified regulations related to the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.³⁷

Recent Activity

³¹ Mary Ellen Klas, *Bill Banning Internet Cafes Becomes Law in Florida*, *Governing*, The States and Localities (April 11, 2013), <https://www.governing.com/archive/mct-bill-banning-internet-cafes-becomes-law-in-florida.html#:~:text=The%20measure%2C%20HB%20155%2C%20was,workers%20in%20now%2Dshuttered%20operations> (last visited Jan. 3, 2024).

³² The National Registry of Exonerations, *Kelly Mathis*, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5122> (last visited Jan. 3, 2024).

³³ Larry Hannan, *Allied Veterans of the World: A massive scandal -- or just overreach?*, *The Florida Times Union*, <https://www.jacksonville.com/story/news/crime/2015/02/22/allied-veterans-scandal-didnt-live-its-billing/15651951007/> (last visited Jan. 3, 2024).

³⁴ S. 849.094, F.S.

³⁵ Eileen Kelley, *State Attorney General's Office drops Allied Veterans charges against embattled Jacksonville lawyer*, *The Florida Times Union*, <https://www.jacksonville.com/story/news/crime/2015/02/22/allied-veterans-scandal-didnt-live-its-billing/15651951007/> (last visited Jan. 3, 2024).

³⁶ Florida House of Representatives Select Committee on Gaming, *Final Bill Analysis of 2013 CS/HB 155*, p. 1 (Apr. 19, 2013).

³⁷ S. 546.10, F.S.

According to reports, illegal gambling operations targeting vulnerable aging populations in Florida are increasing. The activity has especially grown since the pandemic with an “explosion of illegal gambling lounges opening up with unregulated slot machines.”³⁸

According to the Commission, “some of them register as amusement arcades through the Department of Revenue, which means they're acting like a Dave and Buster's or a Chuck E. Cheese, but in reality, they're offering illegal gambling devices such as slot machines. If the game has any element of chance built into it, under Florida statute, it's considered an illegal gambling device. They have the ability to dial up the winnings to entice play. Once they get a packed house, they dial down the winnings to almost zero. Then at that point, they're just stealing and using predatory practices and taking money from Florida's senior population.”³⁹

On May 9, 2023, special agents from the Commission and local law enforcement executed search warrants simultaneously in Fort Pierce, Delray Beach, St. Petersburg, and Tampa. They targeted illegal gambling operations at adult arcades and seized more than \$1.0 million in assets, cash, slot-style gaming machines, computers, and ATMs. The raid resulted in seven arrests and the seizure of 360 slot machines. After the May raid, St. Lucie County sheriff's deputies went to every known adult arcade location in St. Lucie County to hand-deliver a Jan. 27 warning letter initially mailed to each arcade.⁴⁰

Many arcades in St. Lucie County and some in Indian River County closed out of fear. However, some arcades never closed, and most eventually reopened. It appears only a handful shut down permanently. State officials said they would continue to monitor those open adult arcades and continue to work with local law enforcement.⁴¹

In 2023, the Commission investigated several illegal slot machine businesses operating in the state, and found that:⁴²

- The scope of the problem is much larger than initially anticipated.
- There are significant adverse harms associated with the activity.
- Success will require collaborative and coordinated efforts.
- Obstacles will continue to evolve but can be overcome.

During the 2022-2023 fiscal year, the Division received 1,266 total location based complaints of illegal gambling. From those complaints, 493 letters were sent to the local law enforcement departments informing them of possible illegal gambling activities at these locations. From those complaints, 506 letters were sent directly to businesses informing them of their possible participation in illegal gambling activities and providing copies of the gambling laws and associated criminal punishments.⁴³

During the 2022-2023 fiscal year, the Division conducted joint investigation operations with the Chipley Police Department, Hillsborough Sheriff's Office, Holmes County Sheriff's Office, Manatee County Sheriff's Office, Palm Beach Sheriff's Office, St. Lucie County Sheriff's Office, and St. Petersburg Police Department resulting in 52 arrests and the seizure of:⁴⁴

- 858 illegal slot machines.
- \$1,151,000 in cash.
- Approximately \$2,000,000 in real estate.
- 40 grams of fentanyl.

³⁸ Jordan Brown, *Florida seniors warned to be cautious of shady slot machines*, FOX 13 Tampa Bay (May 23, 2023), <https://www.fox13news.com/news/illegal-gambling-operations-in-florida-re-targeting-aging-populations> (last visited Jan. 4, 2024).

