

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 189 Gaming Control

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

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1046

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	16 Y, 4 N, As CS	Butcher	Kramer

### 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. 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 other 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 machines used are similar to regulated gambling devices, but can be manipulated by the operators to fraudulently control the outcome and ratio of winnings. The operations (adult arcades or internet cafes) target vulnerable populations, and are often tied to other criminal activity, including money laundering, drug trafficking, and violent crime. The Division, along with local law enforcement, have conducted numerous enforcement actions, including raids, resulting in arrests and closures; however, the activity persists. According to the Commission, because many of the criminal penalties related to illegal gambling are relatively minor, they do not deter the activity and adult arcades continue operating illegal slot machines across the state.

CS/CS/HB 189 revises specified criminal penalties and creates new crimes related to illegal gambling, as follows:

- Amends s. 843.08, F.S., to prohibit falsely impersonating personnel or representatives of the Commission.
- Amends s. 849.01, F.S., to increase the penalty for keeping an illegal gambling house from a second degree misdemeanor to a third degree felony.
- Amends s. 849.15, F.S., to increase the penalty for manufacturing, selling, or possessing illegal slot machines from a second degree misdemeanor to a first degree misdemeanor, and to a felony if committed by a manager, or by another person with a prior conviction for the offense, after receiving specified notice.
- Creates s. 849.155, F.S., to prohibit trafficking in more than 15 illegal slot machines or any parts thereof as a first degree felony and to require a court to impose specified fines upon a conviction.
- Creates s. 849.157, F.S., to prohibit making a false or misleading statement to facilitate the sale of illegal slot machines as a third degree felony, and a second degree felony when a violation involves five or more machines.
- Creates s. 849.47, F.S., to prohibit transporting five or more persons to facilitate illegal gambling as a first degree misdemeanor, and a third degree felony if a minor, a person 65 or older, or 12 or more persons are transported.
- Creates s. 849.48, F.S., to prohibit certain gambling or gaming advertisements as a first degree misdemeanor.
- Creates s. 849.49, F.S., to prohibit 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.
- Amends s. 903.046, F.S., to require a court to consider the amount of currency seized in connection with certain gambling violations when determining bail conditions.
- Amends s. 921.0022, F.S., to list and revise rankings of specified gaming offenses on the Criminal Punishment Code's offense severity ranking chart (OSRC).

The bill may have an indeterminate positive impact on jail and prison beds and may have a positive fiscal impact on the Commission which may see an increase in revenues resulting from confiscation of contraband and receipt of 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:** h0189c.JDC

**DATE:** 2/22/2024

# 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.<sup>1</sup> 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:<sup>2</sup>

- 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-mutuel<sup>3</sup> wagering;<sup>4</sup>
- 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;<sup>5</sup> and
- Cardrooms<sup>6</sup> at certain pari-mutuel facilities.

Under the Florida Contraband Forfeiture Act,<sup>7</sup> 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.<sup>8</sup>

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<sup>1</sup> S. 849.08, F.S.

<sup>2</sup> 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 Feb. 21, 2024).

<sup>3</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>4</sup> *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

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

<sup>6</sup> 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.”

<sup>7</sup> Ss. 932.701-932.706, F.S., comprise the Florida Contraband Forfeiture Act.

<sup>8</sup> S. 849.36, F.S.

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

## 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.<sup>15</sup> 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.<sup>16</sup>

The Division of Gaming Enforcement (Division) is a criminal justice agency<sup>17</sup> tasked with the enforcement of Florida's gambling laws to combat illegal gambling activities.<sup>18</sup> 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 whose primary responsibility is investigating illegal gambling.<sup>19</sup>

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 other law of this state.<sup>20</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.<sup>21</sup>

Such officers have the authority, without a 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.<sup>22</sup>

The Division and its investigators are specifically authorized to seize, store, and test any contraband<sup>23</sup> in accordance with the Florida Contraband Forfeiture Act.<sup>24</sup>

According to the Commission, the Division:<sup>25</sup>

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<sup>9</sup> S. 849.085, F.S.

