Commerce Committee

Monday, February 26, 2018
2:00 PM – 5:00 PM
Webster Hall (212 Knott)

Meeting Packet

Richard Corcoran
Speaker

Jim Boyd
Chair

The Florida House of Representatives

Commerce Committee

Richard Corcoran
Speaker

Jim Boyd
Chair

Meeting Agenda

Monday, February 26, 2018
2:00 pm – 5:00 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. **Consideration of the following bill(s):**

HB 775 Beverage Law by La Rosa

CS/HB 971 Interruption of Services by Fine

CS/HB 1211 Airboat Regulation by Abruzzo

HB 7067 Gaming by La Rosa

V. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 775 Beverage Law
SPONSOR(S): La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 2 N	Willson	Anstead
2) Commerce Committee		Willson MW	Hamon K.W.H.

SUMMARY ANALYSIS

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

The bill creates s. 561.42(15), F.S., providing that the tied house evil prohibition does not apply to a written agreement for brand naming rights, including the right to advertise collectively, between a manufacturer or importer of malt beverages and a vendor if:

- The agreement is negotiated at arm's length for no more than fair market value;
- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit;
- The agreement does not involve the sale or distribution of malt beverages;
- The vendor does not give preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer or distributor;
- A distributor does not, directly or indirectly, pay any portion of the agreement; and
- Within 10 days after execution of the agreement, the vendor files a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill prohibits a distributor from paying any portion of the brand naming rights agreement.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law, Generally

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Three-Tier System and Tied House Evil

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[6]

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[7] A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.[8] Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.[9]

---

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] s. 561.02, F.S.
[4] s. 563.01, F.S.
[5] s. 561.01(5), F.S.
[6] s. 561.14, F.S.
[7] s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[8] s. 561.22(1), F.S.
[9] ss. 563.022(14) and 561.14(1), F.S.

The three-tier system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[10] Florida's Tied House Evil Law[11] prohibits a licensed manufacturer or distributor from having any direct or indirect financial interest in any vendor, from assisting any vendor through gifts, loans, money or property of any description, and from giving any rebates of any kind whatsoever.

A manufacturer or distributor is also prohibited from:

- engaging in cooperative advertising with a vendor;
- naming a vendor in any advertisement for a malt beverage tasting; and
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer.

However, the Tied House Evil Law authorizes a manufacturer, distributor, importer or registrant of malt beverage to sell expendable retailer advertising specialties (such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like), to a vendor at a price not less than the actual cost to the industry member who initially purchased them.[12]

Violations and Penalties

Section 562.45(1), F.S., provides that the false entry of any record required under the Beverage Law or violation of the excise tax provisions, when done intentionally, is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S. For violations of the Beverage Law where no penalty is provided, first-time offenses are guilty of a misdemeanor of the second degree and a felony of the third degree for any subsequent offenses thereafter.

Section 561.29, F.S. authorizes the Division to issue civil penalties for violations of the Beverage Law and rules issued thereto. Such penalties may not exceed $1,000 per transaction. The Division is also authorized to suspend the license of a licensee that fails to pay a civil penalty.

Effect of the Bill

The bill creates s. 561.42(15), F.S., providing that the tied house evil prohibition does not apply to a written agreement for brand naming rights, including the right to advertise collectively, between a manufacturer or importer of malt beverages and a vendor if:

- The agreement is negotiated at arm's length for no more than fair market value;
- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit;
- The agreement does not involve the sale or distribution of malt beverages;
- The vendor does not give preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer or distributor;
- A distributor does not, directly or indirectly, pay any portion of the agreement; and

[10] *See* Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198 (2010), http://scholarship.law.unc.edu/nclr/vol88/iss6/6.
[11] s. 561.42(1), F.S.
[12] s. 561.42(14), F.S.

- Within 10 days after execution of the agreement, the vendor files with the division a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill provides that "a manufacturer or importer of malt beverages which is a party to a brand naming rights agreement may not, either directly or indirectly, solicit or receive from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to such agreement."

B. SECTION DIRECTORY:

Section 1 Amends s. 561.42, F.S., providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer or importer of malt beverages and a licensed vendor; providing conditions for the exemption; prohibiting the manufacturer or importer from soliciting or receiving any portion of certain payments from its distributors.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. The bill requires DBPR to register financial transactions between manufacturers and vendors. It is unclear at this point how many transactions will occur and it is unclear what, if anything, the bill requires DBPR to do with the transactions once they are received.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and importers of malt beverages and qualified vendors will no longer be prohibited from entering into agreements for brand naming rights under certain circumstances. This relaxation of the Tied House Evil Law may allow certain licensees to benefit financially while negatively impacting other licensees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It may prove difficult for DBPR to determine whether a given financial transaction will, in the future, potentially limit the sale of alcoholic beverages from another manufacturer. Similarly, it is unclear how one would prove that a given transaction has or has not indirectly limited the alcoholic beverage sales of another manufacturer.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Beverage Law; amending s. 561.42, F.S.; providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer or importer of malt beverages and a licensed vendor; providing conditions for the exemption; prohibiting the manufacturer or importer of malt beverages from soliciting or receiving any portion of certain payments from its distributors; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (15) is added to section 561.42, Florida Statutes, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(15)(a) Notwithstanding any other provision of this section, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand naming rights, including the right to advertise cooperatively,

negotiated at arm's length for no more than fair market value if:

1. The vendor operates places of business where consumption on the premises is permitted, the premises are located within a theme park complex consisting of at least 25 contiguous acres owned and controlled by the same business entity, and the complex contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex.

2. Such agreement does not involve, either in whole or in part, the sale or distribution of malt beverages between the manufacturer or importer, or its distributor, and a vendor.

3. The vendor does not give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer with whom the vendor has entered into such agreement.

4. Such agreement does not limit, either directly or indirectly, the sale of alcoholic beverages of another manufacturer or importer, or distributor.

5. Within 10 days after the execution of such agreement, the vendor files with the division a description of the agreement which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

(b) A manufacturer or importer of malt beverages which is a party to a brand naming rights agreement may not, either

directly or indirectly, solicit or receive from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to such agreement.

Section 2. This act shall take effect July 1, 2018.

COMMERCE COMMITTEE

HB 775 by Rep. La Rosa
Beverage Law

AMENDMENT SUMMARY
February 26, 2018

Amendment 1 by Rep. La Rosa (strike-all):

Clarifies certain terms and prohibitions contained in the tied-house evil law.

Clarifies certain exemptions to the prohibition against manufacturers and distributors rendering financial aid or assistance to vendors.

Clarifies the exemption for brand-naming rights and cooperative advertisement agreements by:

- Defining the term "negotiated at arm's length",
- Specifying that such agreements are between a manufacturer and a vendor only, and in no way obligate or place any responsibility on a distributor, and
- Creating civil penalties for the violation of the regulations governing cooperative advertising agreements.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee
Representative La Rosa offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present subsection (13) of section 561.42, Florida Statutes, is redesignated as subsection (14), subsections (1), (8), (11), and (12) and paragraph (b) of present subsection (14) of that section are amended, and a new subsection (13) and subsection (16) are added to that section, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(1) A ~~No~~ manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, nor any broker, sales agent, or sales person thereof, may not ~~shall~~ have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor may ~~shall~~ such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, directly or indirectly assist any vendor by furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, ~~any~~ gifts or loans of money or property of any description, or ~~by the giving of any~~ rebates of any kind whatsoever. A ~~No~~ licensed vendor may not ~~shall~~ accept, directly or indirectly, any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of any description, or ~~any~~ rebates of any kind whatsoever from any such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof; provided, however,

that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with ~~the provisions of~~ this section. A brand owner is a person who is not a manufacturer, distributor, importer, primary American source of supply, brand registrant, or broker, sales agent, or sales person thereof, but who directly or indirectly owns or controls any brand, brand name, or label of alcoholic beverage. Nothing in this section shall prohibit the ownership by vendors of any brand, brand name, or label of alcoholic beverage.

(8) The division may adopt rules and require reports to enforce, and may impose administrative sanctions for any violation of, the limitations established under the Beverage Law on vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, advertising or cooperative advertising, services, gifts or loans of money or property ~~in this section on credits~~, coupons, and other forms of assistance.

(11) A vendor may display in the interior of his or her licensed premises, including the window or windows thereof, neon, electric, or other signs, including window painting and decalcomanias applied to the surface of the interior or exterior of such windows; signs that require a power source; ~~,~~ and posters, placards, and other advertising material advertising

the brand or brands of alcoholic beverages sold by him or her, whether visible or not from the outside of the licensed premises, but a ~~no~~ vendor may not ~~shall~~ display in the window or windows of his or her licensed premises more than one neon, electric, or similar sign that requires a power source~~,~~ advertising the product of any one brand of alcoholic beverage ~~manufacturer~~.

(12) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may give, lend, furnish, or sell to a vendor who sells the products of such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant any of the following: neon, ~~or~~ electric, or similar signs requiring a power source; ~~signs~~, window painting and decalcomanias applied to the surface of the interior or exterior of windows; or~~,~~ posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises. As used in subsection (11) and this subsection, the term "decalcomania" means a picture, design, print, engraving, or label made to be transferred onto a glass surface.

(13) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, who regularly sells merchandise to vendors, or any vendor who purchases

merchandise from such a manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, does not violate subsection (1) if:

(a) Such sale or purchase is not less than the fair market value of the merchandise;

(b) Such sale or purchase is not combined with any sale or purchase of alcoholic beverages;

(c) Such sale or purchase is separately itemized from the sale or purchase of alcoholic beverages; and

(d) Both the seller and purchaser maintain records of any such sale or purchase, including the price and any conditions associated with such sale or purchase of the merchandise.

For purposes of this subsection, the term "merchandise" means commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under chapter 320.

(15) ~~(14)~~ The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners

or registrants, or any sales agent or sales person thereof; however:

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter. If sold, such items may not be sold at a price less than the actual cost to the industry member who initially purchased the items.

(16)(a) Notwithstanding any other provision of this section, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising, negotiated at arm's length for no more than fair market value if:

1. The vendor operates places of business where consumption on the premises is permitted, the premises are located within a theme park complex consisting of at least 25 contiguous acres owned and controlled by the same business entity, and the complex contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex;

2. Such agreement does not involve, either in whole or in part, the sale or distribution of malt beverages between the manufacturer or importer, or the manufacturer's or importer's distributor, and a vendor;

3. The vendor, as a result of such agreement, does not give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer with whom the vendor has entered into such agreement;

4. Such agreement does not limit, either directly or indirectly, the sale of alcoholic beverages of another manufacturer or importer, or distributor; and

5. Within 10 days after execution of such agreement, the vendor files with the division a description of the agreement which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

As used in this paragraph, the term "negotiated at arm's length" means the negotiation of a business transaction by independent parties acting in each party's own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

(b) A manufacturer or importer of malt beverages which is a party to a brand-naming rights agreement may not, either directly or indirectly, solicit or receive from any of its distributors any portion of the payment due from the

manufacturer or importer of malt beverages to the vendor pursuant to such agreement. Such agreement exists solely between the manufacturer and the vendor and does not, directly or indirectly, in any way obligate or place responsibility, financial or otherwise, upon a distributor.

(c) Notwithstanding s. 561.29(3) and (4), a manufacturer of malt beverages, an importer of malt beverages, or a vendor who violates this subsection is subject to:

1. A civil penalty of not more than $25,000, for a first violation.

2. A civil penalty of not more than $100,000 for a second violation occurring within 36 months after the date of the first violation.

3. At the discretion of the division, in lieu of or in addition to a civil penalty imposed under subparagraph 2., suspension or revocation of the alcoholic beverage license for a third or subsequent violation occurring within 36 months after the date of the first violation.

A violation occurring more than 36 months after a first violation is deemed a first violation under this paragraph. When imposing a civil penalty within the ranges provided in subparagraphs 1. and 2., the division may not impose a civil penalty in an amount greater than the financial value of the brand-naming rights agreement.

Section 2. This act shall take effect July 1, 2018.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Beverage Law; amending s. 561.42, F.S.; prohibiting certain entities and persons from directly or indirectly assisting any vendor in certain ways; prohibiting a licensed vendor from accepting certain items and services; authorizing the Division of Alcoholic Beverages and Tobacco to impose administrative sanctions for a violation of certain limitations established in the Beverage Law; prohibiting a vendor from displaying certain signs in the window or windows of his or her licensed premises; authorizing certain entities and persons to give, lend, furnish, or sell certain advertising material to certain vendors; defining the term "decalcomania"; providing exemptions relating to tied house evil for certain sales and purchases of merchandise; providing conditions for the exemptions; defining the term "merchandise"; prohibiting a manufacturer or importer of malt beverages from soliciting or receiving any portion of certain payments from its distributors; defining the term "negotiated at arm's length"; specifying that a brand-naming rights agreement does not obligate or place responsibility upon a distributor; providing civil penalties for

violations by manufacturers or importers of malt beverages or vendors; providing applicability; prohibiting the division from imposing certain civil penalties that are greater than the financial value of a brand-naming rights agreement; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 971 Interruption of Services
SPONSOR(S): Energy & Utilities Subcommittee, Fine
TIED BILLS: **IDEN./SIM. BILLS:** SB 1368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	9 Y, 3 N, As CS	Keating	Keating
2) Commerce Committee		Keating C.K.	Hamon K.W.H.

SUMMARY ANALYSIS

The bill prohibits certain service providers from charging customers for service that has been discontinued, interrupted, or not timely provided, as defined in the bill. Specifically, the bill:

- Prohibits a municipality or private company, as applicable, from charging a customer for garbage pick-up service that is not provided on the normally scheduled pick-up date, unless the missed service is provided within 4 calendar days after the originally scheduled pick-up date.
- Prohibits a telecommunications company or a cable or video service provider from charging a customer for service that has been interrupted for longer than 24 consecutive hours, unless: the interruption was caused by a negligent or willful act of the customer; as a result of damage or loss of electrical power on the customer's side of the service demarcation point that prevents the customer from taking service that is otherwise available; or the company or service provider offers access at no additional cost to the same or substantially similar service through another platform during the interruption.
- Provides that a customer who receives month-to-month service from a telecommunications company or a cable or video service provider and who requests that service be discontinued before the end of the normal billing period may be charged only for that portion of the billing period in which service was provided and must be credited for any overpayment.

To effectuate these prohibitions, the bill requires these service providers to calculate a pro-rata adjustment to the customer's regular bill and apply that amount as a credit or refund to the customer. The bill provides timeframes for the provision of such credits or refunds and requires the imposition of fines for failure to provide such credits or refunds as required by the bill. For a municipality or private company that fails to provide a credit or refund as required by the bill for failure to provide timely garbage pick-up service, the bill imposes a fine, payable to the customer, equal to 10 times the charge billed for service that was not timely provided. For a telecommunications company or a cable or video service provider that fails to provide a credit or refund as required by the bill, the bill requires the Department of Agriculture and Consumer Services (DACS) to impose a fine equal to 10 times the amount of the appropriate credit or refund and to remit any collected fines to its General Inspection Trust Fund. The bill authorizes DACS to adopt implementing rules.

The bill may have an indeterminate positive impact on state government revenues and will have an indeterminate negative impact on state government expenditures. The bill may have an indeterminate negative impact on local government revenues and does not appear to impact local government expenditures. See Fiscal Analysis, below.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Garbage Collection

Florida law authorizes municipalities and private companies to provide for the collection and disposal of garbage.[1] Counties also are authorized to provide solid waste collection service,[2] and have the option to contract with municipalities and special districts to provide such service.[3] A local government may provide solid waste collection service in direct competition with a private company under certain conditions.[4] Further, under certain conditions, a local government may choose to provide such service and effectively prohibit a private company from continuing to provide the same service.[5] In any event, Florida law requires local governments to use the most cost-effective means to provide solid waste management services and encourages contracts with private persons to provide such services.[6] Rates and terms of service for garbage collection vary by city and county.

Telephone Service

Florida's regulatory framework for local telephone service, or "local exchange service," historically has been codified in Chapter 364, F.S. This chapter established the Public Service Commission's ("PSC") jurisdiction to regulate telecommunication services.

In 1995, the Legislature found that competition for the provision of local exchange service would be in the public interest and opened local telephone markets to competition on January 1, 1996.[7] The law sought to establish a competitive market by granting competitive local exchange companies access to the existing telecommunications network. This began a gradual transition to the deregulation of incumbent local exchange companies' rates and terms of service, which culminated in 2011 with the Legislature determining that competition had progressed sufficiently to justify eliminating most of the PSC's remaining regulatory authority over telecommunications services.[8] Much of that competition has come from wireless services and Voice-over-Internet Protocol (VoIP) service rather than competitors offering traditional wireline service.[9]

Prior to 2011, local exchange telecommunications companies were required to adjust customer bills or provide refunds, on a pro-rata basis, if service was interrupted and remained out of order in excess of 24 hours after the customer notified the company of the interruption.[10]

---

[1] s. 180.06, F.S. For purposes of ch. 180, F.S., a "private company" is defined as "any company or corporation duly authorized under the laws of the state to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection and garbage disposal plants." s. 180.05, F.S.
[2] s. 125.01(1), F.S.
[3] s. 125.0101, F.S.
[4] s. 403.70605(1), F.S.
[5] s. 403.70605(3), F.S.
[6] s. 403.7063, F.S.
[7] Ch. 95-403, Laws of Fla.
[8] Ch. 2011-36, Laws of Fla. The PSC retains authority to oversee certain related areas, such as the Lifeline program (s. 364.10, F.S.) and carrier-to-carrier relationships (s. 364.16, F.S.).
[9] *See* FLORIDA PUBLIC SERVICE COMMISSION, *Report on the Status of Competition in the Telecommunications Industry,* December 31, 2016, *available at* http://www.psc.state.fl.us/Files/PDF/Publications/Reports/Telecommunication/TelecommunicationIndustry/2017.pdf (last visited Jan. 26, 2018).
[10] Rule 25-4.110(6), F.A.C. (repealed Oct. 13, 2011).

Since 2011, there has been no legal requirement for local exchange telecommunications companies to provide credits or refunds to reflect the duration of service interruptions.

As of December 2016, local exchange telecommunications companies served approximately 3 million wireline access lines in Florida.[11] AT&T, CenturyLink, and Frontier are the largest of these companies providing wireline service in the state.[12] AT&T's general terms for local exchange service in Florida allow it to make pro-rata billing adjustments for services or facilities rendered useless or inoperative by an interruption that continues in excess of 24 hours from the time it is reported to, or detected by, the company.[13] Such adjustments are not made when the interruption is due to the negligence or willful act of the customer or the failure of customer-provided facilities.[14] CenturyLink's terms of service for Florida include substantially the same provision.[15] These provisions allow, but do not require, the company to provide a refund or credit. Both companies indicate that their systems are not capable of automatically detecting service outages for individual customers. Staff does not have information as to the practices of the numerous local exchange telecommunications companies in Florida. In any event, an individual company may modify its terms of service.