³⁹ *Id.*

⁴⁰ TCPalm, *Florida investigators shut down arcades with illegal slot machines. Here's what we know*, <https://www.tcpalm.com/story/news/crime/st-lucie-county/2023/09/14/what-we-know-investigators-raid-adult-arcades-with-illegal-slots-treasure-coast/70853727007/> (last visited Jan. 12, 2024).

⁴¹ *Id.*

⁴² Florida Gaming Control Commission, Presentation to the House Regulatory Reform & Economic Development Subcommittee, (Oct. 17, 2023), at pg. 12.

⁴³ Florida Gaming Control Commission, *Gaming Enforcement Investigations and Actions, Annual Report 2022-2023*, at pg. 7, <https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf> (last vi

⁴⁴ *Id.*

- 10 grams of methamphetamine.

Slot Machines

In Florida, a slot machine is defined as a machine or device that:⁴⁵

- Is activated by inserting something of value (money, coin, account number, code, or other object or information);
- Is caused to operate or operated by a user **by application of skill, element of chance, or other outcome that is unpredictable to the user**; and
- The user receives or is entitled to receive something of value or additional chances or rights to use the device or machine.

There is a rebuttable presumption that a device, system, or network is a prohibited slot machine or device if it is used to display images of games of chance and is part of a scheme involving any payment or donation of money or its equivalent and awarding anything of value.⁴⁶

Slot machines are only authorized in licensed pari-mutuel facilities located in Miami-Dade and Broward counties and on tribal property.⁴⁷ Off of licensed pari-mutuel facilities, it is a violation to “manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of any slot machine or device or any part thereof.”⁴⁸

Violations of the provisions⁴⁹ prohibiting the manufacture, sale, possession, etc., of slot machines or devices, are a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S. A second violation is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S. Any person violating these provisions after having been twice convicted is deemed a “common offender,” and guilty of a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.⁵⁰

Unlicensed slot machines are illegal in Florida and are considered “contraband.” Florida law provides, as contraband, “the right of property to an illegal slot machine and all the money or other things of value within the slot machine, does not exist and shall be forfeited to the county in which the seizure took place.”⁵¹

Florida law also provides that all sums of money and other value used, displayed in, or connected with illegal gambling or an illegal gambling device contrary to the laws of this state shall be forfeited.⁵²

Pursuant to the federal Johnson Act, Florida law allows shipment of gaming devices including slot machines into this state provided the destination of the shipment is an eligible slot machine facility, or the facility of a slot machine manufacturer or slot machine distributor.⁵³

False Personation

Current law prohibits falsely assuming or pretending to be a state, local, or federal law enforcement officer, or requiring assistance in a matter pertaining to the duty of such officer (false personation).⁵⁴

The list of officers and individuals who may not be falsely personated include:

- Firefighters;

⁴⁵ S. 849.16(1), F.S.

⁴⁶ S. 849.16(3), F.S.

⁴⁷ S. 551.101, F.S.

⁴⁸ S. 849.15(1)(a), F.S.

⁴⁹ Ss. 849.15, F.S. – 849.22, F.S.

⁵⁰ S. 849.23, F.S.

⁵¹ S. 849.19, F.S.

⁵² S. 849.12, F.S.

⁵³ S. 849.15(2), F.S.

⁵⁴ S. 843.08, F.S.

- Sheriffs or sheriffs deputies;
- Florida Highway Patrol officers;
- Fish and Wildlife Conservation Commission officers;
- Department of Environmental Protection officers;
- Department of Financial Services officers;
- Division of Investigative and Forensic Services personnel or representatives;
- Department of Corrections officers;
- State attorney or an assistant state attorney;
- Statewide prosecutor or an assistant statewide prosecutor;
- State attorney investigator;
- Coroner;
- Police officer;
- Lottery special agent or lottery investigator;
- Beverage enforcement agent;
- School guardian;
- Security officer;
- Member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission; and
- Any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.15.05, F.S.⁵⁵

False personation violations are a third degree felony, punishable by up to five years in prison and a \$5,000 fine,⁵⁶ unless committed during the course of a felony.⁵⁷ A person who poses as an officer in order to facilitate a felony crime would also face a second degree felony, punishable by up to 15 years in prison and a \$10,000 fine.⁵⁸

The Commission is currently not listed as a law enforcement agency for the criminal offense of false personation of a law enforcement officer.