<sup>10</sup> S. 849.0931, F.S.

<sup>11</sup> S. 849.0935, F.S.

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

<sup>13</sup> S. 849.141, F.S.

<sup>14</sup> S. 546.10, F.S.

<sup>15</sup> See ss. 16.71-16.716, F.S.

<sup>16</sup> S. 285.710, F.S.

<sup>17</sup> S. 16.711(1), F.S.

<sup>18</sup> 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 Feb. 21, 2024).

<sup>19</sup> Florida Gaming Control Commission, *Gaming Enforcement*, <https://flgaming.gov/enforcement/> (last visited Feb. 21, 2024).

<sup>20</sup> S. 16.711(3), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 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.”

<sup>24</sup> S. 16.711(4), F.S.

<sup>25</sup> *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.”<sup>26</sup>

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.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

## 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)

<sup>26</sup> 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 Feb. 21, 2024).

<sup>27</sup> 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 Feb. 21, 2024).

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

<sup>29</sup> 15 U.S.C. § 1171(a).

<sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup>

Allied Veterans operated centers out of about 50 strip malls throughout Florida. Prosecutors said the centers were mini-casinos, and most people used the pretext of buying Internet time to actually use the computers to gamble. Defense attorneys said the centers offered sweepstakes, not gambling.<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

As a result of the arrests and failure to obtain convictions, 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.<sup>36</sup>

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.<sup>37</sup>

## Recent Activity

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<sup>31</sup> 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 Feb. 21, 2024).

<sup>32</sup> The National Registry of Exonerations, *Kelly Mathis*, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5122> (last visited Feb. 21, 2024).

<sup>33</sup> Larry Hannan, *Allied Veterans of the World: A massive scandal -- or just overreach?*, *The Florida Times Union* (Feb. 21, 2015), <https://www.jacksonville.com/story/news/crime/2015/02/22/allied-veterans-scandal-didnt-live-its-billing/15651951007/> (last visited Feb. 21, 2024).

<sup>34</sup> S. 849.094, F.S.

<sup>35</sup> Eileen Kelley, *State Attorney General's Office drops Allied Veterans charges against embattled Jacksonville lawyer*, *The Florida Times Union* (Mar. 16, 2017), <https://www.jacksonville.com/story/news/crime/2017/03/16/state-attorney-general-s-office-drops-allied-veterans-charges-against/15746477007/> (last visited Feb. 21, 2024).

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

<sup>37</sup> 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.”<sup>38</sup>

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.”<sup>39</sup>

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 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 warning letter initially mailed to each arcade.<sup>40</sup>

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.<sup>41</sup>

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

- The scope of the problem is much larger than initially anticipated.
- There are significant adverse harms associated with the activity.
- Successfully shutting down such businesses 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.<sup>43</sup>

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:<sup>44</sup>

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

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<sup>38</sup> 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 Feb. 21, 2024).

<sup>39</sup> *Id.*

<sup>40</sup> 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 Feb. 21, 2024).

<sup>41</sup> *Id.*

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

<sup>43</sup> 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 visited Feb. 21, 2024).

<sup>44</sup> *Id.*

- 10 grams of methamphetamine.

## Slot Machines

In Florida, a slot machine is defined as a machine or device that:<sup>45</sup>

- 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.<sup>46</sup>

Slot machines are only authorized in licensed pari-mutuel facilities located in Miami-Dade and Broward counties and on tribal property.<sup>47</sup> At any location other than 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.”<sup>48</sup>

A person who violates the prohibitions<sup>49</sup> against manufacturing, selling, or possessing slot machines or devices commits a:

- Second degree misdemeanor upon a first conviction.<sup>50</sup>
- First degree misdemeanor upon a second conviction.<sup>51</sup>
- Third degree felony upon a third or subsequent conviction, and the person is deemed a “common offender.”<sup>52</sup>

Unlicensed slot machines are illegal in Florida and are considered “contraband.” Relating to contraband, Florida law specifies, “the right of property in and to any [illegal slot machine or device] and to all money and other things of value therein, is declared not to exist in any person, and...shall be forfeited...to the county in which the seizure was made.”<sup>53</sup>

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.<sup>54</sup>

Pursuant to the federal Johnson Act, Florida law allows the 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.<sup>55</sup>

## False Personation

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<sup>45</sup> S. 849.16(1), F.S.