For monitoring purposes, wireline service providers must report certain outages to the Federal Communications Commission (FCC) within 120 minutes of becoming aware of the outages.[16]

Cable and Video Service

Prior to 2007, an entity that wished to provide cable service was required to enter into a franchise agreement with each municipality or county in which the service provider intended to operate. These local franchise agreements commonly addressed rates and customer service standards, among other matters.[17]

Since 2007, any entity that provides cable or video service[18] in Florida must apply for and maintain a state-issued certificate of franchise authority through the Department of State that describes the areas within which the certification applies.[19] Cable and video service providers are required to comply with the customer service requirements established by rule of the FCC,[20] and the Department of Agriculture

---

[11] *Supra* note 3, at p. 18. Competitive local exchange companies in Florida accounted for 38% of the business market and 1% of the residential market for local exchange service in Florida as of December 2016.

[12] *Supra* note 3, at p. 14. Six additional incumbent local exchange companies provide wireline service in rural areas or smaller service territories. *See* FLORIDA PUBLIC SERVICE COMMISSION, *Florida Local Exchange Telephone Companies Map* (2016), *available at* http://www.psc.state.fl.us/Files/PDF/Publications/Reports/Telecommunication/exchangemap.pdf (last visited Jan. 26, 2018).

[13] AT&T Florida, *General Exchange Guidebook*, Section A2.4.4, http://cpr.att.com/pdf/fl/g002.pdf (last visited Jan. 26, 2018).

[14] *Id.*

[15] EMBARQ Florida, Inc. d/b/a CenturyLink, *Local Terms of Service, Florida,* Section A2, Sheet 22 http://www.centurylink.com/tariffs/fl_eqfl_loc_terms.pdf (last visited Jan. 26, 2018).

[16] *See* 47 C.F.R. Part 4 – Disruptions to Communications.

[17] *See* House of Representatives Staff Analysis of CS/CS/HB 579 (2007), Policy & Budget Council (March 16, 2007) at 4.

[18] These services generally involve the delivery of video programming service via wireline facilities and exclude video programming delivered via satellite or wireless provider. *See* s. 601.103, F.S.

[19] s. 601.104, F.S.

[20] Specifically, the statute identifies 47 C.F.R. s. 76.309(c) as the applicable FCC rule. This provision reads:

> (c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:
>
> (1) Cable system office hours and telephone availability -
>
> (i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
>
> (A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
>
> (B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

and Consumer Service (DACS) has the sole authority to respond to customer complaints. DACS may not impose customer service standards inconsistent with the FCC's rule.[21] DACS may assist in resolving customer complaints through informal mediation.[22]

The applicable FCC rule does not address specific circumstances under which a credit or refund may be required.[23] The FCC rule specifies that it does not prohibit the state, as the franchising authority, from enacting any consumer protection law not specifically preempted by the rule.[24]

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers -

(i) Refunds - Refund checks will be issued promptly, but no later than either -

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits - Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions -

(i) Normal business hours - The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) Normal operating conditions - The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) Service interruption - The term "service interruption" means the loss of picture or sound on one or more cable channels.

[21] s. 601.108, F.S.

[22] *Id. See, also,* FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, *A to Z Resource Guide,* https://csapp.800helpfla.com/CSPublicApp/AZGuide/AZSearchResult.aspx#610731034 (last visited Jan. 27, 2018).

[23] *Supra* note 20.

[24] 47 C.F.R. §76.309(b)(3).

There are 25 active certificates of franchise authority that the Department of State has issued to cable and video service providers in the state.[25] A review of the published customer agreements for several major cable and video service providers in Florida shows similar approaches to service interruptions with some slight differences between providers.[26] Though each agreement uses different language, all state that the provider is not required to provide a refund or credit for service interruptions caused by circumstances beyond the provider's control, including, among other things, power outages, natural disasters, and causes attributable to the customer.[27] Some agreements indicate that the customer may be entitled to a pro-rata credit or refund for some service interruptions that exceed 24 hours, though the circumstances under which these provisions would apply are not clear.[28]

Although these service providers are not generally obligated under the terms of their service agreements to provide credits or refunds for service interruptions, many cable and video service providers provided credits to customers, upon request or on a case-by-case basis, whose service was interrupted as a result of Hurricane Irma.[29] Further, AT&T indicates that it provides a credit adjustment to customers for each day that service is partially or completely out, if notified of the service interruption. The Florida Internet and Television Association indicates that its members also work with customers on a case-by-case basis to provide credits for service interruptions, if notified of the interruption. Staff does not have information as to the practices of all cable and video service providers in Florida.

For monitoring purposes, cable service providers must report certain outages to the FCC within 120 minutes of becoming aware of the outages.[30]

Effect of Proposed Changes

Garbage Collection

---

[25] FLORIDA DEPARTMENT OF STATE, Division of Corporations, *Cable Franchise Name List,* http://search.sunbiz.org/Inquiry/CableFranchiseSearch/SearchResults?inquiryType=CableFranchiseNameList&currentPage=1 (last visited Jan. 26, 2018).

[26] Xfinity, *Comcast Agreement for Residential Services,* Section 11.f. Disruption of Service, https://www.xfinity.com/corporate/customers/policies/subscriberagreement (last visited Jan. 27, 2018); Spectrum, *Spectrum Residential Cable Services Agreement*, Section 3. Disruption of Cable Service, https://www.spectrum.com/policies/residential-terms.html (last visited Jan. 27, 2018); Cox, *Residential Customer Service Agreement*, Section 9. Power Supply, and Section 17.b. Force Majeure, https://www.cox.com/aboutus/policies/customer-service-agreement.html#power (last visited Jan. 27, 2018); Mediacom, *Mediacom Residential Customer and User Agreement*, Section 4. Service Interruptions, Section 12. Refunds, and Section 22. Miscellaneous, https://mediacomcable.com/legal/residential-customer-and-user-agreement/ (last visited Jan. 27, 2018); AT&T, *AT&T U-verse and AT&T Phone Terms of Service*, Section 8. Interruptions, Limitations, and Modifications of Service, https://www.att.com/legal/terms.uverseAttTermsOfService.html (last visited Jan. 27, 2018); Frontier Communications, *Frontier TV Terms of Service*, Section 12. Warranties and Limitation of Liability, https://frontier.com/~/media/corporate/terms/tv-tos.ashx?la=en (last visited Jan. 27, 2018); CenturyLink, *CenturyLink Prism TV Services Subscriber Agreement*, Section 5.E. Force Majeure Events, http://www.centurylink.com/legal/docs/Prism_TV_Services_Subscriber_Agreement_EN.pdf (last visited Jan. 27, 2018).

[27] *See, e.g.,* Xfinity, *Comcast Agreement for Residential Services*, Section 11.f. Disruption of Service, https://www.xfinity.com/corporate/customers/policies/subscriberagreement (last visited Jan. 27, 2018); and Mediacom, *Mediacom Residential Customer and User Agreement*, Section 4. Service Interruptions, Section 12. Refunds, and Section 22. Miscellaneous, https://mediacomcable.com/legal/residential-customer-and-user-agreement/ (last visited Jan. 27, 2018).

[28] *Id.*

[29] *See, e.g.,* Danny Monteverde, *Cable, phone, internet companies waive fees, offer rebates for Irma victims*, WTSP (Sep. 15, 2017), http://www.wtsp.com/weather/irma/cable-phone-internet-companies-waive-fees-offer-rebates-for-irma-victims/474910296; Lawrence Mower, *Missed Comcast service from Irma? Here's how to get a credit*, PALM BEACH POST (Sep. 21, 2017), http://www.palmbeachpost.com/news/missed-comcast-service-from-irma-here-how-get-credit/nN99YX7yfc39E1Fjb5vQ0L/; Michael D. Bates, *Spectrum: Credits available — if you ask*, CITRUS COUNTY CHRONICLE (Sep. 20, 2017), http://www.chronicleonline.com/news/local/spectrum-credits-available-if-you-ask/article_43dcd766-9e2e-11e7-afc2-87b3ccc68e7f.html.

[30] *Supra* note 10.

The bill provides that a municipality or private company, as applicable, that provides garbage pick-up service may not charge a customer for pick-up service that is not provided on the normally scheduled pick-up date unless the missed service is provided within 4 calendar days after the originally scheduled pick-up date. If service is not provided within this time frame, the bill requires the municipality or private company to make a pro-rata adjustment to the customer's next regular bill to reflect the missed service date. A municipality or private company that fails to provide a credit or refund within 60 days from the next bill must pay the customer a fine equal to 10 times the charge billed for service that was not timely provided.

Municipalities and private companies that provide service by contract with those municipalities may renegotiate the terms of their contracts to account for the requirements and potential fines imposed by the bill.

Telephone Service

The bill provides that a telecommunications company[31] may not charge a customer for service that has been interrupted for longer than 24 consecutive hours. If service is restored for less than one hour during the interruption, the interruption is deemed to have continued through that time. The bill provides an exception if:

- The interruption is caused by a negligent or willful act of the customer;
- The interruption is caused by damage or loss of electrical power on the customer's side of the service demarcation point that prevents the customer from taking service that is otherwise available; or
- The service provider makes substantially similar services available to the customer via another platform during the period of the interruption at no additional cost.

The bill requires a telecommunications company to make a pro-rata adjustment to the customer's bill to reflect the number of days that service was interrupted as a percentage of the number of days in the customer's billing period. If the interrupted service was provided as part of a bundled package that includes services not covered by the bill, the appropriate credit or refund must be calculated based only on the portion of the normal billing amount attributable to the interrupted services covered by the bill. Any required billing adjustment must be provided as a credit or refund within 30 days after the date that service is restored or the date of the customer's next bill following restoration, whichever is later.

In addition, the bill provides that a customer who requests that service be discontinued by the telecommunications company before the end of the normal billing period may be charged only for that portion of the billing period in which service was provided prior to, and including the date of, discontinuance. The bill requires that the telecommunications company provide a credit or refund to the customer for any overpayment within 30 days from the date that service is discontinued or the date of the customer's next regular bill following discontinuance, whichever is later. The bill specifies that it does not reduce any applicable penalty or fee that applies when a customer discontinues service during the term of a contract if the customer has agreed to take service at a specified rate for the full term of the contract and the contract includes more than one billing period.

If an appropriate credit or refund is not provided as required by the bill, DACS must impose a fine equal to 10 times the amount of the appropriate credit or refund. The bill provides that fines collected by DACS must be remitted to its General Inspection Trust Fund.

The bill authorizes DACS to adopt rules that implement these provisions.

Cable and Video Service

[31] The term "telecommunications company" includes all wireline local exchange service providers. *See* s. 364.02(13), F.S.

The bill provides that a cable or video service provider may not charge a customer for service that has been interrupted for longer than 24 consecutive hours. If service is restored for less than one hour during the interruption, the interruption is deemed to have continued through that time. The bill provides an exception if:

- The interruption is caused by a negligent or willful act of the customer;
- The interruption is caused by damage or loss of electrical power on the customer's side of the service demarcation point that prevents the customer from taking service that is otherwise available; or
- The service provider makes substantially similar services available to the customer via another platform during the period of the interruption at no additional cost.

The bill requires a cable or video service provider to make a pro-rata adjustment to the customer's bill to reflect the number of days that service was interrupted as a percentage of the number of days in the customer's billing period. If the interrupted service was provided as part of a bundled package that includes services not covered by the bill, the appropriate credit or refund must be calculated based only on the portion of the normal billing amount attributable to the interrupted services covered by the bill. Any required billing adjustment must be provided as a credit or refund within 30 days after the date that service is restored or the date of the customer's next bill following restoration, whichever is later.

In addition, the bill provides that a customer who requests that service be discontinued by the cable or video service provider before the end of the normal billing period may be charged only for that portion of the billing period in which service was provided prior to, and including the date of, discontinuance. The bill requires that the service provider provide a credit or refund to the customer for any overpayment within 30 days from the date that service is discontinued or the date of the customer's next regular bill following discontinuance, whichever is later. The bill specifies that it does not reduce any applicable penalty or fee that applies when a customer discontinues service during the term of a contract if the customer has agreed to take service at a specified rate for the full term of the contract and the contract includes more than one billing period.

If an appropriate credit or refund is not provided as required by the bill, DACS must impose a fine equal to 10 times the amount of the appropriate credit or refund. The bill provides that fines collected by DACS must be remitted to its General Inspection Trust Fund.

The bill authorizes DACS to adopt rules that implement these provisions.

B. SECTION DIRECTORY:

Section 1. Amending s. 180.06, F.S., relating to garbage pick-up services provided by municipalities and private companies.

Section 2. Amending s. 364.04, F.S., relating to telecommunications company service interruptions.

Section 3. Amending s. 601.018, F.S., relating to customer service standards for cable and video service providers.

Section 4. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive impact on state government revenues. DACS is authorized to impose fines under the bill and is required to remit any collected fines to its General Inspection Trust Fund. The potential extent of these fines is unknown.

2. Expenditures:

The bill will have an indeterminate negative impact on state government expenditures. DACS estimates that it will need one FTE in FY 2018-19 to implement the bill and may require additional staff in FY 2019-20 depending on the level of complaints received.[32]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill requires a refund or credit for municipal garbage pick-up service that is not timely provided to a customer (i.e., within 4 calendar days of the originally scheduled pick-up date). Thus, the bill may have an indeterminate negative impact on the revenues of municipalities that provide garbage pick-up service but miss scheduled pick-up dates.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The systems operated by telecommunications companies and cable and video service providers may be incapable of automatically detecting certain service interruptions. Such systems may require modification to provide this functionality to ensure compliance with the bill and to avoid fines required by the bill.

The bill may encourage telecommunications companies and cable and video service providers to undertake additional measures to identify and minimize service interruptions. Similarly, the bill may encourage municipalities and private companies who provide garbage collection services to minimize missed pick-up services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

[32] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 971, pp. 1-2 (Jan. 26, 2018).

The bill authorizes DACS to adopt rules to implement provisions related to refunds or credits that are due to customers of telecommunications companies and cable and video service providers, including the imposition of fines.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2018, the Energy & Utilities Subcommittee adopted amendments to the bill and reported the bill favorably as a committee substitute. The committee substitute:

- Requires garbage pick-up within 4 calendar days of the originally scheduled pick-up date to avoid the requirement to provide a credit or refund.
- Clarifies that any applicable credit or refund must be applied to the customer's next regular bill and specifies that a fine must be paid if the applicable credit or refund is not provided within 60 days of the next bill.
- Provides that a credit or refund is not required if a service interruption is caused by a loss of electrical power to the customer or if the service provider makes substantially similar services available to the customer via another platform during the period of the interruption at no additional cost.
- Provides that if the interrupted service is provided as part of a bundled package that includes services not covered by the bill, the appropriate credit or refund will be calculated based only on the portion of the normal billing amount attributable to the interrupted services covered by the bill.
- Replaces the PSC with DACS as the agency responsible for imposing fines for a telecommunications company's failure to properly issue credit or refunds.
- Provides that a customer who receives month-to-month service from a telecommunications company or cable or video service provider and who requests that service be discontinued before the end of the normal billing period may be charged only for that portion of the billing period in which service was provided and must be credited for any overpayment, and require DACS to impose a fine equal to 10 times any credit or refund due to the customer but not timely provided.
- Authorizes DACS to adopt implementing rules, and provide that fines collected by DACS must be remitted to its General Inspection Trust Fund.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to interruption of services; amending s. 180.06, F.S.; prohibiting a municipality or private company from charging for garbage pick-up services that are not rendered within a specified period; requiring a municipality or private company to issue a credit or refund on the next regular bill; requiring payment of a fine if a credit or refund is not issued within specified period; amending s. 364.04, F.S.; prohibiting a telecommunications company from charging for services that are interrupted for longer than a specified period unless certain criteria are met; requiring a telecommunications company to issue a credit or refund for specified interruptions; specifying the calculation of such credit or refund; requiring the Department of Agriculture and Consumer Services to impose a fine in a specified amount if the telecommunications company fails to provide a credit or refund within a specified period; requiring a telecommunications company to pro rate charges if a customer discontinues service before the end of a billing cycle; providing a calculation to determine the refund or credit amount; requiring the Department of Agriculture and Consumer Services to impose a fine in a specified amount if a provider fails to provide a

credit or refund within a specified period; providing exceptions; specifying where fines are to be remitted; authorizing the Department of Agriculture and Consumer Services to adopt specified rules; amending s. 610.108, F.S.; prohibiting a cable or video service provider from charging for services that are interrupted for longer than a specified period unless certain criteria are met; requiring a cable or video service provider to issue a credit or refund for specified interruptions; specifying the calculation of such credit or refund; requiring the Department of Agriculture and Consumer Services to impose a fine in a specified amount if a provider fails to provide a credit or refund within a specified period; requiring a cable and video service provider to pro rate charges if a customer discontinues service before the end of a billing cycle; providing a calculation to determine the refund or credit amount; requiring the Department of Agriculture and Consumer Services to impose a fine in a specified amount if a provider fails to provide a credit or refund within a specified period; providing exceptions; specifying where fines are to be remitted; authorizing the Department of Agriculture and Consumer Services to adopt specified rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 180.06, Florida Statutes, is amended to read:

180.06 Activities authorized by municipalities and private companies; garbage pick-up services.—

(1) Any municipality or private company organized for the purposes contained in this chapter, is authorized:

(a) ~~(1)~~ To clean and improve street channels or other bodies of water for sanitary purposes;

(b) ~~(2)~~ To provide means for the regulation of the flow of streams for sanitary purposes;

(c) ~~(3)~~ To provide water and alternative water supplies, including, but not limited to, reclaimed water, and water from aquifer storage and recovery and desalination systems for domestic, municipal or industrial uses;

(d) ~~(4)~~ To provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;

(e) ~~(5)~~ To provide for the collection and disposal of garbage;

(f) ~~(6)~~ And incidental to such purposes and to enable the accomplishment of the same, to construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems,

purification works, collection systems, treatment and disposal works;

(g) ~~(7)~~ To construct airports, hospitals, jails and golf courses, to maintain, operate and repair the same, and to construct and operate in addition thereto all machinery and equipment;

(h) ~~(8)~~ To construct, operate and maintain gas plants and distribution systems for domestic, municipal and industrial uses; and

(i) ~~(9)~~ To construct such other buildings and facilities as may be required to properly and economically operate and maintain said works necessary for the fulfillment of the purposes of this chapter.

However, a private company or municipality shall not construct any system, work, project or utility authorized to be constructed hereunder in the event that a system, work, project or utility of a similar character is being actually operated by a municipality or private company in the municipality or territory immediately adjacent thereto, unless such municipality or private company consents to such construction.