Keeping a Gambling House

Current law makes it is a second degree misdemeanor to keep a gambling house.⁵⁹ Specifically, a person is guilty of this offense if he or she:

- Habitually keeps, exercises, or maintains, for the purpose of gaming or gambling:⁶⁰
 - A gaming table or room;
 - Gaming implements;
 - Gaming apparatus; or
 - A house, booth, tent, shelter, or other place.

A second degree misdemeanor is punishable by up to 60 days in jail and a fine up to \$500.⁶¹

Criminal Punishment Code

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.⁶² Noncapital felonies sentenced under the Code receive an offense

⁵⁵ S. 901.1505., F.S., defines the term “federal law enforcement officer” as “a person who is employed by the Federal Government as a full-time law enforcement officer as defined by the applicable provisions of the United States Code, who is empowered to effect an arrest for violations of the United States Code, who is authorized to carry firearms in the performance of her or his duties, and who has received law enforcement training equivalent to that prescribed in s. 943.13.”

⁵⁶ See ss. 775.082 and 775.083, F.S.

⁵⁷ S. 843.08, F.S.

⁵⁸ *Id.*

⁵⁹ S. 849.01, F.S.

⁶⁰ S. 849.01, F.S.; *Ferguson v. State*, 377 So. 2d 709, 711 (Fla. 1979) (requiring an element of "habitualness" for a conviction under s. 849.01, F.S.).

⁶¹ See ss. 775.082 and 775.083, F.S.

severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart⁶³ or by default.⁶⁴ Judges must use the Code worksheet to compute a sentence score for each felony offender.⁶⁵

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses, and prior offenses.⁶⁶ Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points are added for victim injury, and increase based on the type of injury and severity.⁶⁷ Sentence points may also be added or multiplied for other factors including possession of a firearm or the commission of certain offenses, such as drug trafficking.⁶⁸ If an offense is unlisted on the offense severity ranking chart, the Code provides a ranking based on felony level.⁶⁹ For example, an unranked third degree felony is a level one offense.⁷⁰

If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.⁷¹ Absent mitigation,⁷² the permissible range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁷³

The offense severity ranking chart ranks the following third degree felony lottery violations as a level 1:⁷⁴

- Set up, promote, or conduct any lottery for money or for anything of value;⁷⁵
- Dispose of any money or other property of any kind whatsoever by means of any lottery;⁷⁶
- Conduct any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertise any such lottery scheme or device in any newspaper or by circulars, posters, pamphlets, radio, telegraph, telephone, or otherwise;⁷⁷ or
- Aid or assist 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.⁷⁸
- Engaging in bookmaking.⁷⁹

Bail Determinations

The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant.⁸⁰

⁶² S. 921.002, F.S.

⁶³ S. 921.0022, F.S.

⁶⁴ S. 921.0023, F.S., addresses ranking unlisted felony offenses. For example, an unlisted felony of the third degree is ranked within offense level 1.

⁶⁵ S. 921.0024, F.S.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ S. 921.0023, F.S.

⁷⁰ *Id.*

⁷¹ S. 921.0022(2), F.S.

⁷² The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁷³ S. 921.0022(2), F.S.

⁷⁴ S. 921.022(3)(a), F.S.

⁷⁵ S. 849.09(1)(a)-(d), F.S.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ S. 849.25(2), F.S.

⁸⁰ S. 903.046(1), F.S.

When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court is required to consider certain factors, including:⁸¹

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct.
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail or procure an appearance bond.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.

The bail determination provisions currently do not require courts to consider specific factors related to currency seized that is involved in state gambling law violations.

Effect of Proposed Changes

False Personation

The bill adds personnel or representatives of the Commission to the statute that prohibits falsely impersonating a law enforcement officer.

Keeping a Gambling House

The bill increases the penalty for keeping an illegal gambling house from a second degree misdemeanor to a third degree felony.

Slot Machines

Regarding penalties for the manufacture, sale, and possession of illegal slot machines, the bill:

- Increases general violations from a second degree misdemeanor to a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.
- Increases violations by a manager from a first degree misdemeanor to a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., if:
 - At the time of the violation the person is acting as a manager.
 - The person in violation has one prior conviction for such violation.
- Increases violations by a manager from a third degree felony to a second degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., if:
 - At the time of the violation the person is acting as a manager; and
 - The violation involves five or more slot machines or devices.
 - Has two or more prior convictions for such violation.
- Defines "conviction" to mean "a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.
- Defines "manager" to mean "a person who, at any business, establishment, premises, or other location at which a slot machine or device is offered for play, has:
 - Authorization to operate or hold open the business, establishment, premises, or other location without any other employee present;
 - Authorization to supervise another employee or employees; or
 - Any ownership interest in the business, establishment, premises, or other location."

