

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 804

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government and Senator Hutson

SUBJECT: Gaming Licenses and Permits

DATE: February 23, 2024      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Kraemer/Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Fav/CS</u>
3.	<u>Kraemer</u>	<u>Twogood</u>	<u>RC</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 804 revises gaming permitting and licensing procedures, including the method for serving official communications and administrative complaints upon permitholders and licensees licensed under chs. 550 and 551, F.S., (Pari-mutuel Wagering and Slot Machines), by the Florida Gaming Control Commission (commission).

The bill provides that the commission may also deny a license to, or revoke, suspend, or place conditions upon or restrictions on a license of, any person who has been subject to a provisional suspension or period of ineligibility by the federal Horseracing Integrity and Safety Authority, or on the person suspended or ineligible for licensing related to the finding of a prohibited substance in an animal's hair or bodily fluids. The bill requires, if an occupational license is summarily suspended, the commission to offer the licensee a post-suspension hearing within 72 hours after commencement of the suspension.

The bill authorizes the commission to deny an application for license, or to suspend or revoke a license, if an applicant for a license or a licensee has falsely sworn, in a signed oath or affirmation, to a material statement, including, but not limited to, the criminal history of the applicant or licensee.

Under the bill, the commission is authorized to waive certain restrictions related to slot machine occupational licensing, similar to the waiver authority in current law for pari-mutuel wagering

occupational licensing. Current law authorizes the commission to deny, revoke, or refuse to renew a slot machine occupational license if the applicant or the licensee has been convicted of a felony or misdemeanor in Florida or another state or under federal law when the criminal conviction is related to gambling or bookmaking.<sup>1</sup>

Under the bill, the commission will be able to waive the restriction on criminal convictions for slot machine licenses, if the applicant establishes that the applicant:

- Is of good moral character;
- Has been rehabilitated;
- The criminal conviction is not related to slot machine gaming; and
- The criminal conviction is not a capital offense.

The bill has no fiscal impact to the state.<sup>2</sup> See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

## II. Present Situation:

### Background

In general, gambling is illegal in Florida.<sup>3</sup> Chapter 849, F.S., prohibits keeping a gambling house,<sup>4</sup> running a lottery,<sup>5</sup> or the manufacture, sale, lease, play, or possession of slot machines.<sup>6</sup> However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel<sup>7</sup> wagering at licensed greyhound and horse tracks and jai alai frontons;<sup>8</sup>
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;<sup>9</sup>
- Cardrooms<sup>10</sup> at certain pari-mutuel facilities;<sup>11</sup>

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<sup>1</sup> The term “bookmaking” is defined in s. 849.25, F.S., to mean “the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever.”

<sup>2</sup> See Florida Gaming Control Commission, *2024 Agency Legislative Bill Analysis for SB 804* at 6 (Jan. 11, 2024) (on file with the Senate Committee on Regulated Industries).

<sup>3</sup> See s. 849.08, F.S.

<sup>4</sup> See s. 849.01, F.S.

<sup>5</sup> See s. 849.09, F.S.

<sup>6</sup> Section 849.16, F.S.

<sup>7</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>8</sup> See ch. 550, F.S., relating to the regulation of pari-mutuel activities.

<sup>9</sup> See FLA. CONST., art. X, s. 23, and ch. 551, F.S.

<sup>10</sup> Section 849.086, F.S. See s. 849.086(2)(c), F.S., which defines “cardroom” to mean “a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility.”

<sup>11</sup> See Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023* (Annual Report), at p. 15, at <https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf> (last visited Jan. 10, 2024), which states that of 29 licensed permitholders, 26 operated at a pari-mutuel facility.

- The state lottery authorized by section 15 of Article X of the State Constitution and established under ch. 24, F.S.;<sup>12</sup>
- Skill-based amusement games and machines at specified locations as authorized by s. 546.10, F.S., the Family Amusement Games Act;<sup>13</sup> and
- The following activities, if conducted as authorized under ch. 849, relating to Gambling, under specific and limited conditions:
  - Penny-ante games;<sup>14</sup>
  - Bingo;<sup>15</sup>
  - Charitable drawings;<sup>16</sup>
  - Game promotions (sweepstakes);<sup>17</sup> and
  - Bowling tournaments.<sup>18</sup>

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.<sup>19</sup>

The 1968 State Constitution states that “[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . .” are prohibited.<sup>20</sup> A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.<sup>21</sup>

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

In 2021, the Legislature updated Florida law for authorized gaming in the state, and for enforcement of the gambling laws and other laws relating to authorized gaming.<sup>22</sup> The Office of

<sup>12</sup> Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery; s. 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

<sup>13</sup> See s. 546.10, F.S.

<sup>14</sup> See s. 849.085, F.S.