<sup>46</sup> S. 849.16(3), F.S.

<sup>47</sup> S. 551.101, F.S.

<sup>48</sup> S. 849.15(1)(a), F.S.

<sup>49</sup> Ss. 849.15, F.S. – 849.22, F.S.

<sup>50</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 or 775.083, F.S.

<sup>51</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 or 775.083, F.S.

<sup>52</sup> S. 849.23, F.S. A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>53</sup> S. 849.19, F.S.

<sup>54</sup> S. 849.12, F.S.

<sup>55</sup> S. 849.15(2), F.S.

Section 843.08, F.S., 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).<sup>56</sup> The list of officers and individuals who may not be falsely personated include:

- Firefighters;
- 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 attorneys or assistant state attorneys;
- The statewide prosecutor or assistant statewide prosecutors;
- State attorney investigators;
- Coroners;
- Police officers;
- Lottery special agents or lottery investigators;
- Beverage enforcement agents;
- School guardians;
- Security officers;
- Members of the Florida Commission on Offender Review or any administrative aides or supervisors employed by the commission; and
- Any personnel or representatives of the Department of Law Enforcement, or federal law enforcement officers as defined in s. 901.1505, F.S.<sup>57</sup>

Generally, a person who violates s. 843.08, F.S., commits a third degree felony. A person who poses as a specified officer during the course of the commission of a felony commits a second degree felony.<sup>58</sup>

Section 843.08, F.S., does not include Commission personnel or representatives in the list of officers and individuals who may not be falsely personated.

### **Keeping a Gambling House**

Under s. 849.01, F.S., it is a second degree misdemeanor to keep a gambling house.<sup>59</sup> Specifically, a person is guilty of this offense if he or she:

- Habitually keeps, exercises, or maintains, for the purpose of gaming or gambling:<sup>60</sup>
  - 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.<sup>61</sup>

### **Criminal Punishment Code**

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<sup>56</sup> S. 843.08, F.S.

<sup>57</sup> 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.”

<sup>58</sup> A second degree felony is punishable by up to 15 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>59</sup> S. 849.01, F.S.

<sup>60</sup> 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.).

<sup>61</sup> See ss. 775.082 and 775.083, F.S.



The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.<sup>62</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart<sup>63</sup> (OSRC) or by default.<sup>64</sup> Judges must use the Code worksheet to compute a sentence score for each felony offender.<sup>65</sup>

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>66</sup> Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points may be added for victim injury, and increase based on the type of injury and severity.<sup>67</sup> 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.<sup>68</sup> If an offense is unlisted on the OSRC, the Code provides a ranking based on felony level.<sup>69</sup> For example, an unranked third degree felony is a level 1 offense.<sup>70</sup>

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.<sup>71</sup> Absent mitigation,<sup>72</sup> 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.<sup>73</sup>

The OSRC ranks the following third degree felony gaming violations as a Level 1 offense:<sup>74</sup>

- Set up, promote, or conduct any lottery for money or for anything of value;<sup>75</sup>
- Dispose of any money or other property of any kind whatsoever by means of any lottery;<sup>76</sup>
- 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;<sup>77</sup>
- 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;<sup>78</sup> and
- Engaging in bookmaking.<sup>79</sup>

## Bail Determinations

The purpose of bail 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.<sup>80</sup>

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<sup>62</sup> S. 921.002, F.S.

<sup>63</sup> S. 921.0022, F.S.

<sup>64</sup> 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.

<sup>65</sup> S. 921.0024, F.S.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> S. 921.0023, F.S.