(2) A municipality or private company, as applicable, may not charge a customer for garbage pick-up service that was not provided on a normally scheduled pick-up date if the garbage pick-up service is not provided within 4 calendar days after the

originally scheduled pick-up date. The municipality or private company, as applicable, shall issue a credit or refund on the customer's next regular bill to adjust on a prorated basis the number of times the garbage was not picked up. A municipality or private company, as applicable, that fails to provide a credit or refund within 60 days from the next bill shall pay a fine to each customer whose garbage pick-up was not provided as set forth above, equal to 10 times the charge billed for the service that was not provided.

Section 2. Subsection (1) of section 364.04, Florida Statutes, is amended to read:

364.04 Schedules of rates, tolls, rentals, and charges; filing; service interruptions; public inspection.—

(1)(a) Every telecommunications company shall publish through electronic or physical media schedules showing the rates, tolls, rentals, and charges of that company for service to be offered within the state. The commission shall have no jurisdiction over the content or form or format of such published schedules. A telecommunications company may, as an option, file the published schedules with the commission or publish its schedules through other reasonably publicly accessible means, including on a website. A telecommunications company that does not file its schedules with the commission shall inform its customers where a customer may view the telecommunications company's schedules.

(b) A telecommunications company may not charge a customer for service that has been interrupted for longer than 24 consecutive hours, unless:

1. The interruption is caused by a negligent or willful act by the customer;

2. The interruption is caused by damage or loss of electrical power on the customer's side of the service demarcation point that prevents the receipt or use of service that is otherwise available; or

3. The telecommunications company, by means of any other platform, provides the customer with access to service substantially similar to the interrupted service during the period of the interruption at no additional cost.

(c) Restoration of service for less than 1 hour during a service interruption does not toll the calculation of time for purposes of determining the length of the service interruption. The credit or refund shall be equal to the number of days beyond the first 24 hours that service was interrupted, divided by the number of days in the billing period, and multiplied by the normal billing amount. If the interrupted service is provided as part of a bundled package that includes services not covered by this section, the credit or refund shall be calculated based only on the portion of the normal billing amount attributable to the interrupted services covered by this section. The credit or refund must be provided within 30 days from the date the service

is restored or the date of the customer's next bill following service restoration, whichever is later. Notwithstanding any other provision of law to the contrary, the Department of Agriculture and Consumer Services shall impose an administrative fine equal to 10 times the credit or refund amount upon any telecommunications company that fails to provide a credit or refund as specified in this paragraph.

(d) If a customer of a telecommunications company requests that service be discontinued on a date before the end of the customer's normal billing period, the customer charge for that period shall be equal to the number of days that service is provided in the billing period, including the date that service is discontinued, divided by the number of days in the billing period, and multiplied by the normal charge for the billing period. The telecommunications company shall credit the customer's account or issue a refund for any overpayment to reflect the amount due as calculated pursuant to this paragraph. The credit or refund must be provided within 30 days from the date the service is discontinued or the date of the customer's next regular bill following discontinuance, whichever is later. Notwithstanding any other provision of law to the contrary, the Department of Agriculture and Consumer Services shall impose an administrative fine equal to 10 times the credit or refund amount upon any telecommunications company that fails to provide a credit or refund as specified in this paragraph. This

provision does not reduce any applicable contractual penalty or fee that applies when a customer discontinues service during the term of a contract if such customer has agreed to take service from the telecommunications company at a specified rate for the full term of the contract and the term of the contract includes more than one billing period.

(e) Fines collected by the department under this section shall be remitted to its General Inspection Trust Fund.

(f) The department may adopt rules to implement paragraphs (b), (c), and (d) of this subsection.

Section 3. Subsection (1) of section 610.108, Florida Statutes, is amended to read:

610.108 Customer service standards.—

(1)(a) All cable or video service providers shall comply with customer service requirements in 47 C.F.R. s. 76.309(c).

(b) A cable or video service provider may not charge a customer for cable or video service that has been interrupted for longer than 24 consecutive hours, unless:

1. The interruption is caused by a negligent or willful act by the customer;

2. The interruption is caused by damage or loss of electrical power on the customer's side of the service demarcation point that prevents the receipt or use of service that is otherwise available; or

3. The cable or video service provider, by means of any

other platform, provides the customer with access to programming or service substantially similar to the interrupted service during the period of the interruption at no additional cost.

(c) Restoration of service for less than 1 hour during a service interruption does not toll the calculation of time for purposes of determining the length of the service interruption. The credit or refund shall be equal to the number of days beyond the first 24 hours that service was interrupted, divided by the number of days in the billing period, and multiplied by the normal billing amount. If the interrupted service is provided as part of a bundled package that includes services not covered by this section, the credit or refund shall be calculated based only on the portion of the normal billing amount attributable to the interrupted services covered by this section. The credit or refund must be provided within 30 days from the date the service is restored or the date of the customer's next bill following service restoration, whichever is later. Notwithstanding any other provision of law to the contrary, the Department of Agriculture and Consumer Services shall impose a fine equal to 10 times the credit or refund amount upon any cable or video service provider that fails to provide a credit or refund as specified in this paragraph.

(d) If a customer of a cable or video service provider requests that service be discontinued on a date before the end of the customer's normal billing period, the customer charge for

that period shall be equal to the number of days that service is provided in the billing period, including the date that service is discontinued, divided by the number of days in the billing period, and multiplied by the normal charge for the billing period. The cable or video service provider shall credit the customer's account or issue a refund for any overpayment to reflect the amount due as calculated pursuant to this paragraph. The credit or refund must be provided within 30 days from the date the service is discontinued or the date of the customer's next regular bill following discontinuance, whichever is later. Notwithstanding any other provision of law to the contrary, the Department of Agriculture and Consumer Services shall impose an administrative fine equal to 10 times the credit or refund amount upon any cable or video service provider that fails to provide a credit or refund as specified in this paragraph. This provision does not reduce any applicable contractual penalty or fee that applies when a customer discontinues service during the term of a contract if such customer has agreed to take service from the cable or video service company at a specified rate for the full term of the contract and the term of the contract includes more than one billing period.

(e) Fines collected by the department under this section shall be remitted to its General Inspection Trust Fund.

(f) The department may adopt rules to implement paragraphs (b), (c), and (d) of this subsection.

Section 4. This act shall take effect July 1, 2018.

COMMERCE COMMITTEE

CS/HB 971 by Rep. Fine
Interruption of Services

AMENDMENT SUMMARY
February 26, 2018

Amendment 1 by Rep. Fine (Line 110): Removes the provisions related to the interruption of telecommunications and cable or video services.

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Fine offered the following:

Amendment (with title amendment)

Remove lines 110-250

T I T L E A M E N D M E N T

Remove lines 9-49 and insert:

within specified period; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1211 Airboat Regulation
SPONSOR(S): Careers & Competition Subcommittee, Abruzzo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	15 Y, 0 N, As CS	Willson	Anstead
2) Government Accountability Committee	22 Y, 0 N	Gregory	Williamson
3) Commerce Committee		Willson MW	Hamon K.W.H.

SUMMARY ANALYSIS

Chapter 327, F.S., titled the "Florida Vessel Safety Law," regulates the operation of vessels, and provides for minimum standards relating to safety, education, and equipment. The Fish and Wildlife Conservation Commission (FWC) is charged with coordinating and managing the waterways of the state to provide for safe and enjoyable boating. Specifically, the Division of Law Enforcement within the FWC provides protection to those who enjoy Florida's waterways, while also enforcing resource protection and boating safety laws.

Airboats are considered vessels and are subject to vessel safety and operation regulations under to state and federal law. In Florida, for-hire vessel operators on freshwater, inland waters, or other waters that are not used as highways for substantial interstate or foreign commerce are not required to take any additional training courses or possess any boating-related licenses or special endorsements.

The bill creates "Ellie's Law," providing that a person may not operate an airboat for hire to carry one or more passengers on waters of the state without the following onboard:

- A photographic identification card.
- Proof of either:
  - Completion of an FWC-approved boater education course that meets the minimum eight-hour instruction requirement established by the National Association of State Boating Law Administrators, or
  - A captain's license issued by the United States Coast Guard.
- Proof of successful completion of an FWC-approved airboat operator course that meets the minimum standards established by FWC rule.
- A certificate of successful course completion in cardiopulmonary resuscitation and first aid.

The bill provides that a person who violates the airboat operating provisions commits a misdemeanor of the second degree, punishable by up to 60 days imprisonment or a $500 fine.

The bill does not appear to have a significant fiscal impact on state or local government.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Airboats

Airboats are primarily used to navigate wetlands, marshes, and similar environments where standing water may be shallow to nonexistent, and this purpose is reflected in their design. Airboats typically have a flat-bottomed hull, little displacement, and are powered by an aircraft-like engine and propeller unit that is mounted above the stern.[1] This design creates a high center of gravity and relatively poor flotation, making airboats susceptible to capsizing or sinking.[2]

Airboats are considered vessels[3] and are subject to vessel safety and operation regulations pursuant to state and federal law. According to recent news reports, "[t]hough an impressive 12,164 airboats, 1,025 of which are commercial, are registered in Florida, the industry is virtually unregulated. Despite high speeds, there's no requirement to wear seat belts or life vests, and airboat pilots rarely take boating safety classes."[4]

Florida Vessel Safety Law

Florida law requires the registration of all motorized vessels through the local Tax Collector's Office. Florida leads the nation in the number of vessels registered in any state with close to one million vessels.[5] The Fish and Wildlife Conservation Commission (FWC) is charged with coordinating and managing the waterways of the state to provide for safe and enjoyable boating.[6] Specifically, the Division of Law Enforcement within the FWC provides protection to those who enjoy Florida's waterways, while also enforcing resource protection and boating safety laws.[7]

Chapter 327, F.S., titled the "Florida Vessel Safety Law," includes laws relating to vessel safety, such as boating safety education course requirements and vessel operation requirements. The Florida Vessel Safety Law, as well as vessel titling, certificate, and registration requirements, may be enforced by:

- The Division of Law Enforcement within the FWC and its officers;
- Sheriffs of the various counties and their deputies;
- Municipal police officers; and
- Any other law enforcement officer described in s. 943.10, F.S.[8]

---

[1] Section 327.02(1), F.S., defines "Airboat" as a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.

[2] *See* Fish and Wildlife Conservation Commission (FWC), *The Florida Boaters Guide: A handbook of Boating Laws and Responsibilities*, 15 https://www.boat-ed.com/assets/pdf/handbook/fl_handbook_entire.pdf (last visited Jan. 16, 2018).

[3] Section 327.02(46), F.S., defines the term "vessel" as being "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."

[4] The Miami New Times, *Florida Airboat Accidents Have Killed Seven and Injured Dozens in Recent Years,* Dec. 12, 2017, http://www.miaminewtimes.com/news/floridas-unregulated-airboat-industry-9903095.

[5] FWC, 2016 Boating Accident Statistical Report, *Introduction*, II (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).

[6] FWC, *Boating in Florida*, http://myfwc.com/boating/ (last visited Jan. 8, 2018).

[7] FWC, 2016 Boating Accident Statistical Report, *Introduction*, I (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).

[8] Section 327.70(1), F.S.; s. 943.10(1), F.S., defines the term "law enforcement officer" as "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and

Vessel operators are required to operate in a reasonable and prudent manner with regard for other vessel traffic, posted restrictions, the presence of divers-down flags, and other circumstances so as not to endanger people or property. Failure to do so is considered careless operation, which is a noncriminal infraction punishable by a penalty of $50.[9] Additionally, individuals who operate a vessel with a willful disregard for the safety of persons or property may be cited for reckless operation of a vessel, which is a misdemeanor of the first degree punishable by a fine of up to $1,000 or a term of imprisonment not exceeding one year.

Vessel Safety Regulations

Florida law requires vessel operators to carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements. Generally, the following safety items are required to be aboard a vessel, and if found to be missing during a safety inspection, can result in a vessel citation: visible distress signals, fire extinguishers, navigation lights, personal floatation devices, and sound-producing devices.[10]

Airboat Specific Regulations

Section 327.391, F.S., provides specific regulations relating to the operation of airboats on waters of the state:

- Airboats must adequately muffle engine noise; and
- Airboats must be equipped with a mast or flagpole bearing an orange, rectangular flag visible from all directions, and is at least 10 feet above the bottom of the vessel.

A person participating in an event for which a permit is required, or of which notice must be given,[11] is exempt from the provisions of s. 327.391, F.S., relating to the regulation of airboats.

Boating Safety Identification Cards

In order to operate a vessel of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to carry a photographic identification and a FWC-issued boater safety identification (Boater ID) card aboard the vessel.[12] Boater ID cards are issued to individuals who have:

- Completed a FWC-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators (NASBLA);
- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.[13]

FWC-approved boating safety courses must contain information relating to:

- Boat capacities;
- Boating equipment;
- Vessel safety regulations, including age, engine, and personal flotation device requirements;
- Safe boat operation;
- Emergency preparedness;
- Trip planning and preparation;

---

make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state…".

[9] Sections 327.33(1) and 327.73, F.S.

[10] *See* s. 327.50, F.S., and FWC, *Boating Regulations, Equipment and Lighting Requirements, available at* http://myfwc.com/boating/regulations/#nogo (last visited Jan. 8, 2018) and United States Coast Guard Auxiliary, *Vessel Safety Checks, available at* http://cgaux.org/vsc/ (last visited Jan. 8, 2018).

[11] *See* s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions

[12] Section 327.395(1), F.S.

[13] *Id.*

- Personal watercraft requirements;
- Water ski, parasail, and aquaplane regulations;
- Federal equipment requirements;
- State divers-down flag requirements;
- Boating restricted areas, regulatory markers, and speed restricted areas;
- Boating accidents, including requirements for reporting accidents and remaining on scene and rendering assistance; and
- Manatee and ecosystem awareness.[14]

The FWC may appoint liveries, marinas, or other persons as its agents to administer the course or examinations and issue Boater ID cards.[15] An agent is required to charge a $2 examination fee that the agent must forward to the FWC with proof of passage of the examination, and may charge and keep a $1 service fee.[16]

A Boater ID card issued to a person who has completed a boating education course or a course equivalency examination is valid for life.[17] A Boater ID card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.[18]

A person is exempt from the Boater ID card requirement if he or she:
- Is licensed by the United States Coast Guard (USCG) to serve as master of a vessel;
- Operates a vessel only on a private lake or pond;
- Is accompanied in the vessel by a person who is exempt from this section or who holds a Boater ID card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel;
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state that meets or exceeds the Florida requirements;
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a valid bill of sale;
- Is operating a vessel within 90 days after completing a FWC-approved boater education course or passed a course equivalency examination approved by the FWC, and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination; or
- Is exempted by FWC rule.[19]

The penalty for operating a vessel in violation of the Boater ID card requirements is a noncriminal infraction, which is punishable by a civil penalty of $50.[20]

Currently, organizations such as NASBLA offer airboat-specific operator courses for maritime law enforcement and emergency responders who already possess proficient boating skills.[21] The NASBLA

---

[14] Rule 68D-36.104, F.A.C. *Minimum Standards for Boating Safety Courses*
[15] Section 327.395(4), F.S.
[16] *Id.*
[17] Section 327.395(5), F.S.
[18] *Id.*
[19] Section 327.395(6), F.S.
[20] Section 327.73(1)(s), F.S.
[21] *See* NASBLA, *Airboat Operators Course* at https://www.nasbla.org/nasblamain/training/courses/airboat. The Airboat Operators Course Outline states that "the Airboat class is designed to provide federal, state, county, local and tribal law enforcement officers and first responders in the maritime domain the knowledge and skills to perform airboat operations in a safe and efficient manner, under a

course is a hands-on, five day (40 hour) course that is designed for 6 to 18 students, and costs $38,000, which covers all administration, coordination, student materials (handbooks, practical exercises) and instructor costs including travel, per diem, and lodging.[22]

Vessels and Passengers for Hire

In Florida, for-hire vessel operators on freshwater, inland waters, or other waters that are not used as highways for substantial interstate or foreign commerce are not required to take any additional training courses or possess any boating-related licenses or special endorsements.

On federal waters, a USCG issued license is required to carry legally passengers for hire.[23] This includes charters for fishing, sightseeing, diving, transportation, teaching, or any use that is considered a passenger for hire situation.[24] When carrying six passengers or less, an operator of uninspected vessels (OUPV) license, a type of USCG captain's license, is required. When carrying more than six passengers, a Master license is required and the vessel itself must be built in accordance with strict inspection standards.[25] All USCG issued licenses must be renewed every five years, which requires a renewal physical examination and an approved drug test.[26]

To obtain either an OUPV license or a Master license, an individual must submit an application; have a physical examination taken within 12 months of submitting the application; have an approved drug test taken within six months of submitting the application; and have received cardiopulmonary resuscitation and first aid certification within 12 months of submitting the application. Additionally, for an OUPV license an individual must have 90 days of service in the last three years on vessels of appropriate tonnage, and have 360 days of deck service in the operation of vessels.[27]

Additionally, an FWC-issued charter captain or boat license is required to carry passengers for hire for the purpose of taking, attempting to take, or possessing saltwater fish or organisms.[28] In order to purchase a charter captain or boat license, an individual must have a USCG captain's license.[29]

Boating Accidents and Citations

In 2016, there were 714 reportable[30] boating accidents and 67 boating related fatalities in Florida.[31] Seventy percent of the operators involved in fatal accidents had no formal boater education.[32] The top three primary causes of the accidents reported in 2016 included no proper look-out, operator inexperience, and excessive speed.[33]

---

national curriculum. Students who seek this specialized training must have advanced boating skills (required) - and some basic airboat operational experience is preferred, but not a prerequisite."

[22] *Id.*

[23] U.S. Department of Homeland Security, United States Coast Guard Auxiliary, *Captains' License Information*, http://wow.uscgaux.info/content.php?unit=054-09&category=captains-license-info (last visited Jan. 17, 2018).

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] FWC, *Charter and Headboat Operators' and Guides'*, http://myfwc.com/license/saltwater/commercial-fishing/charter/ (last visited Jan. 17, 2018).

[29] *Id.*

[30] Boating accidents must meet at least one of the five criteria to be classified as reportable: a person dies; a person disappears under circumstances that indicate possible death or injury; a person receives an injury requiring medical treatment beyond immediate first aid; there is at least $2,000 in aggregate property damage to the vessel or other property; or there is a total loss of a vessel.

[31] FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, IV (2016) *available at* http://myfwc.com/media/4215167/2016BoatStatBook.pdf (last visited Jan. 3, 2018).

[32] *Id.*

[33] *Id.* at 11.