<sup>15</sup> See s. 849.0931, F.S.

<sup>16</sup> See s. 849.0935, F.S.

<sup>17</sup> See s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>18</sup> See s. 849.141, F.S.

<sup>19</sup> See s. 550.1625(1), F.S., “. . .legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state.” See also, *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states “Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right,” citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936), and *Zimmerman v. State of Florida, Fla. Gaming Control Comm’n*, \_\_\_So.3d \_\_\_ (Fla. 5th DCA Jan. 12, 2024) (*Case No. 5D23-1062; not final until disposition of motions as set forth in the opinion*).

<sup>20</sup> The pari-mutuel pools that were authorized by law on the effective date of the State Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

<sup>21</sup> The Department of the Lottery is authorized by s. 15, Art. X of the State Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

<sup>22</sup> See ch. 2021-268, Laws of Fla., (Implementation of 2021 Gaming Compact between the Seminole Tribe of Florida and the State of Florida); ch. 2021-269, Laws of Fla., (Gaming Enforcement), ch. 2021-270, Laws of Fla., (Public Records and Public Meetings), and 2021-271, Laws of Fla., (Gaming), as amended by ch. 2022-179, Laws of Fla., (Florida Gaming Control Commission). Conforming amendments are made to the section in ch. 2022-7, Laws of Fla., (Reviser’s Bill) and ch. 2023-8, Laws of Fla., (Reviser’s Bill).

Statewide Prosecution in the Department of Legal Affairs is authorized to investigate and prosecute, in addition to gambling offenses, any violation of chs. 24, 285 (part II), 546, 550, 551, or 849, F.S., (State Lotteries, Gaming Compact, Amusement Facilities, Pari-mutuel Wagering, Slot Machines, and Gambling), which are referred to the Office of Statewide Prosecution by the Florida Gaming Control Commission (commission).<sup>23</sup>

In addition to the enhanced authority of the Office of Statewide Prosecution, the commission was created<sup>24</sup> within the Department of Legal Affairs. The commission has two divisions, including the Division of Gaming Enforcement (DGE), and the Division of Pari-mutuel Wagering (DPMW) which was transferred from the Department of Business and Professional Regulation effective July 1, 2022 (as discussed below).

The commission must do all of the following:<sup>25</sup>

- Exercise all of the regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the State Constitution or law, excluding state lottery games as authorized by the State Constitution.
- Establish procedures consistent with ch. 120, F.S., the Administrative Procedure Act, to ensure adequate due process in the exercise of the commission's regulatory and executive functions.
- Ensure that the laws of this state are not interpreted in any manner that expands the activities authorized in chs. 24, 285 (part II), 546, 550, 551, or 849, F.S.
- Review the rules and regulations promulgated by the Seminole Tribal Gaming Commission for the operation of sports betting and propose to the Seminole Tribe Gaming Commission any additional consumer protection measures it deems appropriate. The proposed consumer protection measures may include, but are not limited to, the types of advertising and marketing conducted for sports betting, the types of procedures implemented to prohibit underage persons from engaging in sports betting, and the types of information, materials, and procedures needed to assist patrons with compulsive or addictive gambling problems.
- Evaluate, as the state compliance agency or as the commission, information that is reported by sports governing bodies or other parties to the commission relating to:
  - Any abnormal betting activity or patterns that may indicate a concern about the integrity of a sports event or events;
  - Any other conduct with the potential to corrupt a betting outcome of a sports event for purposes of financial gain, including, but not limited to, match fixing; suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, or use of false identification; and
  - The use of data deemed unacceptable by the commission or the Seminole Tribal Gaming Commission.
- Provide reasonable notice to state and local law enforcement, the Seminole Tribal Gaming Commission, and any appropriate sports governing body of non-proprietary information that

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<sup>23</sup> Section 16.56(1)(a), F.S.

<sup>24</sup> Section 16.71, F.S.

<sup>25</sup> Section 16.712, F.S. The commission also administers the Pari-mutuel Wagering Trust Fund. *See s. 16.71(6), F.S.*

may warrant further investigation of nonproprietary information by such entities to ensure integrity of wagering activities in the state.

- Review any matter within the scope of the jurisdiction of the commission.
- Review the regulation of licensees, permitholders, or persons regulated by the commission and the procedures used by the commission to implement and enforce the law.
- Review the procedures of the commission which are used to qualify applicants applying for a license, permit, or registration.
- Receive and review violations reported by a state or local law enforcement agency, the Department of Law Enforcement, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of the Lottery, the Seminole Tribe of Florida, or any person licensed under chs. 24, 285 (part II), 546, 550, 551, or 849, F.S., and determine whether such violation is appropriate for referral to the Office of Statewide Prosecution.
- Refer criminal violations of chs. 24, 285 (part II), 546, 550, 551, or 849, F.S., to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.
- Exercise all other powers and perform any other duties prescribed by the Legislature, and adopt rules to implement the above.