Regarding trafficking in slot machines or devices, the bill makes it a:

- First degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., to knowingly sell, purchase, manufacture, transport, deliver, or bring into this state more than 15 slot machines or devices or any part thereof; and

- Includes an additional fine of \$100,000, if the quantity of slot machines or devices or any part thereof involved is more than 15 slot machines or devices or any part thereof, but less than 25 slot machines or devices or any part thereof.
- Includes an additional fine of \$250,000, if the quantity of slot machines or devices or any part thereof involved is 25 slot machines or devices or any part thereof or more, but less than 50 slot machines or devices or any part thereof.
- Includes an additional fine of \$500,000, if the quantity of slot machines or devices or any part thereof involved is 50 slot machines or devices or any part thereof or more.
- Requires all fines imposed and collected pursuant to these provisions to be deposited into the Pari-mutuel Wagering Trust Fund and authorizes such funds to be used for the enforcement of chapters 546, F.S., 550, F.S., 551, F.S., and 849, F.S., by the Commission.

Regarding false or misleading statements to facilitate the sale of illegal slot machines, the bill makes it a:

- Third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., to knowingly and willfully:
 - Make a materially false or misleading statement regarding the legality of a slot machine or device for the purpose of facilitating the sale or delivery of a slot machine or device for any money or other valuable consideration; or
 - Disseminate false or misleading information regarding the legality of a slot machine or device for the purpose of facilitating the sale or delivery of a slot machine or device for any money or other valuable consideration.
- Second degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., when such a violation involves the sale or delivery, or attempted sale or delivery, of five or more slot machines or devices.

Transporting Persons to Facilitate Illegal Gambling

The bill makes it a:

- First degree misdemeanor, punishable as provided in s. 775.082, or s. 775.083, F.S., to knowingly and willfully for profit or hire transport, or procure the transportation of, five or more other persons into or within this state when he or she knows or reasonably should know such transportation is for the purpose of facilitating illegal gambling.
- Third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., for such violations to also include the transport, or procurement of transportation of:
 - A minor or a person 65 years of age or older.
 - Twelve or more persons.

For purposes of these provisions, the bill defines the term “illegal gambling” as any criminal violation of chapters 546, 550, 551, or 849, F.S., that occurs at any business, establishment, premises, or other location which operates for profit.

Gambling or Gaming Advertisements

The bill prohibits, except as otherwise specifically authorized by law:

- Knowingly and intentionally making, publishing, disseminating, circulating or placing before the public, or cause, directly or indirectly, to be made, published, disseminated or circulated or placed before the public in this state, in any manner, any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice for the purpose of promoting or facilitating illegal gambling.
- Setting up any type or plate for any type of advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice when he or she knows or reasonably should know that such material will be used for the purpose of promoting or facilitating illegal gambling.

The bill:

- Makes violations a first degree misdemeanor, punishable as provided in s. 775.082, or s. 775.083, F.S.

- Specifies that nothing in these provisions prohibit the printing or producing of any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice to be used for the purpose of promoting or facilitating gambling conducted in any other state or nation, outside of this state, where such gambling is not prohibited.
- Defines the term “illegal gambling” as any criminal violation of chapters 546, 550, 551, or 849, F.S., that occurs at any business, establishment, premises, or other location which operates for profit.

Preemption

The bill prohibits a county, municipality, or other political subdivision of the state from enacting or enforcing any ordinance or local rule relating to gaming, gambling, lotteries, or any activities described in s. 546.10, F.S., or chapter 849, F.S., except as otherwise expressly provided by the state constitution or general law.

Bail Determinations

The bill requires courts to consider the amount of currency seized that is connected to or involved in a violation of chapters 546, 550, 551, or 849, F.S., when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be.