According to recent news reports, "more than 75 accidents in airboats" have taken place in the past three years in Florida. In that period, "at least seven people died" and "at least 102 airboat passengers have been seriously injured."[34] Passengers have suffered severed fingers and ears, lacerated livers, ruptured spleens, fractured skulls, cracked spines, and head gashes. "Though 90 percent of those involved in accidents weren't wearing life jackets, three in ten told investigators they couldn't swim," and "more than two-fifths of all injured passengers were ejected from their seats."[35] According to one newspaper's examination of accident records, "64 percent assigned fault to the airboat driver, citing infractions such as violation of navigation rules, improper lookout, or alcohol use, while others were cited for careless and reckless driving."[36]

The following chart provides a summary of the citations that were issued in 2016 relating to violations for registration and numbering requirements; safety equipment and regulations; boating safety education requirements; and the negligent operation of a vessel.

2016 Uniform Boating Citation Summary[37]

Citation Type	Number of Citations Issued	
	FWC	Other
Registration and Numbering Operation of unregistered/unnumbered vessels Application, certificate, number or decal violation Special manufacturer and dealer numbers Violation relating to vessel titling Violation relating to Hull Identification Numbers	1,970	556
Safety Equipment and Regulations Equipment and lighting requirements	3,260	432
Boating Safety Education Boating safety education I.D. cards	455	285
Negligent Operation of a Vessel Reckless operation of a vessel Careless operation of a vessel Navigation rule violation resulting in an accident Navigation rule violation not resulting in an accident Failure to report an accident	420	173

Effect of the Bill

The bill creates "Ellie's Law" in honor of Elizabeth "Ellie" Goldenberg who died on Saturday, May 13, 2017, from injuries she sustained after being thrown from an airboat on an Everglades airboat tour.[38]

The bill creates s. 327.391(5), F.S., providing that, beginning December 31, 2018, a person may not operate an airboat to carry one or more passengers for hire on waters of the state without the following onboard:

- A photographic identification card;
- Proof of completion of a boater education course that complies with s. 327.395(1)(a), F.S., or a captain's license issued by the USCG;

[34] Isabella Vi Gomes, *Florida Airboat Accidents Have Killed Seven and Injured Dozens in Recent Years*, The Miami New Times, Dec. 12, 2017, http://www.miaminewtimes.com/news/floridas-unregulated-airboat-industry-9903095.
[35] *Id.*
[36] *Id.*
[37] *Id.* at 35.
[38] Howard Cohen, *A day after she graduated, UM student dies in Everglades boat crash*, THE MIAMI HERALD, May 15, 2017, *available at* http://www.miamiherald.com/news/local/education/article150577537.html (last visited Jan. 17, 2018).

- Proof of successful completion of a FWC-approved airboat operator course that meets the minimum standards established by FWC rule; and
- A certificate of successful course completion in cardiopulmonary resuscitation and first aid.

The bill provides that a person who violates the airboat operating provisions commits a misdemeanor of the second degree, punishable by up to 60 days imprisonment or a $500 fine.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1 Provides a short title.

Section 2 Amends s. 327.391, F.S.; requiring a commercial airboat operator to have specified documents onboard the airboat while carrying passengers for hire; providing an exception; providing a penalty.

Section 3 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have a minimal negative fiscal impact on the FWC because it requires the FWC to adopt rules establishing minimum standards for approved airboat operator courses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative indeterminate economic impact on for-hire airboat operators because they will be required to complete the FWC-approved airboat operator course created in the bill, and, unless they already have a USCG captain's license or a Boater ID card, they will also be required to have a general boater safety education course in order to continue carrying passengers for hire. It is unknown how much money airboat operators will have to pay for the airboat safety course.

The bill may have an indeterminate positive impact on the private sector by reducing the number of injuries sustained on airboats tours.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the FWC to establish minimum standards for airboat operator courses. The FWC possesses sufficient rulemaking authority to promulgate these rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not specify how many hours the airboat operator course must be or provide information on what subjects be included in the course. It is currently left up to the FWC to determine whether the airboat safety course should be 8 hours or 80 hours. The bill also does not set a maximum fee for such course. It is left up to the FWC to determine the length and cost of the course.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Careers and Competition Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute clarifies the list of items that an airboat operator must have onboard when carrying passengers for hire on waters of the state.

The bill analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.

A bill to be entitled

An act relating to airboat regulation; providing a short title; amending s. 327.391, F.S.; requiring a commercial airboat operator to have specified documents onboard the airboat while carrying passengers for hire; providing an exception; providing a penalty; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as "Ellie's Law."

Section 2. Subsection (5) is added to section 327.391, Florida Statutes, to read:

327.391 Airboats regulated.—

(5)(a) Beginning December 31, 2018, a person may not operate an airboat to carry one or more passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

1. A photographic identification card.

2. Proof of completion of a boater education course that complies with s. 327.395(1)(a). Except as provided in paragraph (b), no operator is exempt from this requirement, regardless of age or the exemptions provided under s. 327.395.

3. Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards

established by commission rule.

4. Proof of successful course completion in cardiopulmonary resuscitation and first aid.

(b) A person issued a captain's license by the United States Coast Guard is not required to complete a boating safety education course that complies with s. 327.395(1)(a). Proof of the captain's license must be onboard the airboat when carrying one or more passengers for hire on waters of the state.

(c) A person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

HB 1211 by Rep. Abruzzo
Airboat Regulation

AMENDMENT SUMMARY
February 26, 2018

Amendment 1 by Rep. Abruzzo (strike-all):

The amendment:

- Revises the date, from December 31, 2018 to July 1, 2019, relating to the items that a for-hire airboat operator must carry onboard their airboat, including proof of completion of an airboat operator course.
- Requires FWC to promulgate rules for an airboat operator course by October 1, 2018.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Abruzzo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. This act may be cited as "Ellie's Law."

Section 2. Subsection (5) is added to section 327.391, Florida Statutes, to read:

327.391 Airboats regulated.—

(5)(a) Beginning July 1, 2019, a person may not operate an airboat to carry one or more passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

1. A photographic identification card.

2. Proof of completion of a boater education course that complies with s. 327.395(1)(a). Except as provided in paragraph

(b), no operator is exempt from this requirement, regardless of age or the exemptions provided under s. 327.395.

3. Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by commission rule.

4. Proof of successful course completion in cardiopulmonary resuscitation and first aid.

(b) A person issued a captain's license by the United States Coast Guard is not required to complete a boating safety education course that complies with s. 327.395(1)(a). Proof of the captain's license must be onboard the airboat when carrying one or more passengers for hire on waters of the state.

(c) A person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) The commission shall make and promulgate rules for an airboat operator course as provided for in s. 327.391(5)(a)3. on or before October 1, 2018.

Section 3. This act shall take effect upon becoming a law.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to airboat regulation; providing a short title; amending s. 327.391, F.S.; requiring a commercial airboat operator to have specified documents onboard the airboat while carrying passengers for hire; providing an exception; providing a penalty; requiring the commission to make and promulgate certain rules on or before a specific date; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7067 PCB TGC 18-01 Gaming
SPONSOR(S): Tourism & Gaming Control Subcommittee, La Rosa
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Tourism & Gaming Control Subcommittee	9 Y, 6 N	Bowen	Barry
1) Commerce Committee		Bowen JB	Hamon K.W.H.

SUMMARY ANALYSIS

The bill ratifies and approves a 2018 Gaming Compact between the Seminole Tribe of Florida (Tribe) and the State of Florida (State), and directs the Governor to execute the 2018 Compact. Under its terms, the 2018 Compact extends for 20 years both the Tribe's current exclusive authorization to conduct banked games statewide and the Tribe's current exclusive authorization to conduct slot machine gaming outside of Miami-Dade and Broward Counties. In exchange for the exclusivity afforded to it by the 2018 Compact, the Tribe will make revenue sharing payments totaling at least $3 billion to the State during the first seven years.

The 2018 Compact reincorporates many of the same provisions of the Gaming Compact between the Tribe and State executed on April 7, 2010 (2010 Compact), as well as providing for the following:

- Prospective ratification and approval by the Legislature;
- Fixed 20-year term with no scheduled changes, extensions or expirations during the term;
- Tribe receives exclusive authorization to conduct banked games at 5 facilities for full 20-year term;
- Tribe maintains exclusive authorization to conduct slot machine gaming outside Miami-Dade and Broward Counties for full 20-year term;
- Maintains current level of monthly revenue sharing until the 2018 Compact becomes effective;
- Once effective, increases revenue sharing, including a guaranteed $3 billion in the first seven years;
- The State's portion of revenue share must be allocated to specified education programs to maintain the Tribe's revenue sharing obligations;
- Any new type or new location of class III games not in existence as of January 1, 2018, either reduces or ceases revenue sharing payments;
- Any reductions in the number of live performances at pari-mutuel facilities below current statutory requirements impacts revenue sharing payments;
- Improves the process for identifying, resolving and/or curing breaches of the Tribe's exclusivity.

In addition, the bill amends various substantive provisions of Florida Statutes relating to gambling, including:

- Clarifies that slot machine gaming is not authorized at pari-mutuel facilities outside of Miami-Dade and Broward Counties and clarifies that pre-reveal machines are prohibited slot machines;
- Clarifies that only traditional, pari-mutuel-style poker games are authorized in cardrooms;
- Provides for the mandatory revocation of dormant and delinquent permits, under certain circumstances;
- Provides for the discretionary revocation of certain permits, under certain circumstances;
- Prohibits the issuance of new permits, and prohibits the conversion of permits;
- Prohibits the transfer or relocation of pari-mutuel permits or gaming licenses.

The bill is expected to have a positive fiscal impact on state funds; however, the Revenue Estimating Conference has not yet reviewed the bill.

The bill provides for an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

General Overview of Gaming in Florida

In general, gambling is illegal in Florida.[1] Among other things, Florida law prohibits keeping a gambling house,[2] conducting lotteries,[3] and the manufacture, sale, lease, play, or possession of slot machines.[4] Exceptions to the general prohibition include the Florida Lottery,[5] pari-mutuel wagering[6] on three types of horseracing,[7] greyhound dog racing,[8] and jai alai,[9] slot machines at certain pari-mutuel facilities,[10] authorized cardrooms at many pari-mutuel facilities,[11] and specified gaming at certain tribal facilities.[12] Other exceptions include penny-ante games,[13] charitable bingo,[14] charitable drawings,[15] game promotions (sweepstakes),[16] and bowling tournaments.[17]

The Florida Legislature currently has broad latitude in authorizing, restricting and regulating gambling activities within the state.[18] However, a proposed constitutional amendment that recently qualified for the 2018 general election ballot would require a constitutional amendment to authorize any type of "casino gambling."[19]

Pari-Mutuel Wagering

For many decades, pari-mutuel wagering has been authorized in Florida for jai alai, greyhound racing, and three specific forms of horseracing (thoroughbred horse racing, harness horse racing and quarter horse racing). These activities are overseen and regulated by the Division of Pari-Mutuel Wagering (Division) with the Department of Business and Professional Regulation (DBPR). The Division's purpose is to ensure the health, safety, and welfare of the public, racing animals, and licensees through efficient, and fair regulation of the pari-mutuel industry in Florida.[20]

---

[1] *See* FLA. CONST. art. X, s. 7; s. 849.08, F.S. The terms "gambling" and "gaming" are used interchangeably in this analysis.
[2] s. 849.01, F.S.
[3] s. 849.09, F.S.
[4] s. 849.16, F.S.
[5] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Section 24.102, F.S., creates the Department of the Lottery.
[6] "Pari-mutuel" means 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. S. 550.002(22), F.S.
[7] The definition of "horserace permitholder" specifies thoroughbred racing, harness racing, and quarter horse racing. S. 550.002(15), F.S.
[8] *See* s. 550.002(29), F.S.
[9] A ball game of Spanish origin played on a court with three walls. s. 550.002(18), F.S.
[10] *See* Article X, Section 23, Florida Constitution; ch. 551, F.S.
[11] Sections 849.086, F.S.
[12] ss. 285.710 and 285.712, F.S.
[13] s. 849.085, F.S.
[14] s. 849.0931, F.S.
[15] s. 849.0935, F.S.
[16] s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[17] s. 546.10, F.S.
[18] *See, e.g., Florida Gaming Centers v. DBPR*, 71 So. 3d 226 (Fla. 1st DCA 2011).
[19] Information relating to the proposed constitutional amendment, entitled "Voter Control of Gambling in Florida," is available at http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64995&seqnum=1 (last visited Jan. 26, 2018)
[20] From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within the Department of Business Regulation, which, in 1993, became DBPR.

Pari-mutuel is defined 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."[21]

Chapter 550, F.S., provides specific permitting and licensing requirements, taxation provisions, and regulations for the conduct of the pari-mutuel industry. Pari-mutuel wagering activities are limited to operators who have received a permit from the Division, which is then subject to ratification by county referendum. Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities.[22] Certain permitholders are also authorized to operate cardrooms[23] and slot machines at their facility, as discussed further below.[24]

Currently in Florida there are 50 pari-mutuel wagering permits, and 5 non-wagering permits. There are 38 pari-mutuel permitholders licensed to operate during Fiscal Year 2016-2017, in addition to one thoroughbred sales facility that holds a limited license to conduct intertrack wagering. There are eight pari-mutuel facilities that have been licensed to operate slot machines. Several locations have multiple permits that operate at a single facility. Chapter 550, F.S., specifies circumstances under which certain pari-mutuel permits may be revoked, relocated, or converted.

The following types of permits are licensed to operate during Fiscal Year 2016-2017:

- 19 Greyhound permits
- 5 Thoroughbred permits
- 1 Harness permit
- 5 Quarter Horse permits
- 8 Jai-Alai permits

Patrons at a racetrack may also wager on races hosted at other tracks, which is called intertrack (when both tracks are in Florida) or simulcast (when one track is out of state) wagering. In-state 'host tracks' conduct live or receive broadcasts of simulcast races that are then broadcast to 'guest tracks,' which accept wagers on behalf of the host. To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing and meet other requirements.[25]

Lotteries

Section 7 of Article X of the 1968 State Constitution provides, "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."[26]

To allow activities that would otherwise be illegal lotteries, the Legislature has carved out several narrow exceptions to the statutory lottery prohibition. Statutory exceptions are provided for charitable bingo, charitable drawings, and game promotions. Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries, and randomly select an entry to win a prize. Under s. 849.0935, F.S., qualified organizations may conduct drawings by chance, provided the organization has complied with all applicable provisions of Chapter 496, F.S. Game promotions, often called sweepstakes, are advertising tools by which businesses promote their goods or services. As they

[21] s. 550.002(22), F.S.
[22] s. 550.0115, F.S.
[23] s. 849.086, F.S.
[24] s. 551.104, F.S.
[25] *See* s. 550.615, F.S.
[26] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The new state constitution was ratified by the electorate on November 5, 1968.

contain the three elements of a lottery: consideration, chance, and prize, they are generally prohibited by Florida law unless they meet a statutory exception.[27]

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. The Florida Lottery—known formally as the Florida Education Lotteries—benefits education by funding the State Education Lotteries Trust Fund. Section 15 of Article X of the State Constitution (adopted by the electors in 1986) provides as follows:

> Lotteries may be operated by the state.... On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law. [28]

Cardrooms

The Legislature authorized cardrooms at pari-mutuel facilities in 1996 subject to local approval.[29] Cardrooms can only be offered at a location where the permitholder is authorized to conduct pari-mutuel activities. To remain eligible for a cardroom license, a permitholder must conduct at least 90% of the performances conducted the year it applied for its initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.[30]

Currently, 24 pari-mutuel facilities are operating cardrooms. The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. No-limit poker games are permitted. Cardrooms must be approved by an ordinance of the county commission where the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation's monthly gross receipts.

A pari-mutuel facility that operates a cardroom may only offer authorized games within the cardroom. An "authorized game" is defined as "a game or series of games of poker or dominos which are played in a nonbanking manner."[31] The licensed cardrooms are prohibited from offering "banked" card games.

In recent years, several cardrooms in the state have begun operating "designated player games." Designated player games (also known as player-banked games) are card games in which a designated player occupies the position of the dealer. Rather than competing against each other, players compete solely against the designated player to determine the game's winner. Instead of competing for a common pot of winnings, players wager against the designated player, who collects from losers and pays winners from their own bank.

In July 2014, the Division adopted rules establishing requirements for such games. Under the resulting rule, Chapter 61D-11.002(5), F.A.C. (DP Rule), cardroom operators were required to establish house rules for the operation of designated player games.[32] The house rules must include uniform requirements to be a designated player, ensure that the opportunity to be the dealer rotates around the table after each hand, and not require the designated player to cover all wagers.[33]

---

[27] *Little River Theatre Corp v. State*, 185 So. 854, 868 (Fla. 1939).
[28] The Department of the Lottery is authorized by Article X, Section 15 of the Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., creates the Department of the Lottery and states the Legislature's intent that it be self-supporting and revenue-producing and function as an entrepreneurial business enterprise.
[29] s. 20, Ch. 96-364, Laws of Fla.
[30] s. 849.086(5)(b), F.S.
[31] s. 849.086(2)(a), F.S.
[32] Rule 61D-11.002(5), F.A.C.
[33] *Id.*

In October 2015, the Division proposed rule changes to effectively ban designated player games and delete the requirements for operation of designated player games.[34] After a rule challenge was filed against the proposed rule changes, the Division issued a Notice of Change revising its proposed rules by removing the prohibition against designated player games. However, the revised proposed rule changes maintained the repeal of established criteria for designated player games.[35] The revised proposed rule changes were challenged at the Division of Administrative Hearings (DOAH). After a hearing at DOAH, an Administrative Law Judge (ALJ) ruled that the Division lacked authority to repeal the DP Rule.[36] On appeal, the First District Court of Appeal largely affirmed the ALJ's order, but confirmed the Division's underlying rulemaking authority regarding the DP Rule.[37] The Division is currently in the process of developing new or revised rules regarding the conduct of designated player games.

In January 2016, the Division issued administrative complaints against multiple pari-mutuel facilities, charging that the facilities were "operating a banking game or a game not specifically authorized" by state law.[38] After an evidentiary hearing at DOAH, an ALJ ruled that the designated player games, as conducted at a certain cardroom serving as the "test" case, violated the statutory prohibition of banking card games.[39] An ensuing appeal by Jacksonville Kennel Club was later withdrawn, and related cases are being informally resolved by the Division in accordance with the ALJ's ruling.

Slot Machine Gaming

After a brief period of legalization in the 1930s, slot machines were again prohibited in Florida in 1937.[40] Slot machines remained illegal until 2004, when voters approved a state constitutional amendment authorizing slot machines at specified pari-mutuel facilities in two counties, subject to local approval.