### ***Commissioners***

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

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

Section 16.711, F.S., sets forth the duties of the Division of Gaming Enforcement (DGE) within the commission.<sup>26</sup> The DGE is a criminal justice agency, as defined in s. 943.045, F.S. The commissioners must appoint a director of the DGE who is qualified by training and experience in law enforcement or security to supervise, direct, coordinate, and administer all activities of the DGE.<sup>27</sup>

The DGE director and all investigators employed by the DGE must meet the requirements for employment and appointment provided by s. 943.13, F.S., and must be certified as law enforcement officers, as defined in s. 943.10(1), F.S. The DGE director and such investigators must be designated law enforcement officers and must have the power to detect, apprehend, and arrest for any alleged violation of chs. 24, 285 (part II), 546, 550, 551, or 849, F.S., or any rule adopted pursuant thereto, or any law of this state.<sup>28</sup>

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<sup>26</sup> For a summary of DGE investigations and actions in Fiscal Year 2022-2023, see Annual Report, *supra* n. 11 at p.5.

<sup>27</sup> Section 16.711(2), F.S.

<sup>28</sup> Section 16.711(3), F.S.

Such law enforcement officers may enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any necessary equipment, and such entry does not constitute a trespass. In any instance in which there is reason to believe that a violation has occurred, such officers have the authority, without warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring.<sup>29</sup>

Further, any such officer may, consistent with the United States and Florida Constitutions, seize or take possession of any papers, records, tickets, currency, or other items related to any alleged violation. Investigators employed by the commission also have access to, and the right to inspect, premises licensed by the commission, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons licensed by the commission.<sup>30</sup>

The DGE and its investigators are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. The term “contraband” has the same meaning as the term “contraband article” in s. 932.701(2)(a)2., F.S.<sup>31</sup> The DGE is specifically authorized to store and test any contraband that is seized in accordance with the Florida Contraband Forfeiture Act and may authorize any of its staff to implement this provision. The authority of any other person authorized by law to seize contraband is not limited by these provisions.<sup>32</sup>

Section 16.711(5), F.S., requires the Florida Department of Law Enforcement (FDLE) to provide assistance in obtaining criminal history information relevant to investigations required for honest, secure, and exemplary gaming operations, and such other assistance as may be requested by the commission’s executive director and agreed to by FDLE’s the executive director. Any other state agency, including the DBPR and the Department of Revenue, must, upon request, provide the commission with any information relevant to any investigation conducted as described above, and the commission must reimburse any agency for the actual cost of providing any such assistance.<sup>33</sup>

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

The commission has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. The Division of Pari-Mutuel Wagering (DPMW) is a program area of the commission which is charged with the regulation of Florida’s pari-mutuel, cardroom, and slot gaming industries, as authorized by chs. 550, 551, and 849, F.S., as well as collecting and safeguarding associated revenues due to the state. The DPMW supports the commission in meeting the commission’s obligations as the State Compliance Agency

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

<sup>30</sup> *Id.*

<sup>31</sup> Section 16.711(4), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 16.711(5), F.S.

(SCA)<sup>34</sup> in carrying out the state's oversight responsibilities under the provisions of the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.<sup>35</sup>

### **Issuance of Pari-mutuel Permits and Annual Licenses**

Section 550.054, F.S., provides that any person meeting the qualification requirements of ch. 550, F.S., may apply to the commission for a permit to conduct pari-mutuel wagering. Upon approval, a permit must be issued to the applicant that indicates:

- The name of the permitholder;
- The location of the pari-mutuel facility;
- The type of pari-mutuel activity to be conducted; and
- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

A permit does not authorize any pari-mutuel performances until approved by a majority of voters in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. An application may not be considered, nor may a permit be issued by the commission or be voted upon in any county, for the conduct of:

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within 100 miles of an existing pari-mutuel facility; or
- Jai alai games within 50 miles of an existing pari-mutuel facility.

Distances are measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.<sup>36</sup>

After issuance of the permit and a ratification election, the commission may issue an annual operating license for wagering at the specified location in a county, indicating the time, place, and number of days during which pari-mutuel operations may be conducted at the specified location.<sup>37</sup> Section 550.5251, F.S., specifies the requirements for annual operating licenses to be issued to thoroughbred permitholders by March 15 of each year, including the number and dates of all performances to be conducted for the racing season commencing the following July 1.

Pursuant to s. 550.054(9)(b), F.S., the commission may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the commission, and may impose a civil penalty against the permitholder or licensee up to \$1,000 for each offense.