Criminal Punishment Code

The bill:

- Confirms the offense severity ranking chart to the changes made by the bill.
- Reclassifies the offense of engaging in bookmaking as a level 3 offense.
- Ranks the offense of keeping a gambling house as a level 3 offense.
- Ranks the lottery offenses relating to setting up, promoting, assisting, conducting or advertising a drawing for prizes, or disposing of property or money by means of lottery as a level 3 offense.
- Ranks second or subsequent violations of each of the following offenses related to conducting an unlawful lottery as a level 3 offense:
 - Attempting to operate, conduct, or advertise any lottery scheme or device.
 - Possession of a 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, a lottery ticket, coupon, or share, of any lottery ticket.
 - Possession of a 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.
 - Possession of a lottery advertisement, circular, poster, or pamphlet, or any list or schedule of any lottery prizes, gifts, or drawings.
 - Possession of 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 the laws of this state prohibiting lotteries and gambling.
- Ranks each of the following offenses related to slot machines as a level 3 offense:
 - Manufacture, sale, or possession of slot machine; by manager or with prior conviction.
 - False or misleading statement to facilitate sale of slot machines or devices.
 - Transporting persons to facilitate illegal gambling; minor or person 65 years of age or older or 12 or more persons.
- Ranks each of the following offenses related to slot machines as a level 5 offense:
 - Manufacture, sale, or possession of a slot machine; by a manager of five or more machines or two or more prior convictions.
 - False or misleading statement to facilitate sale of slot machines or devices; five or more machines.

- Bookmaking; second or subsequent offense.
- Ranks trafficking in slot machines or devices or any part thereof a level 7 offense.

B. SECTION DIRECTORY:

- Section 1: Amends s. 843.08, F.S., relating to false personation.
- Section 2: Amends s. 849.01, F.S., relating to keeping gambling houses.
- Section 3: Amends s. 849.15, F.S., relating to manufacture, sale, possession, etc., of slot machines or devices prohibited.
- Section 4: Creates s. 849.155, F.S., relating to trafficking in slot machines or devices or any parts thereof.
- Section 5: Creates s. 849.157, F.S., relating to making a false or misleading statement regarding the legality of slot machines or devices to facilitate sale.
- Section 6: Repeals s. 849.23, F.S., relating to Penalty for violations of ss. 849.15-849.22, F.S.
- Section 7: Creates s. 849.47, F.S., relating to transporting or procuring the transportation of persons to facilitate illegal gambling.
- Section 8: Creates s. 849.48, F.S., relating to gambling or gaming advertisements; prohibited.
- Section 9: Creates s. 849.49, F.S., relating to preemption.
- Section 10: Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.
- Section 11: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 12: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments.
2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comments.
2. Expenditures:
See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may prevent or reduce illegal gambling, which will protect vulnerable populations, and reduce secondary criminal activity, including money laundering, drug trafficking, violent crime, and more.

D. FISCAL COMMENTS:

The fiscal impact to the state and local government is indeterminate. The bill increases and creates new criminal penalties for violations relating to illegal gambling. This may create a positive fiscal impact to the state and local governmental entities that receive proceeds from the related fines. This may also create a negative fiscal impact to those entities relating to administration of enforcement. The Criminal Justice Impact Conference has not yet analyzed this bill.

Regarding trafficking in slot machines or devices, the bill:

- Requires all fines imposed and collected pursuant to these provisions to be deposited into the Pari-mutuel Wagering Trust Fund; and
- Authorizes such funds to be used for the enforcement of chapters 546, 550, 551, and 849, F.S., by the Commission.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 17, 2024, the Regulatory Reform & Economic Development Subcommittee adopted a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Removes the provision that exempted the Commission from chapter 255, F.S.
- Revises the penalty for keeping an illegal gambling house.
- Removes the provision that creates a rebuttable presumption that the presence of one or more slot machines at a house, room, booth, tent, shelter or place is being illegally rented for gambling or gaming purposes and subject to a third degree felony for keeping an illegal gambling house.
- Removes provisions that increase the penalties for:
 - Allowing a minor, a mentally incompetent person, or a person under guardianship to gamble.
 - A licensed pool hall owner that allows persons to play for money.
 - Illegal lottery offenses.
- Revises penalties for the manufacture, sale, and possession of illegal slot machines.
- Increases penalties for making false or misleading statements regarding legality of slot machines to facilitate sale.
- Creates penalties for transporting persons to facilitate illegal gambling.

- Revises bail funding guidelines for courts to consider.
- Revises the offense severity ranking chart in the criminal punishment code.
- Preempts local governments from enacting or enforcing ordinances or local rules relating to gaming, gambling, lotteries, or any activities described in s. 546.10 or ch. 849, except as otherwise expressly provided by the state constitution or general law.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.