Section 23 of Article X of the State Constitution (adopted by the electors in 2004) provides for slot machines in Miami-Dade and Broward Counties, as follows:

> After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed pari-mutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such pari-mutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

Pursuant to this constitutional authorization and subsequently enacted statutes, slot machines are now authorized at eight pari-mutuel facilities in Broward and Miami-Dade Counties and are regulated under Chapter 551, F.S.[41] These facilities are often referred to as "Racinos" (i.e., race track + casino).

Under s. 551.102(4), F.S., slot machine-eligible facilities are defined as follows:

---

[34] Proposed Rule 61D-11.002, F.A.C. (Published in F.A.R. Oct. 19, 2015).
[35] Proposed Rule 61D-11.002, F.A.C. (Notice of Change. Jan. 15, 2016).
[36] *Dania Entertainment Center v. DBPR,* Case No. 15-007010RP (Fla. DOAH Aug. 26, 2016).
[37] *DBPR v. Dania Entertainment Center*, 229 So. 3d 1259, 1265 (Fla. 1st DCA 2017).
[38] *See* Kam, Dara, *State targets pari-mutuels over card games*, Tampa Bay Business Journal, http://www.bizjournals.com/tampabay/news/2016/01/27/state-targets-pari-mutuels-over-card-games.html (last visited Feb. 17, 2017) and Administrative Complaints filed by the Division (Jan. 25, 2016)(on file with the Tourism and Gaming Control Subcommittee).
[39] *Dep't of Bus. & Prof. Reg. v. Jacksonville Kennel Club, Inc.*, Case No. 16-1009 (Fla. DOAH Aug. 1, 2016).
[40] s. 849.15, F.S., originally enacted by s. 1, ch. 18143, L.O.F. (1937).
[41] *See* Article X, Section 23, Florida Constitution; ch. 2010-29, L.O.F. and chapter 551, F.S.

- Any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county;
- Any licensed pari-mutuel facility located within a county as defined in s. 125.011, F.S., provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or
- Any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter.

Slot machine licensees are required to pay an annual license fee of $2 million and an annual regulatory fee of $250,000.[42] The tax rate on slot machine revenues at each facility, originally 50 percent, is currently 35 percent. In order to remain eligible for slot machines, permitholders must conduct a full schedule of live racing or games, among other requirements.[43]

Seven pari-mutuel facilities obtained eligibility for slot machines through constitutional approval - the first clause above. An eighth pari-mutuel facility, Hialeah Park, was ineligible under the first clause because it had not conducted live racing or games in 2002 and 2003. However, it obtained eligibility in 2010 with the enactment of Chapter 2009-170, which added the second and third clauses above to s. 551.102(4), F.S. Notably, the 2010 Compact was ratified by the same legislation that effectuated the second and third clauses.

To date, no facilities have obtained eligibility through the third clause. However, several pari-mutuels have relied upon that clause in applying for a slot machine license.[44] Certain permitholders seeking to add slot machines have argued that the phrase "after the effective date of this section" in the third clause applies to "a countywide referendum held." Based on this reading of the statute, some permitholders contend that any county can hold a referendum on slot machines by virtue of its general authority to hold referenda or, alternatively, that the necessary legislative authorization to hold such a referendum is conferred by the current statute. To date, Duval, St. Lucie, Brevard, Gadsden, Lee, Palm Beach, Hamilton and Washington counties have each held a countywide referendum. In each case, a majority of voters indicated their support for slot machines at the pari-mutuel facility in that county.

As the Division began receiving applications for slot machine licenses from pari-mutuel permitholders in these counties, DBPR requested a formal written opinion from Florida's Attorney General (AGO) regarding whether the Division was authorized by statute to issue slot machine licenses to facilities outside of Miami-Dade and Broward Counties.

In January 2012, the AGO stated that it did not, concluding that the phrase "after the effective date of this section" modified the phrase "a statutory or constitutional authorization" and not "countywide referendum."[45] The AGO determined that counties could not rely on their general authority to hold referenda but instead must have specific statutory authorization enacted after July 1, 2010, to hold referenda on the question of slot machines. Relying on the AGO, the Division has denied all new slot

[42] ss. 551.106 and 551.118, F.S.
[43] s. 551.104(1)(c), F.S.
[44] *Gretna Racing, LLC v. Fla. Dep't of Bus. & Prof. Reg.*, No. SC15-1929, 2015 WL 8212827 (Fla. May 18, 2017).
[45] 2012-01 Fla. Op. Att'y Gen. (2012).

machine license applications since 2012.[46] A few applicants challenged the denials, including Gretna Racing in Gadsden County. In May 2017, the Florida Supreme Court ruled in favor of the Division, holding that Gadsden County lacked the authority to conduct a referendum on slot machine gaming without further legislative authorization.[47]

Live Performance Requirements

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.[48] Currently the State requires that:

- To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing as defined in ch. 550 and meet other requirements.[49]
- To remain eligible for a cardroom license, permitholders must conduct at least 90% of the performances conducted the year they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances. [50]
- To remain eligible for a slot machine license, permitholders must conduct a full schedule of live racing as defined in ch. 550.[51]

Indian Gaming

Background on Indian Gaming Law

Gambling on Indian lands is subject to federal law, with limited state involvement. The Indian Gaming and Regulatory Act (IGRA), codified at 25 USCA §§ 2701-2721, was enacted in 1988 in response to the United State Supreme Court decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The act provides for "a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming."[52] In so doing, IGRA seeks to balance the competing interests of two sovereigns: the interests of the Tribe in engaging in economic activities for the benefit of its members and the interest of the state in either prohibiting or regulating gaming activities within its borders.[53]

IGRA separates gaming activities into three categories:

- Class I games are "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations."[54] Class I games are within the exclusive jurisdiction of the Indian tribes.[55]
- Class II games are bingo and card games that are explicitly authorized or are not explicitly prohibited by the laws of the State.[56] The tribes may offer Class II card games "only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games." Class II gaming does not include "any banking card games, including baccarat, chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot

[46] *See* Mary Ellen Klas, *Attorney General Opinion Puts Reins on Slots at Gretna Barrel Racing Track*, Miami Herald (Jan. 12, 2012), http://www.miamiherald.typepad.com/nakedpolitics/2012/01/attorney-general-opinion-puts-reins-on-gretna-barrel-racing-.html.
[47] *Gretna Racing*, 2015 WL 8212827 (Fla. May 18, 2017).
[48] *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").
[49] *See* s. 550.615, F.S.
[50] s. 849.086(5)(b), F.S.
[51] s. 551.104(4)(c), F.S.
[52] United States Senate Report No. 100-446, Aug. 3, 1988.
[53] *Id.*
[54] 25 U.S.C. 2703(6).
[55] 25 U.S.C. 2710(a)(1).
[56] 25 U.S.C. 2703(7)(A).

machines of any kind."[57] Class II games are also within the jurisdiction of the Indian tribes, but are also subject to the provisions of IGRA.[58]
- Class III games are defined as any games that are not Class I or Class II. Class III games include slot machines and banked card games such as blackjack, baccarat and chemin de fir.[59]

A tribe can qualify to offer Class III games in the following ways:

- If the state authorizes Class III games for any purpose to any person, organization, or entity, the tribe must:
    - Authorize the games by an ordinance or resolution adopted by the governing body of the Indian tribe, approved by the Chairman of the National Indian Gaming Commission, and in compliance with IGRA; and
    - Conduct the games in conformance with a Tribal-State compact entered into between the tribe and the State.[60]

- If the state does NOT authorize Class III gaming for any purpose by any person, organization, or entity, the tribe must request negotiations for a tribal-state compact governing gaming activities on tribal lands. Upon receiving such a request, the state may be obligated to negotiate with the Indian tribe in good faith.[61] Under IGRA, a tribe is not entitled to a compact.

When the negotiations fail to produce a compact, a tribe may file suit against the state in federal court and seek a determination of whether the state negotiated in good faith. If the court finds the state negotiated in good faith, the tribe's proposal fails. On a finding of lack of good faith by the state, however, the court may order negotiation, followed by mandatory mediation. If the state ultimately rejects a court-appointed mediator's proposal, the Secretary "shall prescribe, in consultation with the Indian tribe, procedures... under which class III gaming may be conducted."[62]

Generally, in accordance with IGRA, a compact may include the following provisions:

- The application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of gaming;
- The allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of laws and regulations;
- An assessment in an amount necessary to defray the costs of regulation;
- Revenue sharing by the Indian tribe for permitted activities;
- Remedies for breach of contract;
- Standards for the operation of gaming and gaming facilities, including licensing; and
- Any other subjects that are directly related to the operation of gaming activities.[63]

Any compact that is entered into by a tribe and a state will take effect when approval by the Secretary of the Interior is published in the Federal Register.[64] Upon receipt of a proposed compact, the Secretary

---

[57] 25 U.S.C. 2703(7)(B).
[58] 25 U.S.C. 2710(a)(2) and (b).
[59] 25 U.S.C. 2703; 25 C.F.R. § 502.4.
[60] 25 U.S.C. 2710(d)(1).
[61] 25 U.S.C. 2710 (d)(3)(A).
[62] 25 U.S.C. 2710(d)(7). This option is addressed in *Seminole Tribe of Florida v. Florida,* 517 U.S. 44 (1996), which brought into question whether a tribe has the ability to judicially enforce the provisions of IGRA against a state. The Department of the Interior adopted rules to provide a remedy for the tribes. The validity of the rules were brought into question in *Texas v. United States*, 497 F.3d 491, (5th Cir. 2007).
[63] 25 U.S.C. 2710 (d)(3)(C).
[64] 25 U.S.C. 2710(d)(3)(B).

has 45 days to approve or disapprove the compact.[65] A compact will be considered approved if the Secretary fails to act within the 45-day period. A compact that has not been validly "entered into" by a state and a tribe (e.g., execution of a compact by a state officer who lacks the authority to bind the state) cannot be put "into effect", even if the Secretary of the Interior publishes the compact in the Federal Register.[66]

There is no explicit provision under IGRA that authorizes revenue sharing. IGRA specifically states:

> [N]othing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3) (A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.[67]

Notwithstanding this restriction, revenue sharing is permissible so long as the tribe receives a valuable economic benefit in return. Typically, such benefit is in the form of substantial exclusivity in game offerings, geographic monopoly and/or a right to conduct such offerings on more favorable terms than non-Indians.[68]

The 2010 Compact

The Tribe and the State executed the 2010 Compact on April 7, 2010, which was ratified through Chapter 285, F.S. The 2010 Compact took effect when published in the Federal Register on July 6, 2010 and all but the banked card game authorization has a term of 20 years, expiring July 31, 2030, unless renewed.

The 2010 Compact provides for revenue sharing from the Tribe to the State. For the exclusive authority to offer banked card games on tribal lands at five locations for five years and to offer slot machine gaming outside Miami-Dade and Broward Counties, the Tribe pays the State a share of "net win" (currently, revenue sharing payments equal approximately $240 million per year). The 2010 Compact required the Tribe to share revenue with the State in the amount of $1 billion over the first five years.

Section 285.710(1)(f), F.S., designates the Division within DBPR as the "state compliance agency" responsible for carrying out the state's oversight responsibilities under the 2010 Compact.

The State of Florida retains the right to authorize or prohibit gaming in the state. However, the 2010 Compact provides consequences for the expansion of gaming:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuel facilities located in Miami-Dade and Broward counties (which may not relocate) and the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.
- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.[69]

---

[65] 25 U.S.C. 2710(d)(8)(C).
[66] *See Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997).
[67] 25 U.S.C. 2710(d)(4).
[68] *See generally In re Indian Gaming Related Cases*, 331 F.3d 1094 (9th Cir. 2003)(upholding revenue sharing where revenues were apportioned to non-gaming tribes); *see also* Letter From Gale A. Norton, Secretary of the Department of the Interior, to Cyrus Schindler, President of the Seneca Nation of Indians, November 12, 2002.
[69] The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

Revenue sharing payments cease if:

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location outside of Miami-Dade and Broward counties that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

Compact Litigation

In 2015, when the Tribe's authorization to conduct banked card games was scheduled to expire, the Tribe and DBPR filed lawsuits against each other. In its lawsuit, the Tribe asserted that the State allowed pari-mutuel facilities to conduct designated player games and, as a result, the Tribe is entitled to conduct banked card games for the full 20-year term of the 2010 Compact. The Tribe also asserted that the State breached its duty to negotiate with the Tribe in good faith. In its lawsuit, DBPR asserted that the Tribe was improperly continuing banked card games beyond its 5-year authorization, and that the Tribe was violating IGRA by conducting gaming not otherwise authorized in the state.

In November 2016, a federal district court entered an order declaring that, due to DBPR's authorization of designated player games at pari-mutuel facilities, the Tribe has the right under the 2010 Compact to continue offering banked card games for the 2010 Compact's entire 20-year term and at all seven tribal facilities.[70] DBPR initially appealed the ruling, which was subsequently dismissed after the parties entered into a settlement agreement in July 2017.

Under the settlement, during a so-called "forbearance period" that is currently anticipated to conclude on March 31, 2018, the Tribe agreed to continue making revenue sharing payments so long as DBPR pursues "aggressive enforcement" against the operation of banked card games at cardrooms located in pari-mutuel facilities.

2015 Proposed Compact

A proposed new compact was executed by the Governor and the Tribe on December 7, 2015 (2015 Proposed Compact), but it was not ratified by the Legislature and therefore is not in effect. Consequently, the 2010 Compact remains in effect.

Effect of the Bill: Seminole Gaming Compact

Indian Gaming in Florida

Ratification of the 2018 Compact

The bill ratifies and approves in advance a 2018 Compact between the Tribe and the State of Florida and authorizes the Governor to execute such a compact in the identical form set forth in the legislation. If ratified, the 2018 Compact will supersede the 2010 Compact; if not ratified, the 2010 Compact will remain in effect. As in previous compact legislation, the bill requires the Governor to cooperate with the Tribe in seeking approval of the 2018 Compact from the United States Secretary of the Interior.

Obligations under the 2018 Compact

The 2018 Compact authorizes the Tribe to conduct the same Class III games at the same locations originally authorized under the 2010 Compact.

It permits the Tribe to offer the following games, termed "covered games:"

[70] *Seminole Tribe of Florida v. State of Florida*, No. 4:15CV516-RH/CAS, 2016 WL 6637706 (N.D. Fla. Nov. 9, 2016).

- Slot machines at all 7 facilities;
- Banked card games (including blackjack, chemin de fer, and baccarat) at 5 of 7 facilities;
- Raffles and drawings; and
- Any other game authorized for any person for any purpose, except for a compact with a qualifying Indian Tribe.

It provides that "[a]ny of the facilities existing on Indian Lands... may be expanded or replaced by another facility on the same Indian Lands with at least 60 days advanced notice to the state."

The 2018 Compact has a term of 20 years.

Payments to the State under the 2018 Compact

Mirroring the 2015 Proposed Compact, the 2018 Compact establishes a guarantee minimum payment period that is defined as the seven-year period beginning July 1, 2018, and ending June 30, 2024. During the guarantee minimum payment period, the Tribe will make payments as specified, totaling $3 billion over seven years. Payments will be paid by the Tribe to the State as follows:

- During the initial period (from the effective date to June 30, 2018), the Tribe makes payments based on a variable percentage of net win similar to the percentage payments in the 2010 Compact.
- During the guarantee minimum payment period from July 1, 2018 to June 30, 2024, the Tribe pays a minimum of $3 billion over seven years.
- At the end of the guarantee minimum payment period, if the percentage payments (that range from 13 percent of net win up to $2 billion, to 25 percent of net win greater than $4.5 billion) would have amounted to more than the guaranteed minimum payments, the Tribe must pay the difference.
- The Tribe's guaranteed minimum revenue sharing payments are:
    - $325 million – 1st year;
    - $350 million – 2nd year;
    - $375 million – 3rd year;
    - $425 million – 4th year;
    - $475 million – 5th year;
    - $500 million – 6th year; and
    - $550 million – 7th year.
- After the first seven years, the Tribe will continue to make percentage payments to the state without a guaranteed minimum payment.
- The percentage payments include a 1 percent increase on amounts up to $2 billion, and a 2.5 percent increase on amounts greater than $2 billion, up to and including $3 billion, as compared to the 2010 Compact.

Revenue Sharing Consequences under the 2018 Compact

The 2018 Compact specifies that the monies paid by the Tribe to the State shall be allocated as follows:

- One-third shall be allocated to K-12 teacher recruitment and retention bonuses;[71]
- One-third shall be allocated to schools that serve students from persistently failing schools;[72] and

[71] s. 1012.731, F.S.
[72] ss. 1001.292 and 1002.333, F.S.

- One-third shall be allocated to higher education institutions to recruit and retain distinguished faculty.

If such payments are not allocated to the specified educational purposes in the precise manner and amounts set forth above, then all further revenue sharing payments due under the 2018 Compact could cease.

As with the 2010 Compact, revenue sharing payments under the 2018 Compact may be reduced or discontinued by the Tribe if any of the following activities are authorized:

- New forms of Class III gaming or other casino-style gaming after February 1, 2018, or Class III gaming or other casino-style gaming at any location not authorized for such games as of January 1, 2018;
- Banked card games at licensed pari-mutuel facilities;
- Class III gaming at other locations in Miami-Dade or Broward counties; or
- Class III gaming to be offered outside of Miami-Dade or Broward counties.

As with the 2010 Compact, revenue sharing under the 2018 Compact may also be affected if the State authorizes any new games for the Florida Lottery that are not in operation as of February 1, 2018. Likewise, it recognizes that internet gaming is not currently permitted in Florida. If the Legislature authorizes internet gaming, the guaranteed minimum payments cease, but the percentage payments continue. If the Tribe offers internet gaming to patrons, then the guaranteed minimum payments continue.

In addition, the 2018 Compact:

- Specifies that revenue sharing payments may be affected if the State permits any pari-mutuel to reduce or eliminate live performances below levels required under current law for a pari-mutuel facility to maintain cardroom and slot machine licenses.
- Establishes a more detailed process for identifying and resolving disputes, including alleged breaches of exclusivity under the Compact.

As the table below illustrates, the 2018 Compact adopts many of the key provisions of the 2010 Compact:

	2010 Compact	**2018 Compact**
Revenue Sharing	Revenue sharing, providing for minimum guaranteed payments of $1 billion dollars over the first five years. (The minimum guaranteed payments ended on July 1, 2015)	Revenue sharing, providing for minimum guaranteed payments of $3 billion dollars over the first seven years.
Compulsive Gambling Exclusivity Payment	Tribe will make annual $250,000 donation per Facility ($1,750,000 total) to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list, so long as exclusivity is maintained.	Same.
Class III Gaming Authorizations	All seven Seminole Casinos may offer slot machines, raffles and drawings, and any new game authorized in Florida. Banked card games may be offered at five of the Seminole Casinos (excluding the Brighton and Big Cypress facilities).	Same.
Banked Card Game Exclusivity	No facility in Florida, except for specifically authorized Tribal facilities, may offer banked card games.	Same.
Slot Machine Exclusivity	No facility except for currently authorized PMW facilities in Miami-Dade or Broward County may offer slot machines.	Same.
If Class III Gaming is authorized in non-specified facilities within Miami-Dade or Broward County	Guaranteed minimum payments cease and revenue sharing payments are calculated excluding Broward County facilities.	Same.
If Class III Gaming is authorized outside of Miami-Dade or Broward County	All payments under the Compact cease.	Same.
If internet or online gaming is authorized in Florida	If Tribe's revenues drop by more than 5%, guaranteed minimum payments stop but percentage revenue sharing continues. If Tribe decides to offer internet or online gaming, then guaranteed minimum payments continue.	Same.