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<sup>34</sup> See s. 285.710, F.S. Until June 30, 2022, the DPMW was designated as the SCA, prior to that division's transfer to the commission from the Department of Business and Professional Regulation, as set forth in ch. 2021-269, Laws of Fla.

<sup>35</sup> See s. 285.710(3)(b), F.S., which provides that the Gaming Compact between the Seminole Tribe of Florida and the State of Florida (2021 Gaming Compact), executed by the Governor and the Tribe on April 23, 2021, as amended on May 17, 2021, is ratified and approved. The 2021 Gaming Compact may be accessed at <https://www.flgov.com/wp-content/uploads/pdfs/2021%20Gaming%20Compact.pdf> (last visited Jan. 10, 2024). The May 17, 2021 amendment states that Part XVIII.A [relating to certain negotiations within 36 months] is deleted in its entirety and replaced with "Reserved", and that the Seminole Tribe of Florida agrees that it will not commence Sports Betting, as defined in Park III.CC, prior to October 15, 2021. (on file with the Senate Regulated Industries Committee).

<sup>36</sup> See s. 550.054(2), F.S.

<sup>37</sup> See s. 550.054(9)(a), F.S.

Section 550.054(14), F.S., authorizes conversion of jai alai permits to greyhound permits, under limited conditions.

Section 550.054(15), F.S., provides that a permit for the conduct of pari-mutuel wagering and associated cardroom or slot machine licenses may only be held by a:

- Permitholder who held an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021 or who holds a permit issued pursuant to s. 550.3345, F.S.; or
- Purchaser, transferee, or assignee of a valid permit for the conduct of pari-mutuel wagering if approved by the commission before such purchase, transfer, or assignment and provided that the commission does not approve or issue an additional permit for the conduct of pari-mutuel wagering.

Under current law, no additional permits for the conduct of pari-mutuel wagering may be approved or issued by the commission, and a pari-mutuel permit may not be converted to another class of permit.<sup>38</sup>

The issuance of limited thoroughbred racing permits (through conversion from a quarter horse permit) is authorized in s. 550.3345, F.S. A limited thoroughbred racing permit authorizes the conduct of live thoroughbred horseracing, with net revenues dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under ch. 550, F.S., promotion of the thoroughbred horse breeding industry, and the care of retired thoroughbred horses in Florida.

### **Slot Machine Gaming Locations and Operations**

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

Sections 551.102, 551.103, 551.104, 551.114, 551.116, and 551.121, F.S., address slot machine gaming operations, and:

- Restrict the issuance of slot machine licenses to licensed pari-mutuel permitholders, for slot machine gaming only at the address specified in the licensed permitholder's slot machine license issued for Fiscal Year 2020-2021;
- Require the licensee to be in compliance with chs. 550, F.S., relating to Pari-mutuel Wagering, and ch. 551, F.S., relating to Slot Machines;
- Require, as to thoroughbred permitholders, the conduct of a full schedule of live racing as defined in s. 550.002(10), F.S.;

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<sup>38</sup> See s. 550.054(15)(c) and (d), F.S. Pursuant to s. 550.054(15)(b), F.S., all pari-mutuel permits issued under ch. 550, F.S., that were held by permitholders on January 1, 2021, are deemed valid for the sole and exclusive purpose of satisfying all conditions for the valid issuance of the permits, if such permitholder held an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020-2021 or if such permitholder held a permit issued pursuant to s. 550.3345, F.S., relating to limited thoroughbred permits.



- Require testing of slot machines by an independent testing laboratory with demonstrated competence testing gaming machines and equipment, that is licensed by at least 10 other states; and that has not had its license suspended or revoked by any other state within the immediately preceding 10 years;
- Allow slot machine gaming areas to be open 24 hours daily throughout the year;
- Regulate the serving of alcoholic beverages to players in certain areas; complimentary or reduced-cost alcoholic beverages may not be served in slot machine gaming areas;
- Prohibit certain other actions concerning the advancement of credit, the acceptance of checks, and the placement of automated teller machines or devices; and
- Provide other requirements regarding ownership, law enforcement access, computer systems, security, records, and audits.

### Cardrooms

Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.<sup>39</sup> In Fiscal Year 2022-2023, 29 permitholders held a cardroom license.<sup>40</sup> A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.<sup>41</sup> A cardroom may be open 24 hours per day.<sup>42</sup>

Under current law, notwithstanding any other provision of law, a pari-mutuel permitholder (other than a limited thoroughbred permitholder) may not be issued a license for the operation of a cardroom if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020-2021.<sup>43</sup> For a limited thoroughbred permitholder, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least a full schedule of live racing.<sup>44</sup> An initial cardroom license may be issued to a pari-mutuel permitholder only after its facilities are in place and after it conducts its first day of pari-mutuel activities on live racing or games.<sup>45</sup>

Sections 849.086(5) and (6), F.S., provide that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of poker or dominoes.<sup>46</sup> Such games must be played in a non-banking manner,<sup>47</sup> where the participants play against each other, instead of against the house (cardroom).