<sup>70</sup> *Id.*

<sup>71</sup> S. 921.0022(2), F.S.

<sup>72</sup> 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.

<sup>73</sup> S. 921.0022(2), F.S.

<sup>74</sup> S. 921.022(3)(a), F.S.

<sup>75</sup> S. 849.09(1)(a)-(d), F.S.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> S. 849.25(2), F.S.

<sup>80</sup> S. 903.046(1), F.S.

Under s. 903.046, F.S., when determining whether to release a defendant on bail or other conditions, and what that bail or other conditions of release may be, the court is required to consider certain factors, including:<sup>81</sup>

- 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.

Section 903.046, F.S., currently does 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**

CS/CS/HB 189 amends s. 843.08, F.S., to add Commission personnel or representatives to the list of officers and individuals who may not be falsely personated. Under the bill, a person who falsely personates a Commission personnel or representative commits a third degree felony, and a second degree felony if such false personation occurs during the commission of another felony.

#### **Keeping a Gambling House**

The bill amends s. 849.01, F.S., to increase the penalty for keeping an illegal gambling house from a second degree misdemeanor to a third degree felony, and ranks the offense as a Level 3 offense on the OSRC.

#### **Slot Machines**

The bill amends s. 849.15, F.S., prohibiting the manufacture, sale, or possession of illegal slot machines, to:

- Increase general violations from a second degree misdemeanor to a first degree misdemeanor.
- Create a new third degree felony, ranked as a Level 3 offense on the OSRC, if a person has received notice from the Commission or any other law enforcement agency in Florida that the operations at the establishment, premises, or other location are in violation of s. 849.15(2), F.S., and commits a violation of s. 849.15(2), F.S., by failing to cease and desist such operations within 48 hours of receiving notice, and:
  - At the time of the violation the person is knowingly acting as a manager; or
  - The person has one prior conviction for a violation of s. 849.15, F.S.
- Create a new second degree felony, ranked as a Level 5 offense on the OSRC, if a person has received notice from the Commission or any other law enforcement agency in Florida that the operations at the establishment, premises, or other location are in violation of s. 849.15(2), F.S., and commits a violation of s. 849.15(2), F.S., by failing to cease and desist such operations within 48 hours of receiving notice, and:
  - At the time of the violation the person is knowingly acting as a manager; and
  - The violation involves five or more slot machines or devices; or
  - The person has two or more prior convictions for a violation of s. 849.15, F.S.
- Define "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."

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<sup>81</sup> S. 903.046(2), F.S.  
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- Define "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."

The bill creates s. 849.155, F.S., prohibiting trafficking in slot machines or devices, to:

- Create a first degree felony,<sup>82</sup> ranked as a Level 7 offense on the OSRC, for knowingly selling, purchasing, manufacturing, transporting, delivering, or bringing into this state more than 15 slot machines or devices or any part thereof; and requires a court to order a person convicted of such a violation to pay a:
  - \$100,000 fine, if the offense involved more than 15, but less than 25 slot machines or devices or any parts thereof.
  - \$250,000 fine, if the offense involved 25 or more, but less than 50 slot machines or devices or any parts thereof.
  - \$500,000 fine, if the offense involved 50 or more slot machines or devices or any parts thereof.
- Require all fines imposed and collected under s. 849.155, F.S., to be deposited into the Pari-mutuel Wagering Trust Fund and authorize such funds to be used for the enforcement of chapters 546, 550, 551, and 849, F.S., by the Commission.

The bill creates s. 849.157, F.S., to prohibit a person from making false or misleading statements to facilitate the sale of illegal slot machines, as a:

- Third degree felony, ranked as a Level 3 offense on the OSRC, if a person knowingly and willfully:
  - Makes 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
  - Disseminates 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, ranked as a Level 5 offense on the OSRC, 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 creates s. 849.47, F.S., to create a:

- First degree misdemeanor for knowingly and willfully for profit or hire transporting, or procuring the transportation of, five or more other persons into or within this state when a person knows or reasonably should know such transportation is for the purpose of facilitating illegal gambling.
- Third degree felony, ranked as a Level 3 offense on the OSRC, if the violation includes the transport, or procurement of transportation of:
  - A minor or a person 65 years of age or older; or
  - 12 or more persons.