Effect of the Bill: Pari-Mutuel Wagering

The bill specifies that the Division may not approve or issue any new permit authorizing pari-mutuel wagering. The bill also provides that any reduction in live performances by a pari-mutuel facility may affect revenue sharing payments under the Compact.

The bill provides additional authority for the Division to revoke a permit, including in the following circumstances:

- If a permitholder has failed to obtain an operating license to conduct live events for a period of more than 24 consecutive months after July 1, 2012.
- If a permitholder fails to make required payments for more than 24 consecutive months. This extends the existing requirement relative to thoroughbred and harness racing permits to all pari-mutuel wagering permits.

In addition, the bill:

- Specifies that pari-mutuel permits revoked under the situations identified above are void and may not be reissued.
- Repeals all relocation provisions relating to pari-mutuel permits.
- Repeals all conversion provisions relating to pari-mutuel permits.

Effect of the Bill: Cardrooms

The bill revises provisions to clarify that only traditional, pari-mutuel-style poker games are authorized in cardrooms in Florida. The bill further clarifies that designated player games and any other form of card game involving a bank are prohibited in cardrooms.

The bill revises the statutory definition of "authorized game" as follows:

> a game or series of games of traditional poker or dominoes which are played in a pari-mutuel, nonbanking manner, where all players at the table play against all other players at the table and contribute to a common pot of winnings collected by the winner, and which are played in a manner consistent with the rules and requirements set forth in the 1974 edition of Hoyle's Modern Encyclopedia of Card Games.

The bill revises the statutory definition of "banking game" to be "a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers, or a game in which any person or party serves as a bank against which participants play."

The bill prohibits any game not specifically authorized by the statute, including but not limited to games in which:

- the cardroom or any other person or party serves as a bank or banker against which players play;
- players compete against a designated player instead of competing against all players at the table;
- the number of cards or ranking of hands does not conform to the rules and requirements for traditional poker as set forth in the 1974 edition of Hoyle's Modern Encyclopedia of Card Games; or
- any other game conducted in a manner that is not consistent with the statutes.

Finally, the bill states that any action or inaction by the Division which is deemed to be permission to conduct banking games does not represent state action for purposes of the 2018 Compact.

Effect of the Bill: Slot Machines

The bill clarifies that slot machines and slot machine licenses are not authorized in pari-mutuel facilities outside of Miami-Dade and Broward Counties, and further states that no new slot machine licenses may be issued after January 1, 2018. This clarification is accomplished in part by repealing the third clause of s. 551.102(4), which is the provision that caused litigation.

Under s. 551.102(4), F.S., slot machine-eligible facilities are defined to include:

- Any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county;
- Any licensed pari-mutuel facility located within a county as defined in s. 125.011, F.S., provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or
- Any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter.

To date, no facilities have obtained eligibility pursuant to the third clause.[73]

The bill also clarifies that the types of machines at issue in *Gator Coin v. DBPR*[74] are illegal slot machines. The machines, often referred to as "pre-reveal" machines, involve a "multiple game system with a preview feature"[75] requiring the player to press a preview button that displays the outcome of the game before they can play. The preview button shows the outcome of the next game but not the game after that.[76] The bill essentially codifies the trial court's ruling in the *Gator Coin* case, currently under appeal, which concluded that pre-reveal machines are illegal slot machines.

B. SECTION DIRECTORY:

Section 1 amends s. 285.710, F.S., ratifying and approving a Model Gaming Compact between the Tribe and the State (2018 Compact); providing that the 2018 Compact, once in effect, will replace and supersede the prior compact in effect since 2010 (2010 Compact); authorizing the Governor to negotiate and execute a compact identical to the 2018 Compact, and thereafter to cooperate with the Tribe in seeking approval of such compact from the United States Secretary of the Interior; maintaining exclusive authorization for the Tribe to conduct games but only to the extent previously authorized under the 2010 Compact and only at the specified facilities authorized to conduct such games as of July 1, 2015.

Section 2 amends s. 285.712, F.S., correcting a citation.

Section 3 amends s. 550.054, F.S., requiring the Division to revoke a pari-mutuel wagering operating permit under certain circumstances; prohibiting issuance or approval of new pari-mutuel permits after a specified date; providing exceptions; revising provisions that prohibit transfer or assignment of a pari-mutuel permit; prohibiting transfer or assignment of a pari-mutuel permit or license under certain

[73] *Gretna Racing, LLC v. Fla. Dep't of Bus. & Prof. Reg.*, No. SC15-1929, 2015 WL 8212827 (Fla. May 18, 2017).
[74] *Gator Coin v. DBPR*, No. 2015-CA-2629, at *1 (Fla. Cir. Ct. Jul. 10, 2017).
[75] *Id.*
[76] *Id.*

conditions; prohibiting relocation of a pari-mutuel facility, cardroom, or slot machine facility or conversion of pari-mutuel permits to a different class; deleting provisions for certain converted permits.

Section 4 repeals s. 550.0555, F.S., relating to the relocation of greyhound racing permits.

Section 5 repeals s. 550.0745, F.S., relating to the issuance of pari-mutuel permits to summer jai alai permits under certain circumstances.

Section 6 amends s. 550.09512, F.S., providing for the revocation of certain harness horse racing permits; specifying that a revoked permit may not be reissued.

Section 7 amends s. 550.09515, F.S., providing for the revocation of certain thoroughbred racing permits; specifying that a revoked permit may not be reissued; removing an obsolete provision.

Section 8 amends s. 550.3345, F.S., revising provisions for a permit previously converted from a quarter horse racing permit to a limited thoroughbred racing permit.

Section 9 amends s. 551.102, F.S., revising the definition of the terms "eligible facility" for purposes of provisions relating to slot machines.

Section 10 amends s. 551.104, F.S., specifying that no new slot machine licenses may be issued by the Division after January 1, 2018; specifying that no slot machine gaming may be conducted at any location or facility not conducting slot machine gaming as of January 1, 2018.

Section 11 amends s. 849.086, F.S., revising definitions; clarifying that Division may not authorize designated player games or any game involving a bank in cardrooms; authorizing the Division to revoke the cardroom license of any permitholder which conducts games prohibited under s. 849.086(12), F.S.

Section 12 amends s. 849.16, F.S., revising definitions; clarifying that the definition of illegal slot machines or devices includes machines with preview features in which the outcome is known, displayed, or capable of being known or displayed to the user.

Section 13 clarifies that all cardroom games involving designated players or a bank of any kind are illegal, prohibited, and contrary to the plain language and spirit of Florida law.

Section 14 provides an effective date.

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:

   The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill is expected to have a positive impact on state funds. However, the bill has not yet been reviewed by the Revenue Estimating Impact Conference.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

The bill includes provisions that may result in the revocation or restriction of pari-mutuel permits and associated licenses. The bill may also result in the restriction of activities currently being conducted or requested to be conducted at one or more pari-mutuel facilities. Affected permitholders may claim that such provisions offend constitutional protections.

The Florida Supreme Court has found that "[a]uthorized gambling is a matter over which the state may exercise greater control and exercise its police power in a more arbitrary manner... ."[77] Thus, the Court found that, unlike permits to construct a building, "[i]t is doubtful if we can agree with counsel in concluding that a racing permit is a vested interest or right and after once granted cannot be changed."[78] Likewise, "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right."[79]

Furthermore, it is unclear what (if any) value can be attributed to a pari-mutuel permit. Pari-mutuel permits are merely a prerequisite to licensure for pari-mutuel wagering and, by themselves, do not appear to vest the holder with any constitutionally protected rights. There are no application fees to receive a permit for pari-mutuel wagering and no fees to retain such a permit. Permits may not be transferred without state approval. While a pari-mutuel permit is one prerequisite to licensure to conduct cardrooms and slot machines, it is not the only prerequisite. Not all permitholders may be able to obtain a license to conduct pari-mutuel wagering events or other gaming activities, which may require local zoning and other approvals. In other words, the value of a pari-mutuel permit alone (if any) is unclear given the highly regulated nature of the underlying activity and the many other licenses and other governmental approvals that are required to conduct the activities associated with the pari-mutuel permit.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

---

[77] *Hialeah Race Course v. Gulfstream Park Racing Ass'n*, 37 So.2d 692, 694 (Fla. 1948).
[78] *State ex rel. Biscayne Kennel Club v. Stein*, 130 Fla. 517, 520 (Fla. 1938).
[79] *Solimena v. State,* 402 So.2d 1240 (Fla. 3rd DCA 1981).

With a few exceptions, which are summarized below, the bill is identical to PCB 17-01/HB 7037, which passed the House on April 4, 2017. The 2017 bill later died in a Gaming Conference with the Senate towards the end of the 2017 Regular Session.

The bill updates date references where appropriate (for instance, from 2017 to 2018), incorporates new statutory citations for the educational programs referenced in the 2017 bill, and clarifies the definition of the term "slot machine or device" in chapter 849, F.S., in response to recent litigation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to gaming; amending s. 285.710, F.S.; authorizing and directing the Governor, in cooperation with the Seminole Tribe of Florida, to execute a new compact in the form provided; signifying the Legislature's approval and ratification of such compact that does not materially alter from the approved form; providing terms and conditions for the gaming compact; providing definitions; authorizing the Tribe to operate covered games on its lands in accordance with the compact and at specified facilities; prohibiting specified games; providing requirements for resolution of patron disputes involving gaming, tort claims, and employee disputes; providing requirements for regulation and enforcement of the compact; requiring the state to conduct random inspections of tribal facilities; authorizing the state to conduct an independent audit; requiring the Tribe and commission to comply with specified licensing and hearing requirements; requiring the Tribe to make specified revenue share payments to the state, with reductions authorized under certain circumstances; requiring the Tribe to pay an annual oversight assessment and annual donation to the Florida Council on Compulsive Gaming; providing for

dispute resolution between the Tribe and the state; providing an effective date and termination of the compact; providing for execution of the compact; amending s. 285.712, F.S.; requiring the Governor to provide a copy of the executed compact to specified parties and direct the Secretary of State to forward a copy to the Secretary of the Interior; amending s. 550.054, F.S.; requiring the Division of Pari-Mutuel Wagering to revoke a permit to conduct pari-mutuel wagering for a permitholder that fails to make specified payments or obtain an operating license; prohibiting the issuance of new permits; deleting provisions related to the conversion of permits; repealing s. 550.0555, F.S., relating to relocation of a greyhound dogracing permit within the same county; repealing s. 550.0745, F.S., relating to conversion of a pari-mutuel permit to a summer jai alai permit; amending ss. 550.09512 and 550.09515, F.S.; requiring the division to revoke the permit of a harness horse or thoroughbred racing permitholder, respectively, who does not pay tax on handle for a specified period of time; deleting provisions relating to the reissuance of escheated permits; amending s. 550.3345, F.S.; revising provisions relating to a limited thoroughbred racing permit previously converted from a quarter

horse racing permit; amending s. 551.102, F.S.; revising the definition of the term "eligible facility"; amending s. 551.104, F.S.; prohibiting the division from issuing a license to conduct or authorizing slot machine gaming after a specified date; amending s. 849.086, F.S.; revising definitions; prohibiting specified cardroom games; authorizing the division to revoke a cardroom license after a certain date for specified actions; correcting a cross-reference; amending s. 849.16, F.S.; revising the definition of the term "slot machine or device"; providing action by the division construed to constitute permission by the state to conduct certain cardroom games is not state action; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) and subsection (3) of section 285.710, Florida Statutes, are amended to read:

285.710 Compact authorization.—

(1) As used in this section, the term:

(a) "Compact" means the Gaming Compact between the Seminole Tribe of Florida and the State of Florida~~, executed on April 7, 2010~~.

(3)(a) The Gaming Compact between the Seminole Tribe of Florida and the State of Florida, executed by the Governor and the Tribe on April 7, 2010, was ~~is~~ ratified and approved by chapter 2010-29, Laws of Florida. ~~The Governor shall cooperate with the Tribe in seeking approval of the compact from the United States Secretary of the Interior.~~

(b) The Governor, on behalf of this state, is hereby authorized and directed to execute a new compact with the Tribe as set forth in paragraph (c), and the Legislature hereby signifies in advance its approval and ratification of such compact, provided that it is identical to the compact set forth in paragraph (c) and becomes effective on or before January 1, 2019. The Governor shall cooperate with the Tribe in seeking approval of such compact ratified and approved under this paragraph from the Secretary of the Department of the Interior. Upon becoming effective, such compact supersedes the Gaming Compact ratified and approved under paragraph (a), which shall then become null and void.

(c) The Legislature hereby approves and ratifies the following Gaming Compact between the State of Florida and the Seminole Tribe of Florida, provided that such compact becomes effective on or before January 1, 2019:

Gaming Compact Between the Seminole Tribe of Florida and the State of Florida

This compact is made and entered into by and between the Seminole Tribe of Florida and the State of Florida, with respect to the operation of covered games, as defined herein, on the Tribe's Indian lands, as defined by the Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq.

PART I

TITLE.—This document shall be referred to as the "Gaming Compact between the Seminole Tribe of Florida and the State of Florida."

PART II

LEGISLATIVE FINDINGS.—

(1) The Seminole Tribe of Florida is a federally recognized tribal government that possesses sovereign powers and rights of self-government.

(2) The State of Florida is a state of the United States of America that possesses the sovereign powers and rights of a state.

(3) The State of Florida and the Seminole Tribe of Florida maintain a government-to-government relationship.

(4) The United States Supreme Court has long recognized

the right of an Indian Tribe to regulate activity on lands within its jurisdiction, but the United States Congress, through the Indian Gaming Regulatory Act, has given states a role in the conduct of tribal gaming in accordance with negotiated tribal-state compacts.

(5) Pursuant to the Seminole Tribe Amended Gaming Ordinance, adopted by Resolution No. C-195-06, and approved by the Chairman of the National Indian Gaming Commission on July 10, 2006, hereafter referred to as the "Seminole Tribal Gaming Code," the Seminole Tribe of Florida desires to offer the play of covered games, as defined in Part III, as a means of generating revenues for purposes authorized by the Indian Gaming Regulatory Act, including, without limitation, the support of tribal governmental programs, such as health care, housing, sewer and water projects, police, fire suppression, general assistance for tribal elders, day care for children, economic development, educational opportunities, per capita payments to tribal members, and other typical and valuable governmental services and programs for tribal members.

(6) This compact is the only gaming compact between the Tribe and the state. This compact supersedes the Gaming Compact between the Tribe and the state executed on or about April 7, 2010, which was subsequently ratified by the Legislature and went into effect on or about July 6, 2010.

(7) It is in the best interests of the Seminole Tribe of

Florida and the State of Florida for the state to enter into a compact with the Tribe that recognizes the Tribe's right to offer certain Class III gaming and provides substantial exclusivity of such activities in conjunction with a reasonable revenue sharing arrangement between the Tribe and the state that will entitle the state to significant revenue participation.

PART III

DEFINITIONS.—As used in this compact, the term:

(1) "Annual oversight assessment" means the amount owed by the Tribe to the state for reimbursement for the actual and reasonable costs incurred by the state compliance agency to perform the monitoring functions set forth under the compact.

(2) "Class II video bingo terminals" means any electronic aid to a Class II bingo game that includes a video spinning reel or mechanical spinning reel display.

(3) "Class III gaming" means the forms of Class III gaming defined in 25 U.S.C. s. 2703(8) and by the regulations of the National Indian Gaming Commission.

(4) "Commission" means the Seminole Tribal Gaming Commission, which is the tribal governmental agency that has the authority to carry out the Tribe's regulatory and oversight responsibilities under this compact.

(5) "Compact" means this Gaming Compact between the

Seminole Tribe of Florida and the State of Florida.

(6) "Covered game" or "covered gaming activity" means the following Class III gaming activities:

(a) Slot machines, which machines must meet all of the following requirements:

1. Any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device.

2. Require, for play or operation, the insertion of a coin, bill, ticket, token, or similar object, or payment of any consideration whatsoever, including the use of any electronic payment system, except a credit card or debit card, unless state law authorizes the use of an electronic payment system that uses a credit or debit card payment, in which case the Tribe is authorized to use such payment system.

3. Are available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually.

4. Includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other

device.

5. May use spinning reels, video displays, or both.

(b) Banking or banked card games, including any card games that are banked by the house, a player, other person or party, or any combination or variation thereof, such as baccarat, chemin de fer, and blackjack or 21; provided that the Tribe shall not offer such banked card games at its Brighton or Big Cypress facilities.

(c) Raffles and drawings.

(d) Any new game, if expressly authorized by the Legislature pursuant to legislation enacted subsequent to the effective date of this compact and lawfully conducted by any person for any purpose pursuant to such authorization, except for banked card games authorized for any other federally recognized tribe pursuant to Indian Gaming Regulatory Act, provided that the tribe has land in federal trust in the state as of January 1, 2018.

(7) "Covered game employee" or "covered employee" means an individual employed and licensed by the Tribe whose responsibilities include the rendering of services with respect to the operation, maintenance, or management of covered games, including, but not limited to, managers and assistant managers; accounting personnel; commission officers; surveillance and security personnel; cashiers, supervisors, and floor personnel; cage personnel; and any other employee whose employment duties

require or authorize access to areas of the facility related to the conduct of covered games or the technical support or storage of covered game components. The term does not include the Tribe's elected officials, provided that such individuals are not directly involved in the operation, maintenance, or management of covered games or covered games components.

(8) "Documents" means books, records, electronic, magnetic, and computer media documents, and other writings and materials, copies of such documents and writings, and information contained in such documents and writings.

(9) "Effective date" means the date on which the compact becomes effective pursuant to subsection (1) of Part XVI.

(10) "Electronic bingo machine" means a card minding device, which may only be used in connection with a bingo game as defined in s. 849.0931(1)(a), Florida Statutes, which is certified in advance by an independent testing laboratory approved by the Division of Pari-Mutuel Wagering as a bingo aid device that meets all of the following requirements:

(a) Aids a bingo game player by:

1. Storing in the memory of the device not more than three bingo faces of tangible bingo cards as defined by s. 849.0931(1)(b), Florida Statutes, purchased by a player.