<sup>39</sup> Section 849.086, F.S. Section 849.086(2)(c), F.S., defines “cardroom” to mean a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility.

<sup>40</sup> See Annual Report, *supra* n. 11 at p.15, which states that of 29 permitholders, 26 operated at a pari-mutuel facility.

<sup>41</sup> *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, states “Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right,” citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936). See s. 550.1625(1), F.S., “...legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state.”

<sup>42</sup> Section 849.086(7)(b), F.S.

<sup>43</sup> Section 849.086(5), F.S.

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

<sup>45</sup> *Id.*

<sup>46</sup> See s. 849.086(2)(a), F.S.

<sup>47</sup> *Id.*

At least four percent of the gross cardroom receipts of jai alai permitholders conducting live games must supplement greyhound purses and jai alai prize money.<sup>48</sup> Thoroughbred and harness horse racing permitholders that conduct live performances and operate a cardroom must use at least 50 percent of the monthly net proceeds from the cardroom for purses and awards, with 47 percent to supplement purses and three percent to supplement breeders' awards. Quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.<sup>49</sup>

### **Prohibition on Racing of and Wagering on Greyhounds or other Dogs**

Amendment 13 to the Florida Constitution was adopted in 2018 with 69.06 percent support of the electorate. The amendment, titled "Prohibition on Racing of and Wagering on Greyhounds or other Dogs, is codified in s. 32, Art. X of the State Constitution.<sup>50</sup> The amendment banned all racing of and wagering on live dog racing in Florida after December 31, 2020, and allowed greyhound permitholders to stop racing after December 31, 2018, without affecting other pari-mutuel activities as authorized by law, and the Legislature was directed to specify civil or criminal penalties for violations.

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

**Section 1** creates s. 16.717, F.S., to authorize the Florida Gaming Control Commission (commission) to deny an application for license, or to suspend or revoke a license if an applicant for a license or a licensee has falsely sworn, in a signed oath or affirmation, to a material statement, including, but not limited to, the criminal history of the applicant or licensee. In addition, the bill provides that such applicants and licensees are subject to other penalties as provided by law.

The bill mirrors similar authority held by the Department of Business and Professional Regulation (DBPR) under current law,<sup>51</sup> to deny an application for license, or to suspend or revoke a license. However, the authority for the taking of these actions that is in current law does not apply to the commission, notwithstanding the transfer of licensing authority to it,<sup>52</sup> and such authority is necessary to properly regulate the persons licensed to conduct pari-mutuel wagering, slot machine games, or cardroom activity in the state.

**Section 2** creates s. 16.718, F.S, to establish procedures relating to notification to the commission of applicant and licensee addresses, places of employment, and the authorized methods of service by the commission of its official communications and administrative complaints to applicants and licensees.

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<sup>48</sup> Section 849.086(13), F.S.

<sup>49</sup> See s. 849.086(13)(d), F.S.

<sup>50</sup> See <http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32> (last visited Jan. 17, 2024).

<sup>51</sup> See s. 559.791, F.S.

<sup>52</sup> Pursuant to ch. 2021-269, s. 11, Laws of Fla., a type two transfer occurred on July 1, 2022, that transferred the Division of Pari-Mutuel Wagering from the DBPR to the commission.

The bill provides that applicants and licensees are responsible for providing written notification to the commission of their current mailing address, e-mail address, and place of employment. Failure to do so constitutes a violation by an applicant, whose application may be denied for failure to provide the information. A licensee's failure to notify the commission of any change to the e-mail or mailing address of record constitutes a violation that may subject the licensee to discipline by the commission as described in s. 550.0251(10), F.S.<sup>53</sup>

As to service by the commission of its official communications, under the bill, an e-mail to an applicant's or licensee's e-mail address of record with the commission constitutes sufficient notice to applicants and licensees, notwithstanding any provision of Florida law to the contrary. The bill provides the commission with discretion to instead provide service by regular mail to the last known mailing address of an applicant or licensee, but the commission is not required to provide service by both e-mail and regular mail.

The bill further provides, as to service of an administrative complaint or other document setting forth intended or final agency action on an applicant or a licensee, the commission is only required to provide service by e-mail to the applicant's or licensee's e-mail address on record with the commission, notwithstanding any provision of law to the contrary. Under the bill, e-mail service constitutes sufficient notice to those served with an administrative complaint or any other document setting forth intended or final agency action. The commission may, in its discretion, provide service of such documents by regular mail to an applicant's or licensee's last known mailing address, but is not required to provide service by both e-mail and regular mail.