For purposes of s. 849.47, F.S., 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 creates s. 849.48, F.S., to prohibit, except as otherwise specifically authorized by law:

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<sup>82</sup> A first degree felony is punishable by up to 30 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.  
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- Knowingly and intentionally making, publishing, disseminating, circulating or placing before the public, or causing, 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 the person knows or reasonably should know that such material will be used for the purpose of promoting or facilitating illegal gambling.

The bill:

- Makes a violation of the prohibition a first degree misdemeanor.
- Specifies that nothing in s. 849.48, F.S., prohibits 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 creates s. 849.49, F.S., to prohibit 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, general law, or special law.

### **Bail Determinations**

The bill amends s. 903.046, F.S., to require a court 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 other conditions of release may be.

### **Criminal Punishment Code**

The bill also amends s. 921.0022, F.S., to increase the OSRC ranking for specified current gaming offenses, including:

- Bookmaking under s. 849.25(2), F.S., from a Level 1 to a Level 3 offense.
- Bookmaking under s. 849.25(3), F.S., second or subsequent violation, from a Level 4 to a Level 5 offense.
- Offenses related to conducting an unlawful lottery under s. 849.09(1)(a)-(d), F.S., from a Level 1 to a Level 3 offense.
- Offenses related to conducting an unlawful lottery under s. 849.09(1)(e)-(k), F.S., second or subsequent violation, from a Level 1 to a Level 3 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, etc.

**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 help to prevent or reduce illegal gambling, which may protect vulnerable populations and reduce secondary criminal activity, including money laundering, drug trafficking, and violent crime.

### D. FISCAL COMMENTS:

The fiscal impact to the state and local government is indeterminate. The bill may have an indeterminate positive impact on the jail and prison bed population by creating new gaming offenses, increasing penalties for specified current gaming offenses, and listing specified gaming offenses on the OSRC, which may result in increased admissions to jail and prison facilities and offenders serving longer terms of incarceration in such facilities.

The bill also creates new criminal fines for specified 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.

Specifically, the Commission may experience an increase in revenues resulting from increased confiscation of contraband under the bill. The bill also requires all fines imposed and collected for violations of trafficking in slot machines or devices to be deposited into the Pari-mutuel Wagering Trust Fund and authorizes the use of such funds by the Commission of the enforcement of chapters 546, 550, 551, and 849, F.S.

The Criminal Justice Impact Conference (CJIC) reviewed the bill on February 12, 2024, and noted that while a large number of offenders were arrested for misdemeanor gaming offenses in Fiscal Year 2022-2023, the amount of guilty/convicted charges and adjudications withheld were minimal. According to

CJIC, it is not known how increasing specified misdemeanors to felonies, or the addition of the other felonies, will impact prison beds. CJIC adopted a positive indeterminate estimate for the bill.<sup>83</sup>

### 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.

On February 21, 2024, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Made technical changes to correct a cross reference in the bill and clarify which elements apply to specified gaming offenses for managers and persons with prior slot machine offense convictions.

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<sup>83</sup> CJIC, *Narrative Analyses of Adopted Impacts* (Feb. 12, 2024), <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB189.pdf> (last visited Feb. 21, 2024).

- Specified that a person must be knowingly acting as a manager to commit specified slot machine offenses.
- Required that a person receive notice from the Commission or any other law enforcement agency in Florida that the operations at the establishment, premises, or other location are in violation of s. 849.15(2), F.S., and commit a violation of s. 849.15(2), F.S., by failing to cease and desist such operations within 48 hours of receiving notice, before it can be proven that the person committed a specified third or second degree felony slot machine offense.
- Added special laws to the list of exceptions under the bill's preemption clause.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.