2. Comparing the numbers drawn and individually entered into the device by the player to the bingo faces previously stored in the memory of the device.

3. Identifying preannounced winning bingo patterns marked or covered on the stored bingo faces.

(b) Is not capable of accepting or dispensing any coins, currency, or tokens.

(c) Is not capable of monitoring any bingo card face other than the faces of the tangible bingo card or cards purchased by the player for that game.

(d) Is not capable of displaying or representing the game result through any means other than highlighting the winning numbers marked or covered on the bingo card face or giving an audio alert that the player's card has a prize-winning pattern. No casino game graphics, themes, or titles, including, but not limited to, depictions of slot machine-style symbols, cards, craps, roulette, or lottery may be used.

(e) Is not capable of determining the outcome of any game.

(f) Does not award progressive prizes of more than $2,500.

(g) Does not award prizes exceeding $1,000, other than progressive prizes not exceeding $2,500.

(h) Does not contain more than one player position for playing bingo.

(i) Does not contain or does not link to more than one video display.

(j) Awards prizes based solely on the results of the bingo game, with no additional element of chance.

(11) "Facility" means a building or buildings of the Tribe

in which the covered games authorized by this compact are conducted.

(12) "Guaranteed minimum compact term payment" means a minimum total payment for the guarantee payment period of $3 billion, which shall include all revenue share payments during the guarantee payment period.

(13) "Guarantee payment period" means the seven-year period beginning July 1, 2018, and ending June 30, 2025.

(14) "Guaranteed revenue sharing cycle payment" means the payments as provided in Part XI.

(15) "Historic racing machine" means an individual historic race terminal linked to a central server as part of a network-based video game, where the terminals allow pari-mutuel wagering by players on the results of previously conducted horse or greyhound races, but only if the game is certified in advance by an independent testing laboratory approved by the Division of Pari-Mutuel Wagering as complying with all of the following requirements:

(a) Stores all data on previously conducted horse or greyhound races in a secure format on the central server, which is located at the pari-mutuel facility.

(b) Uses only horse or greyhound races that were recorded at licensed pari-mutuel facilities in the United States after January 1, 2000.

(c) Offers one or more of the following three bet types on

all historic racing machines: win-place-show, quinella, or trifecta.

(d) Offers one or more of the following racing types: thoroughbreds, harness, or greyhounds.

(e) Progressive prizes of more than of $2,500 are prohibited.

(f) Does not award prizes exceeding $1,000, other than progressive prizes not exceeding $2,500.

(g) After each wager is placed, displays a video of at least the final eight seconds of the horse or greyhound race before any prize is awarded or indicated on the historic racing machine.

(h) The display of the video of the horse or greyhound race must occupy at least 70 percent of the historic racing machine's video screen and does not contain and is not linked to more than one video display.

(i) Does not use casino game graphics, themes, or titles, including but not limited to, depictions of slot machine-style symbols, cards, craps, roulette, lottery, or bingo.

(j) Does not use video or mechanical reel displays.

(k) Does not contain more than one player position for placing wagers.

(l) Does not dispense coins, currency, or tokens.

(m) Awards prizes solely on the results of a previously conducted horse or greyhound race with no additional element of

chance.

(n) Uses a random number generator to select the race from the central server to be displayed to the player and the numbers or other designations of race entrants that will be used in the various bet types for any "Quick Pick" bets. To prevent an astute player from recognizing the race based on the entrants and thus knowing the results before placing a wager, the entrants of the race may not be identified until after all wagers for that race have been placed.

(16) "Indian Gaming Regulatory Act" means the Indian Gaming Regulatory Act, Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, codified at 25 U.S.C. ss. 2701 et seq. and 18 U.S.C. ss. 1166 to 1168.

(17) "Indian lands" means the lands defined in 25 U.S.C. s. 2703(4).

(18) "Initial payment period" means the period beginning on the effective date of the compact and ending on June 30, 2018.

(19) "Lottery vending machine" means any of the following three types of machines:

(a) A machine that dispenses pre-printed paper instant lottery tickets, but that does not read or reveal the results of the ticket or allow a player to redeem any ticket. The machine, or any machine or device linked to the machine, does not include or make use of video reels or mechanical reels or other video

depictions of slot machine or casino game themes or titles for game play, but does not preclude the use of casino game themes or titles on such tickets or signage or advertising displays on the machines;

(b) A machine that dispenses pre-determined electronic instant lottery tickets and displays an image of the ticket on a video screen on the machine, where the player touches the image of the ticket on the video screen to reveal the outcome of the ticket, provided the machine does not permit a player to redeem winnings, does not make use of video reels or mechanical reels, and does not simulate the play of any casino game, and the lottery retailer is paid the same amount as would be paid for the sale of paper instant lottery tickets; or

(c) A machine that dispenses a paper lottery ticket with numbers selected by the player or randomly by the machine, but does not reveal the winning numbers. Such winning numbers are selected at a subsequent time and different location through a drawing conducted by the state lottery. The machine, or any machine or device linked to the machine, does not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The machine is not used to redeem a winning ticket. This does not preclude the use of casino game themes, titles for signage, or advertising displays on the machine.

(20) "Monthly payment" means the monthly revenue share

payment which the Tribe remits to the state on the 15th day of the month following each month of the revenue sharing cycle.

(21) "Net revenue base" means the net win for the 12 month period immediately preceding the offering of, for public or private use, Class III or other casino-style gaming at any of the licensed pari-mutuel facilities in Broward and Miami-Dade Counties, except that if the commencement of such new gaming is made during the initial payment period, "net revenue base" means net win for the 12-month period immediately preceding this compact.

(22) "Net win" means the total receipts from the play of all covered games less all prize payouts and free play or promotional credits issued by the Tribe.

(23) "Pari-mutuel wagering activities" means those activities presently authorized by chapter 550, which do not include any casino-style game or device that includes video reels or mechanical reels or other slot machine or casino game themes or titles.

(24) "Patron" means any person who is on the premises of a facility, or who enters the Tribe's Indian lands for the purpose of playing covered games authorized by this compact.

(25) "Regular payment period" means the period beginning on July 1, 2025, and terminating at the end of the term of this compact.

(26) "Revenue share payment" means the periodic payment by

the Tribe to the state provided for in Part XI.

(27) "Revenue sharing cycle" means the annual 12-month period of the Tribe's operation of covered games in its facilities beginning on July 1 of each fiscal year, except for during the initial payment period, when the first revenue sharing cycle begins on July 1 of the previous year, and the Tribe receives a credit for any amount paid to the state under the 2010 Compact for that revenue sharing cycle.

(28) "Rules and regulations" means the rules and regulations promulgated by the commission for implementation of this compact.

(29) "State" means the State of Florida.

(30) "State compliance agency" means the state agency designated by the Florida Legislature that has the authority to carry out the state's oversight responsibilities under this compact.

(31) "Tribe" means the Seminole Tribe of Florida or any affiliate thereof conducting activities pursuant to this compact under the authority of the Seminole Tribe of Florida.

PART IV

AUTHORIZATION AND LOCATION OF COVERED GAMES.—

(1) The Tribe and state agree that the Tribe is authorized to operate covered games on its Indian lands, as defined in the

Indian Gaming Regulatory Act, in accordance with the provisions of this compact. Except as otherwise provided in this compact, nothing gives the Tribe the right to conduct roulette, craps, roulette-style games, or craps-style games; however, nothing in the compact is intended to prohibit the Tribe from operating slot machines that employ video or mechanical displays of roulette, wheels, or other table game themes. Except for the provisions in subsection (1) of Part XI, nothing in this compact shall limit the Tribe's right to operate any Class II gaming under the Indian Gaming Regulatory Act.

(2) The Tribe is authorized to conduct covered games under this compact only at the following seven existing facilities, which may be expanded or replaced as provided in subsection (3) on Indian lands:

(a) Seminole Indian Casino-Brighton in Okeechobee, FL.

(b) Seminole Indian Casino-Coconut Creek in Coconut Creek, FL.

(c) Seminole Indian Casino-Hollywood in Hollywood, FL.

(d) Seminole Indian Casino-Immokalee in Immokalee, FL.

(e) Seminole Indian Casino-Big Cypress in Clewiston, FL.

(f) Seminole Hard Rock Hotel & Casino-Hollywood in Hollywood, FL.

(g) Seminole Hard Rock Hotel & Casino-Tampa in Tampa, FL.

(3) Any of the facilities existing on Indian lands identified in subsection (2) may be expanded or replaced by

another facility on the same Indian lands with at least 60 days' advance notice to the state.

PART V

RULES AND REGULATIONS; MINIMUM REQUIREMENTS FOR OPERATIONS.—

(1) At all times during the term of this compact, the Tribe shall be responsible for all duties that are assigned to it and the commission under this compact. The Tribe shall promulgate any rules necessary to implement this compact, which, at a minimum, shall expressly include or incorporate by reference all provisions of Parts V, VI, VII, and VIII. Nothing in this compact shall be construed to affect the Tribe's right to amend its rules, provided that any such amendment is in conformity with this compact. The state compliance agency may propose additional rules consistent with and related to the implementation of this compact to the commission at any time, and the commission shall give good faith consideration to such proposed rules and shall notify the state compliance agency of its response or action with respect to such rules.

(2) All facilities shall comply with, and all covered games approved under this compact shall be operated in accordance with, the requirements set forth in this compact, including, but not limited to, the requirements set forth in

subsections (3) and (4) and the Tribe's Internal Control Policies and Procedures. In addition, all facilities and all covered games shall be operated in strict compliance with tribal internal control standards that provide a level of control that equals or exceeds those set forth in the National Indian Gaming Commission's Minimum Internal Control Standards, 25 C.F.R. part 542 (2015), even if the 2015 regulations are determined to be invalid or are subsequently withdrawn by the National Indian Gaming Commission. The Tribe may amend or supplement its internal control standards from time to time, provided that such changes continue to provide a level of control that equals or exceeds those set forth in 25 C.F.R. part 542 (2015).

(3) The Tribe and the commission shall retain all documents in compliance with the requirements set forth in the Tribe's Record Retention Policies and Procedures.

(4) The Tribe shall continue and maintain its program to combat problem gambling and curtail compulsive gambling and work with the Florida Council on Compulsive Gambling or other organizations dedicated to assisting problem gamblers. The Tribe shall continue to maintain the following safeguards against problem gambling:

(a) The Tribe shall provide to every new gaming employee a comprehensive training and education program designed in cooperation with the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers.

(b) The Tribe shall make printed materials available to patrons, which include contact information for the Florida Council on Compulsive Gambling 24-hour helpline or other hotline dedicated to assisting problem gamblers, and will work with the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers to provide contact information for the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers, and to provide such information on the facility's website. The Tribe shall continue to display within the facilities all literature from the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers.

(c)1. The commission shall establish a list of patrons voluntarily excluded from the Tribe's facilities, pursuant to subparagraph 3.

2. The Tribe shall employ its best efforts to exclude patrons on such list from entry into its facilities; provided that nothing in this compact shall create for patrons who are excluded but gain access to the facilities, or any other person, a cause of action or claim against the state, the Tribe or the commission, or any other person, entity, or agency for failing to enforce such exclusion.

3. Patrons who believe they may be compulsively playing covered games may request that their names be placed on the list of patrons voluntarily excluded from the Tribe's facilities.

(d) All covered game employees shall receive training on identifying compulsive gamblers and shall be instructed to ask such persons to leave. The facility shall make available signs bearing a toll-free help-line number and educational and informational materials at conspicuous locations and automated teller machines in each facility, which materials aim at the prevention of problem gaming and which specify where patrons may receive counseling or assistance for gambling problems. All covered games employees shall also be screened by the Tribe for compulsive gambling habits. Nothing in this subsection shall create for patrons, or any other person, a cause of action or claim against the state, the Tribe or the commission, or any other person, entity, or agency for failing to identify a patron or person who is a compulsive gambler or ask that person to leave.

(e) The Tribe shall follow the rules for exclusion of patrons set forth in the Seminole Tribal Gaming Code.

(f) The Tribe shall make diligent efforts to prevent underage individuals from loitering in the area of each facility where the covered games take place.

(g) The Tribe shall ensure that any advertising and marketing of covered games at the facilities contains a responsible gambling message and a toll-free help-line number for problem gamblers, where practical, and that such advertising and marketing make no false or misleading claims.

(5) The state may secure an annual independent audit of the conduct of covered games subject to this compact, as set forth in Part VIII.

(6) The facility shall visibly display summaries of the rules for playing covered games and promotional contests and shall make available complete sets of rules upon request. The Tribe shall provide copies of all such rules to the state compliance agency within 30 calendar days after issuance or amendment.

(7) The Tribe shall provide the commission and state compliance agency with a chart of the supervisory lines of authority with respect to those directly responsible for the conduct of covered games, and shall promptly notify those agencies of any material changes to the chart.

(8) The Tribe shall continue to maintain proactive approaches to prevent improper alcohol sales, drunk driving, underage drinking, and underage gambling. These approaches shall involve intensive staff training, screening and certification, patron education, and the use of security personnel and surveillance equipment in order to enhance patrons' enjoyment of the facilities and provide for patron safety.

(a) Staff training includes specialized employee training in nonviolent crisis intervention, driver license verification, and detection of intoxication.

(b) Patron education shall be carried out through notices

transmitted on valet parking stubs, posted signs in the facilities, and in brochures.

(c) Roving and fixed security officers, along with surveillance cameras, shall assist in the detection of intoxicated patrons, investigate problems, and engage with patrons to deescalate volatile situations.

(d) To help prevent alcohol-related crashes, the Tribe will continue to operate the "Safe Ride Home Program," a free taxi service.

(e) The Tribe shall maintain these programs and policies in its Alcohol Beverage Control Act for the duration of the compact but may replace such programs and policies with stricter or more extensive programs and policies. The Tribe shall provide the state with written notice of any changes to the Tribe's Alcohol Beverage Control Act, which notice shall include a copy of such changes and shall be sent on or before the effective date of the change. Nothing in this subsection shall create for patrons, or any other person, a cause of action or claim against the state, the Tribe or the commission, or any other person, entity, or agency for failing to fulfill the requirements of this subsection.

(9) A person under 21 years of age may not play covered games, unless otherwise permitted by state law.

(10) The Tribe may establish and operate facilities that operate covered games only on its Indian lands as defined by the

Indian Gaming Regulatory Act and as specified in Part IV.

(11) The commission shall keep a record of, and shall report at least quarterly to the state compliance agency, the number of covered games in each facility, by the name or type of each game and its identifying number.

(12) The Tribe and the commission shall make available, to any member of the public upon request, within 10 business days, a copy of the National Indian Gaming Commission's Minimum Internal Control Standards, 25 C.F.R. part 542 (2015), the Seminole Tribal Gaming Code, this compact, the rules of each covered game operated by the Tribe, and the administrative procedures for addressing patron tort claims under Part VI.

PART VI

PATRON DISPUTES, WORKERS' COMPENSATION, TORT CLAIMS; PRIZE CLAIMS; LIMITED CONSENT TO SUIT.—

(1) All patron disputes involving gaming shall be resolved in accordance with the procedures established in the Seminole Tribal Gaming Code.

(2) Tort claims by employees of the Tribe's facilities will be handled pursuant to the provisions of the Tribe's Workers' Compensation Ordinance, which shall provide workers the same or better protections as provided in state workers' compensation laws.

(3) Disputes involving employees of the Tribe's facilities will be handled pursuant to the provisions of the Tribe's policy for gaming employees, as set forth in the Employee Fair Treatment and Dispute Resolution Policy.

(4) A patron who claims to have been injured after the effective date of the compact at one of the Tribe's facilities in which covered games are played is required to provide written notice to the Tribe's Risk Management Department or the facility, in a reasonable and timely manner, but no longer than three years after the date of the incident giving rise to the claimed injury, or the claim shall be forever barred.

(5) The Tribe shall have 30 days to respond to a claim made by a patron. If the Tribe fails to respond within 30 days, the patron may file suit against the Tribe. When the Tribe responds to an incident alleged to have caused a patron's injury or illness, the Tribe shall provide a claim form to the patron. The form must include the address for the Tribe's Risk Management Department and provide notice of the Tribe's administrative procedures for addressing patron tort claims, including notice of the relevant deadlines that may bar such claims if the Tribe's administrative procedures are not followed. It is the patron's responsibility to complete the form and forward the form to the Tribe's Risk Management Department within a reasonable period of time, and in a reasonable and timely manner. Nothing herein shall interfere with any claim a

patron might have arising under the Federal Tort Claim Act.

(6) Upon receiving written notification of the claim, the Tribe's Risk Management Department shall forward the notification to the Tribe's insurance carrier. The Tribe shall use its best efforts to ensure that the insurance carrier contacts the patron within a reasonable period of time after receipt of the claim.

(7) The insurance carrier shall handle the claim to conclusion. If the patron, Tribe, and insurance carrier are not able to resolve the claim in good faith within one year after the patron provided written notice to the Tribe's Risk Management Department or the facility, the patron may bring a tort claim against the Tribe in any court of competent jurisdiction in the county in which the incident alleged to have caused injury occurred, as provided in this compact, and subject to a four-year statute of limitations, which shall begin to run from the date of the incident of the injury alleged in the claim. A patron's notice of injury to the Tribe pursuant to subsection (4) and the fulfillment of the good faith attempt at resolution pursuant to this part are conditions precedent to filing suit.

(8) For tort claims of patrons made pursuant to subsection (4), the Tribe agrees to waive its tribal sovereign immunity to the same extent as the state waives its sovereign immunity, as specified in s. 768.28(1) and (5), Florida Statutes, as such

provision may be amended from time to time by the Legislature. In no event shall the Tribe be deemed to have waived its tribal immunity from suit beyond the limits set forth in s. 768.28(5), Florida Statutes. These limitations are intended to include liability for compensatory damages, costs, pre-judgment interest, and attorney fees if otherwise allowable under state law arising out of any claim brought or asserted against the Tribe, its subordinate governmental and economic units, any Tribal officials, employees, servants, or agents in their official capacities and any entity which is owned, directly or indirectly, by the Tribe. All patron tort claims brought pursuant to this provision shall be brought solely against the Tribe, as the sole party in interest.

(9) Notices explaining the procedures and time limitations with respect to making a tort claim shall be prominently displayed in the facilities, posted on the Tribe's website, and provided to any patron for whom the Tribe has notice of the injury or property damage giving rise to the tort claim. Such notices shall explain:

(a) The method and places for making a tort claim, including where the patron must submit the claim.

(b) That the process is the exclusive method for asserting a tort claim arising under this section against the Tribe.

(c) That the Tribe and its insurance carrier have one year from the date the patron gives notice of the claim to resolve

the matter, and that after that time, the patron may file suit in a court of competent jurisdiction.