**Section 3** amends s. 550.01215, F.S., relating to annual operating licenses, to revise deadlines for submission of applications and issuance of licenses, and to revise the process for changes in a licensee's operating dates.

The bill revises the date by which a pari-mutuel permitholder must submit an application for its annual operating license, from the period between December 15 and January 4 to the period between January 15 and February 4. This may reduce errors and deficiencies related to a deadline in the first week of the year. Also, a permitholder may amend their application through March 28 instead of February 28. To address the later submission date of such applications, the bill extends the date by which the commission must issue annual operating licenses to April 15, from March 15 of each year.

In prior years, the setting of permitholder operating dates was an important aspect of horse racing, to avoid conflicting dates and improve profitability to horse owners, breeders, and racetracks, and changes were subject to review by competing permitholders. Under the bill, approval requirements relating to the procedure for a requested change in operating dates are substantially revised, as these requirements are eliminated:

- That there be no objection to the requested change from active permitholders operating within 50 miles of the permitholder requesting the change; and

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<sup>53</sup> Section 550.251, F.S., authorizes the commission to impose an administrative fine not to exceed \$1,000 for each count or separate offense (unless otherwise provided in ch. 550, F.S., relating to pari-mutuel wagering), and to suspend or revoke a permit, a pari-mutuel license, or an occupational license.

- That when such an objection is made, the commission must approve or disapprove the requested change based upon its impact on all the active permitholders located within 50 miles of the permitholder requesting the change.

The bill provides that when the commission determines to approve a change in operating dates, it has the discretion whether to take the impact of the change on state revenues into consideration. Current law provides that the commission must consider impacts on state revenues.

The bill revises the term “racing” dates to the term “performance” dates. This is a technical revision in order to also allow changes in operating dates for the conduct of jai alai games. Current law allows changes to racing dates, which is applicable only to horse racing.

**Section 4** amends s. 550.0351, F.S., relating to charity days, to remove obsolete references to “racing” from the provision.

**Section 5** amends s. 550.054, F.S., relating to applications for permits to conduct pari-mutuel wagering, to remove an obsolete reference to “racing” from the provision.

**Section 6** amends s. 550.0951, F.S., relating to daily license fees and taxes, to delete obsolete language related to daily license fees and tax rates payable on live greyhound racing that is no longer authorized to be conducted in this state.

**Section 7** amends s. 550.09515, F.S., relating to admissions taxes and rates for thoroughbred races, to delete obsolete language related to thoroughbred permitholders that did not operate during the 2001-2002 license year in a provision that expired by its own terms on July 1, 2003.

**Section 8** amends s. 550.105, F.S., relating to occupational licensing and discipline of racetrack employees. In 2020, Congress passed the Horseracing Integrity and Safety Act of 2020 (HISA) within the Consolidated Appropriations Act of 2021.<sup>54</sup> This federal legislation resulted in the creation of the Horseracing Integrity and Safety Authority (the authority), which was created for the purposes of developing and implementing a horseracing anti-doping and medication control program and racetrack safety program.<sup>55</sup> The funding for the authority comes from assessments for racing activities within each state,<sup>56</sup> and permitholders that conduct thoroughbred racing have paid those assessments.

One of the functions of the authority is to suspend individuals from Florida racetracks for violations associated with the authority’s programs.<sup>57</sup> Under current law the commission may deny a license to or revoke, suspend, or place conditions upon or restrictions on a license of any person who has been refused a license by any other state racing commission or racing authority.

The bill provides that the commission may also deny a license to or revoke, suspend, or place conditions upon or restrictions on a license of any person who has been subject to a provisional

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<sup>54</sup> Pub. L. No. 116-260.

<sup>55</sup> Section 1203, Pub. L. No. 116-260.

<sup>56</sup> *Id.*

<sup>57</sup> See the regulations promulgated by HISA for its Racetrack Safety Program (Rule Series 2000) and Equine Anti-Doping and Controlled Medication Protocol (Rule Series 3000) at <https://hisaus.org/regulations> (last visited Jan. 17, 2024).

suspension or period of ineligibility by the authority, or another such authority as may be designated by the Federal Trade Commission.

Similarly, as to the commission's authority under current law to deny, suspend, or place conditions on a license of any person who is under suspension or has unpaid fines in another jurisdiction, the bill allows such actions by the commission against the license of any person who is subject to a provisional suspension or period of ineligibility under HISA that is related to the finding of a prohibited substance in an animal's hair or bodily fluids. The bill provides that any such suspension expires on the same date that the HISA-imposed provisional suspension or period of ineligibility expires.

The bill requires, if an occupational license is summarily suspended, the commission must offer the licensee a post-suspension hearing within 72 hours after commencement of the suspension. The occupational licensee has the burden of proving by clear and convincing evidence that she or he is not subject to a provisional suspension or period of ineligibility imposed by HISA. The standard of review is whether the commission's action was an abuse of its discretion.

The bill includes technical drafting changes to eliminate obsolete references in this provision.

**Section 9** amends s. 550.125, F.S., relating to permitholder accounting requirements and the submission of annual reports, to delete obsolete language and to clarify that the required records must show cardroom gross receipts and slot machine revenue, in addition to funds contributed to pari-mutuel pools.

**Section 10** amends s. 550.3551, F.S., relating to transmission of racing and jai alai information, to authorize a licensed horse track to receive broadcasts of horseraces conducted at horse racetracks outside Florida, if the track conducted a full schedule of live racing in the preceding fiscal year. See Section VII of this analysis related to consideration of an amendment to revise this provision to authorize licensed horse tracks that are not required to conduct a full schedule of live racing under current law, to continue to receive broadcasts of horseraces conducted at horse racetracks outside Florida.

**Section 11** amends s. 550.505, F.S., relating to nonwagering permits for the conduct of horse racing when no pari-mutuel wagering occurs. The bill revises the deadline for submission of annual applications by nonwagering permitholders to the period of time between January 15 and February 4 each year for the next fiscal year (i.e., July 1 to June 30). Under current law the annual application deadline for nonwagering permitholders is before June 1, for the next calendar year (i.e., January 1 to December 31). The bill also provides for license issuance on or before April 15, consistent with the deadline for other annual licenses set forth in **Section 3** of the bill. The bill establishes a transitional period during which the commission is authorized to extend a nonwagering license during the 2024 calendar year through the 2024-2025 fiscal year, if requested by a permitholder.

**Section 12** amends s. 550.5251, F.S., relating to thoroughbred racing, to revise the date by which a thoroughbred permitholder must submit an application for its annual operating license, from the period between December 15 and January 4 to the period between January 15 and February 4. This may reduce errors and deficiencies related to a deadline in the first week of the

year. Also, a thoroughbred permitholder may amend the application through March 28 instead of February 28. To address the later submission date of such applications, the bill extends the date by which the commission must issue annual operating licenses to April 15, from March 15 of each year. These revisions conform to the revisions to s. 550.01215, F.S., made by the bill.

See **Section 3**.

**Section 13** amends s. 551.104, F.S. relating to slot machine gaming licenses, by:

- Deleting obsolete language and conforming to bill drafting conventions;
- Adding to the requirement that an independent certified accountant audit a licensee's slot machine revenues, that the accountant must be licensed under Florida law pursuant to ch. 373, F.S., relating to Public Accountancy, (revising text enacted in 2005<sup>58</sup>); and
- Requiring the audit of slot machine revenues be filed within 120 days after the end of the licensee's fiscal year, rather than 60 days after completion of its scheduled racing or games.

**Section 14** amends s. 551.107, F.S., relating to slot machine occupational licensing, to conform the power of the commission to waive certain restrictions related to slot machine occupational licensing to the power it has in current law to waive similar restrictions for pari-mutuel wagering occupational licensing under s. 550.105(5)(c), F.S. Current law authorizes the commission to deny, revoke, or refuse to renew a slot machine occupational license if the applicant or the licensee has been convicted of a felony or misdemeanor in Florida or another state or under federal law when the criminal conviction is related to gambling or bookmaking.<sup>59</sup>

The bill provides that the commission may waive the restriction on criminal convictions, if the applicant establishes that the applicant:

- Is of good moral character;
- Has been rehabilitated;
- The criminal conviction is not related to slot machine gaming; and
- The criminal conviction is not a capital offense.

### **Statutory Provisions Reenacted in the Bill**

**Sections 15 to 24** provide for the reenactment of provisions in current law, to incorporate the amendments made by the bill to s. 550.0951, F.S., relating to the payment of daily license fees and taxes on horse races and jai alai games. The statutory sections reenacted in the bill include sections:

- 212.04(2)(c), F.S., relating to admissions taxes and rates;
- 550.0351(4), F.S., relating to charity racing days;
- 550.09511(2), F.S., relating to jai alai taxes;
- 550.09512(4), F.S., relating to harness horse taxes;
- 550.09514(1) and (2)(e), F.S., relating to greyhound dogracing taxes and purse requirements;
- 550.09516(3), F.S., relating to thoroughbred racing permitholders;

<sup>58</sup> See ch. 2005-362, Laws of Fla.

<sup>59</sup> The term "bookmaking" is defined in s. 849.25, F.S., to mean "the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever."

- 550.135(1), F.S., relating to the distribution of daily licensing fees from pari-mutuel racing;
- 550.1625(2), F.S., relating to dogracing taxes;
- 550.26352(3)-(6), F.S., relating to authorizing Breeders' Cup Meet pools; and
- 550.375(4), F.S., F.S., relating to the operation of certain harness tracks.

**Section 25** provides that the bill takes effect July 1, 2024.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who hold gaming permits and licenses will be minimally impacted financially by having to comply with the procedures revised by the bill, including the method for service of official communications and administrative complaints upon permitholders and licensees licensed under chs. 550, and 551, F.S., ((Pari-mutuel Wagering and Slot Machines), by the Florida Gaming Control Commission (commission).

Licensees may be affected financially by the authority of the commission to deny a license to or revoke, suspend, or place conditions upon or restrictions on a license of any person who has been subject to a provisional suspension or period of ineligibility by the federal Horseracing Integrity and Safety Authority, or who has been suspended or ineligible for licensing related to the finding of a prohibited substance in an animal's hair or bodily fluids.

Applicants for licenses and licensees may be affected financially if the commission denies an application for license, or suspends or revokes a license if an applicant for a license or a licensee has falsely sworn to a material statement, such as the criminal history of the applicant or licensee.

Some applicants for slot machine licenses may benefit financially from the authority granted to the commission by the bill to waive certain restrictions related to slot machine occupational licensing in cases where the applicant or the licensee has been convicted of a felony or misdemeanor in Florida or another state or under federal law when the criminal conviction is related to gambling or bookmaking. Under the bill, such a waiver by the commission is possible, if the applicant establishes that the applicant is of good moral character, has been rehabilitated, the criminal conviction is not related to slot machine gaming, and the criminal conviction is not a capital offense.

**C. Government Sector Impact:**

According to the commission, there will be a “minimal decrease in expenditures due to expected decrease in use of certified mail, posting notices in local newspapers, and manhours for hand service of official communication, documents, final orders, and final agency action of the commission.”<sup>60</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 550.3551, F.S., relating to transmission of racing and jai alai information, authorizes a licensed horse track to receive broadcasts of horseraces conducted at horse racetracks outside Florida, if the track conducted a full schedule of live racing in the preceding fiscal year. The sponsor may wish to consider an amendment to revise this provision to authorize licensed horse tracks that are not required to conduct a full schedule of live racing under current law to continue to receive broadcasts of horseraces conducted at horse racetracks outside Florida. See **Section 10**.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 550.01215, 550.0351, 550.054, 550.0951, 550.09515, 550.105, 550.125, 550.3551, 550.505, 550.5251, and 551.104.

This bill creates the following sections of the Florida Statutes: 16.717 and 16.718.

This bill reenacts the following sections of the Florida Statutes: 212.04, 550.0351, 550.09511, 550.09512, 550.09514, 550.09516, 550.135, 550.1625, 550.3551, 550.26352, and 550.375.

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<sup>60</sup> See Florida Gaming Control Commission, *2024 Agency Legislative Bill Analysis for SB 804* at 6 (Jan. 11, 2024) (on file with the Senate Committee on Regulated Industries).



**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Appropriations Committee on Agriculture, Environment, and General Government on February 8, 2024:**

The committee substitute:

- Revises the title to “Gaming Licenses and Permits,” a more comprehensive description for the provisions addressed in the bill;
- Clarifies the authority of the Florida Gaming Control Commission (commission) to deny applications, and suspend or revoke licenses, if an applicant or licensee falsely swears, in a signed oath or affirmation, to material statements or criminal history information;
- Authorizes the commission to fine or suspend a permitholder’s license if all licensed racing performances do not occur;
- Authorizes the commission, notwithstanding the requirements of Florida’s Administrative Procedure Act, to summarily suspend the occupational license of any person suspended by the federal Horseracing Integrity and Safety Authority (HISA) relating to prohibited substances in an animal’s hair or bodily fluids. After an occupational licensee is summarily suspended, the commission must offer the licensee a hearing within 72 hours;
- Deletes an obsolete provision allowing permitholders to apply for performance dates that are not used by another permitholder;
- Retains current law relating to daily license fees and tax rates payable on live greyhound racing;
- Retains current law relating to a greyhound racing tax on unclaimed wagering tickets, to avoid addressing tax issues in this bill;
- Amends the authority for a licensed horse track to receive broadcasts of horseraces conducted at horse racetracks outside Florida, if the track conducted a full schedule of live racing in the preceding fiscal year;
- Includes a provision to revise the deadlines for annual license applications and amendments by thoroughbred permitholders, and for issuance of such licenses by the commission, to conform with similar deadline revisions in the bill;
- Deletes a provision authorizing the commission to waive criminal convictions of slot machine occupational licensees in certain circumstances; and
- Removes obsolete language and conforms provisions to changes made by the amendment.

**B. Amendments:**

None.