(d) That the exhaustion of the process is a prerequisite to filing a claim in state court.

(e) That claims that fail to follow this process shall be forever barred.

(10) The Tribe shall maintain an insurance policy that shall:

(a) Prohibit the insurer or the Tribe from invoking tribal sovereign immunity for claims up to the limits to which the state has waived sovereign immunity as set forth in s. 768.28(5), Florida Statutes, or its successor statute.

(b) Include covered claims made by a patron or invitee for personal injury or property damage.

(c) Permit the insurer or the Tribe to assert any statutory or common law defense other than sovereign immunity.

(d) Provide that any award or judgment rendered in favor of a patron or invitee shall be satisfied solely from insurance proceeds.

(11) The Tribal Council of the Seminole Tribe of Florida may, in its discretion, consider claims for compensation in excess of the limits of the Tribe's waiver of its sovereign immunity.

PART VII

ENFORCEMENT OF COMPACT PROVISIONS.—

(1) The Tribe, the commission, and the state compliance agency, to the extent authorized by this compact, shall be responsible for regulating activities pursuant to this compact. As part of its responsibilities, the Tribe shall adopt or issue standards designed to ensure that the facilities are constructed, operated, and maintained in a manner that adequately protects the environment and public health and safety. Additionally, the Tribe and the commission shall ensure that:

(a) Operation of the conduct of covered games is in strict compliance with:

1. The Seminole Tribal Gaming Code.

2. All rules, regulations, procedures, specifications, and standards lawfully adopted by the National Indian Gaming Commission and the commission.

3. The provisions of this compact, including, but not limited to, the Tribe's standards and rules.

(b) Reasonable measures are taken to:

1. Ensure the physical safety of facility patrons, employees, and any other person while in the facility.

2. Prevent illegal activity at the facilities or with regard to the operation of covered games, including, but not limited to, the maintenance of employee procedures and a

surveillance system.

3. Ensure prompt notification is given, in accordance with applicable law, to appropriate law enforcement authorities of persons who may be involved in illegal acts.

4. Ensure that the construction and maintenance of the facilities complies with the standards of the Florida Building Code, the provisions of which the Tribe has adopted as the Seminole Tribal Building Code.

5. Ensure adequate emergency access plans have been prepared to ensure the health and safety of all covered game patrons.

(2) All licenses for members and employees of the commission shalt be issued according to the same standards and terms applicable to facility employees. The commission's officers shalt be independent of the Tribal gaming operations, and shall be supervised by and accountable only to the commission. A commission officer shall be available to the facility during all hours of operation upon reasonable notice, and shall have immediate access to any and all areas of the facility for the purpose of ensuring compliance with the provisions of this compact. The commission shall investigate any suspected or reported violation of this part and shall officially enter into its files timely written reports of investigations and any action taken thereon, and shall forward copies of such investigative reports to the state compliance

agency within 30 calendar days after such filing. The scope of such reporting shall be determined by the commission and the state compliance agency as soon as practicable after the effective date of this compact. Any such violations shall be reported immediately to the commission, and the commission shall immediately forward such reports to the state compliance agency. In addition, the commission shall promptly report to the state compliance agency any such violations which it independently discovers.

(3) In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this compact, representatives of the commission and the state compliance agency shall meet at least annually to review past practices and examine methods to improve the regulatory scheme created by this compact. The meetings shall take place at a location mutually agreed upon by the commission and the state compliance agency. The state compliance agency, before or during such meetings, shall disclose to the commission any concerns, suspected activities, or pending matters reasonably believed to constitute violations of the compact by any person, organization, or entity, if such disclosure will not compromise the interest sought to be protected.

PART VIII

STATE MONITORING OF COMPACT.—

(1) It is the express intent of the Tribe and the state for the Tribe to regulate its own gaming activities. Notwithstanding, the state shall conduct random inspections as provided for in this part to ensure that the Tribe is operating in accordance with the terms of the compact. The state may secure an annual independent audit of the conduct of covered games subject to this compact and the Tribe shall cooperate with such audit. The audit shall:

(a) Examine the covered games operated by the Tribe to ensure compliance with the Tribe's Internal Control Policies and Procedures and any other standards, policies, or procedures adopted by the Tribe, the commission, or the National Indian Gaming Commission which govern the play of covered games.

(b) Examine revenues in connection with the conduct of covered games and include only those matters necessary to verify the determination of net win and the basis and amount of the payments the Tribe is required to make to the state pursuant to Part XI and as defined by this compact.

(2) A copy of the audit report for the conduct of covered games shall be submitted to the commission and the state compliance agency within 30 calendar days after completion. Representatives of the state compliance agency may, upon request, meet with the Tribe and its auditors to discuss the audit or any matters in connection therewith; provided that such

discussions are limited to covered games information. The annual independent audit shall be performed by an independent firm selected by the state which has experience in auditing casino operations, subject to the consent of the Tribe, which shall not be unreasonably withheld. The Tribe shall pay for the cost of the annual independent audit.

(3) As provided herein, the state compliance agency may monitor the conduct of covered games to ensure that the covered games are conducted in compliance with the provisions of this compact. In order to properly monitor the conduct of covered games, agents of the state compliance agency shall have reasonable access, without prior notice, to all public areas of the facilities related to the conduct of covered games.

(a) The state compliance agency may review whether the Tribe's facilities are in compliance with the provisions of this compact and the Tribe's rules and regulations applicable to covered games and may advise on such issues as it deems appropriate. In the event of a dispute or disagreement between Tribal and state compliance agency regulators, the dispute or disagreement shall be resolved in accordance with the dispute resolution provisions of Part XIII.

(b) In order to fulfill its oversight responsibilities, the state compliance agency may perform on a routine basis specific oversight testing procedures as set forth in paragraph (c).

(c)1. The state compliance agency may inspect any covered games in operation at the facilities on a random basis, provided that such inspections may not exceed one inspection per facility per calendar month and the inspection may not exceed ten hours spread over those two consecutive days, unless the state compliance agency determines that additional inspection hours are needed to address the issues of substantial noncompliance, provided that the state compliance agency provides the Tribe with written notification of the need for additional inspection hours and a written summary of the substantial noncompliance issues that need to be addressed during the additional inspection hours. The total number of hours of random inspections and audit reviews per year may not exceed 1,200 hours. Inspection hours shall be calculated on the basis of the actual amount of time spent by the state compliance agency conducting the inspections at a facility, without accounting for a multiple for the number of state compliance agency inspectors or agents engaged in the inspection activities. The purpose of the random inspections is to confirm that the covered games function properly pursuant to the manufacturer's technical standards and are conducted in compliance with the Tribe's Internal Control Policies and Procedures and any other standards, policies, or procedures adopted by the Tribe, the commission, or the National Indian Gaming Commission which govern the play of covered games. The state compliance agency

shall provide notice to the commission of such inspection at or before the commencement of a random inspection and a commission agent may accompany the inspection.

2. For each facility, the state compliance agency may perform one annual review of the Tribe's slot machine compliance audit.

3. At least annually, the state compliance agency may meet with the Tribe's Internal Audit Department for Gaming to review internal controls and the record of violations for each facility.

(d) The state compliance agency shall cooperate with and obtain the assistance of the commission in the resolution of any conflicts in the management of the facilities, and the state and the Tribe shall make their best efforts to resolve disputes through negotiation whenever possible. Therefore, to foster a spirit of cooperation and efficiency, the state compliance agency and Tribe shall resolve disputes between the state compliance agency staff and commission regulators about the day-to-day regulation of the facilities through meeting and conferring in good faith. Notwithstanding, the parties may seek other relief that may be available when circumstances require such relief. In the event of a dispute or disagreement between tribal and state compliance agency regulators, the dispute or disagreement shall be resolved in accordance with the dispute resolution provisions of Part XIII.

(e) The state compliance agency shall have access to each facility during the facility's operating hours only. No advance notice is required when the state compliance agency inspection is limited to public areas of the facility; however, representatives of the state compliance agency shall provide notice and photographic identification to the commission of their presence before beginning any such inspections.

(f) The state compliance agency agents, to ensure that a commission officer is available to accompany the state compliance agency agents at all times, shall provide one hour notice and photographic identification to the commission before entering any nonpublic area of a facility. Agents of the state compliance agency shall be accompanied in nonpublic areas of the facility by a commission officer.

(g) Any suspected or claimed violations of this compact or law shall be directed in writing to the commission. The state compliance agency, in conducting the functions assigned them under this compact, shall not unreasonably interfere with the functioning of any facility.

(4) Subject to the provisions herein, the state compliance agency may review and request copies of documents of the facility related to its conduct of covered games during normal business hours unless otherwise allowed by the Tribe. The Tribe may not refuse said inspection and copying of such documents, provided that the inspectors do not require copies of documents

in such volume that it unreasonably interferes with the normal functioning of the facilities or covered games. To the extent that the Tribe provides the state with information that the Tribe claims to be confidential and proprietary, or a trade secret, the Tribe shall clearly mark such information with the following designation: "Trade Secret, Confidential, and Proprietary." If the state receives a request under chapter 119 that would include such designated information, the state shall promptly notify the Tribe of such a request and the Tribe shall promptly notify the state about its intent to seek judicial protection from disclosure. Upon such notice from the Tribe, the state may not release the requested information until a judicial determination is made. This designation and notification procedure does not excuse the state from complying with the requirements of the state's public records law, but is intended to provide the Tribe the opportunity to seek whatever judicial remedy it deems appropriate. Notwithstanding the foregoing procedure, the state compliance agency may provide copies of tribal documents to federal law enforcement and other state agencies or state consultants that the state deems reasonably necessary in order to conduct or complete any investigation of suspected criminal activity in connection with the Tribe's covered games or the operation of the facilities or in order to assure the Tribe's compliance with this compact.

(5) At the completion of any state compliance agency

inspection or investigation, the state compliance agency shall forward any written report thereof to the commission, containing all pertinent, nonconfidential, nonproprietary information regarding any violation of applicable laws or this compact which was discovered during the inspection or investigation unless disclosure thereof would adversely impact an investigation of suspected criminal activity. Nothing herein prevents the state compliance agency from contacting tribal or federal law enforcement authorities for suspected criminal wrongdoing involving the commission.

(6) Except as expressly provided in this compact, nothing in this compact shall be deemed to authorize the state to regulate the Tribe's government, including the commission, or to interfere in any way with the Tribe's selection of its governmental officers, including members of the commission.

PART IX

JURISDICTION.—The obligations and rights of the state and the Tribe under this compact are contractual in nature and are to be construed in accordance with the laws of the state. This compact does not alter tribal, federal, or state civil adjudicatory or criminal jurisdiction in any way.

PART X

LICENSING.—The Tribe and the commission shall comply with the licensing and hearing requirements set forth in 25 C.F.R. parts 556 and 558, as well as the applicable licensing and hearing requirements set forth in Articles IV, V, and VI of the Seminole Tribal Gaming Code. The commission shall notify the state compliance agency of any disciplinary hearings or revocation or suspension of licenses.

PART XI

PAYMENTS TO THE STATE OF FLORIDA.—

(1) The parties acknowledge and recognize that this compact provides the Tribe with partial but substantial exclusivity and other valuable consideration consistent with the goals of the Indian Gaming Regulatory Act, including special opportunities for tribal economic development through gaming within the external boundaries of the state with respect to the play of covered games. In consideration thereof, the Tribe covenants and agrees, subject to the conditions agreed upon in Part XII, to make payments to the state derived from net win as set forth in subsections (2) and (7). The Tribe further agrees that it will not purchase or lease any new Class II video bingo terminals or their equivalents for use at its facilities after the effective date of this compact.

(2) The Tribe shall make periodic revenue share payments to the state derived from net win as set forth in this subsection, and any such payments shall be made to the state via electronic funds transfer. Of the amounts paid by the Tribe to the state, three percent shall be distributed to local governments, including both counties and municipalities, in the state affected by the Tribe's operation of covered games. Of the remaining amounts paid by the Tribe to the state, one-third shall be allocated to K-12 teacher recruitment and retention bonuses pursuant to s. 1012.731, one-third shall be allocated to schools that serve students from persistently failing schools pursuant to ss. 1001.292 and 1002.333, and one-third shall be allocated to higher education institutions to recruit and retain distinguished faculty. If the Florida Legislature fails to allocate the amounts to the specified educational purposes in the precise manner and amounts set forth in this subsection, all further payments due to the state pursuant to subsections (2) and (7) shall cease, until such time as such allocations are made, in which event the payments shall resume. Payments shall be due in accordance with the payment schedule set forth in paragraph (a).

(a) Revenue share payments by the Tribe to the state shall be calculated as follows:

1. During the initial payment period, the Tribe agrees to pay the state a revenue share payment in accordance with this

subparagraph.

a. 13 percent of all amounts up to $2 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

b. 17.5 percent of all amounts greater than $2 billion up to and including $3.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

c. 20 percent of all amounts greater than $3.5 billion up to and including $4 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

d. 22.5 percent of all amounts greater than $4 billion up to and including $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle; or

e. 25 percent of all amounts greater than $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle.

2. During the guarantee payment period, the Tribe agrees to make fixed payments in accordance with this subparagraph. In addition, within 90 days after the end of the guarantee payment period, the Tribe shall make an additional payment to the state equal to the amount above $3 billion, if any, that would have been owed by the Tribe to the state had the percentages set

forth in subparagraph 3. been applicable during the guarantee payment period.

a. A payment of $325 million during the first revenue sharing cycle;

b. A payment of $350 million during the second revenue sharing cycle;

c. A payment of $375 million during the third revenue sharing cycle;

d. A payment of $425 million during the fourth revenue sharing cycle;

e. A payment of $475 million during the fifth revenue sharing cycle;

f. A payment of $500 million during the sixth revenue sharing cycle; and

g. A payment of $550 million during the seventh revenue sharing cycle.

3. During the regular payment period, the Tribe agrees to pay a revenue share payment, for each revenue sharing cycle, to the state equal to the amount calculated in accordance with this subparagraph.

a. 13 percent of all amounts up to $2 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

b. 17.5 percent of all amounts greater than $2 billion up to and including $3.5 billion of net win received by the Tribe

from the operation and play of covered games during each revenue sharing cycle;

c. 20 percent of all amounts greater than $3.5 billion up to and including $4 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle;

d. 22.5 percent of all amounts greater than $4 billion up to and including $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle; or

e. 25 percent of all amounts greater than $4.5 billion of net win received by the Tribe from the operation and play of covered games during each revenue sharing cycle.

(3) The Tribe shall remit monthly payments as follows:

(a) On or before the 15th day of the month following each month of the revenue sharing cycle, the Tribe will remit to the state or its assignee the monthly payment. For purposes of this section, the monthly payment shall be 8.3 percent of the estimated revenue share payment to be paid by the Tribe during such revenue sharing cycle.

(b) The Tribe shall make available to the state at the time of the monthly payment the basis for the calculation of the payment.

(c) The Tribe shall, on a monthly basis, reconcile the calculation of the estimated revenue share payment based on the

Tribe's unaudited financial statements related to covered games.

(4) The Tribe shall have an audit conducted as follows:

(a) On or before the 45th day after the third month, sixth month, ninth month, and twelfth month of each revenue sharing cycle, provided that the 12-month period does not coincide with the Tribe's fiscal year end date as indicated in paragraph (c), the Tribe shall provide the state with an audit report by its independent auditors as to the annual revenue share calculation.

(b) For each quarter within revenue sharing cycle, the Tribe shall engage its independent auditors to conduct a review of the unaudited net revenue from covered games. On or before the 120th day after the end of the Tribe's fiscal year, the Tribe shall require its independent auditors to provide an audit report with respect to net win for covered games and the related payment of the annual revenue share.

(c) If the twelfth month of the revenue sharing cycle does not coincide with the Tribe's fiscal year, the Tribe shall deduct net win from covered games for any of the months outside of the revenue sharing cycle and include net win from covered games for those months outside of the Tribe's audit period but within the revenue sharing cycle, before issuing the audit report.

(d) No later than 30 calendar days after the day the audit report is issued, the Tribe shall remit to the state any underpayment of the annual revenue share, and the state shall

either reimburse to the Tribe any overpayment of the annual revenue share or authorize the overpayment to be deducted from the next successive monthly payment or payments.

(5) If, after any change in state law to affirmatively allow internet or online gaming, or any functionally equivalent remote gaming system that permits a person to play from home or any other location that is remote from a casino or other commercial gaming facility, the Tribe's net win from the operation of covered games at all of its facilities combined drops more than five percent below its net win from the previous 12-month period, the Tribe shall no longer be required to make payments to the state based on the guaranteed minimum compact term payment and shall not be required to make the guaranteed minimum compact term payment. However, the Tribe shall continue to make payments based on the percentage revenue share amount. The Tribe shall resume making the guaranteed minimum compact term payment for any subsequent revenue sharing cycle in which its net win rises above the level described in this subsection. This subsection does not apply if:

(a) The decline in net win is due to acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of its facilities or property necessary to operate the facility of facilities; or

(b) The Tribe offers internet or online gaming or any functionally equivalent remote gaming system that permits a

person to game from home or any other location that is remote from any of the Tribe's facilities, as authorized by law.

(6) The annual oversight assessment, which shall not exceed $250,000 per year, indexed for inflation as determined by the Consumer Price Index, shall be determined and paid in quarterly installments within 30 calendar days after receipt by the Tribe of an invoice from the state compliance agency. The Tribe reserves the right to audit the invoices on an annual basis, a copy of which will be provided to the state compliance agency, and any discrepancies found therein shall be reconciled within 45 calendar days after receipt of the audit by the state compliance agency.

(7) The Tribe shall make an annual donation to the Florida Council on Compulsive Gaming as an assignee of the state in an amount not less than $250,000 per facility.

(8) In accordance with the Tribe's previous and continued conduct of Class III gaming pursuant to the previously existing compact, the Tribe shall continue to pay the state $19.5 million on or before the 15th day of the month following each month that the Tribe conducts Class III gaming before the effective date of this compact.

(9) On the effective date of this compact, any moneys remitted by the Tribe before the effective date of this compact shall be released to the state without further obligation or encumbrance.

(10) Except as expressly provided in this part, nothing in this compact shall be deemed to require the Tribe to make payments of any kind to the state or any of its agencies.

PART XII

REDUCTION OF TRIBAL PAYMENTS BECAUSE OF LOSS OF EXCLUSIVITY OR OTHER CHANGES IN STATE LAW.—The intent of this compact is to provide the Tribe with the right to operate covered games on an exclusive basis throughout the state, subject to the exceptions and provisions in this part.

(1) For purposes of this subsection, the terms "Class III gaming" or "other casino-style gaming" include, but are not limited to, slot machines, electronically assisted bingo or electronically assisted pull-tab games, noncard table games, video lottery terminals, or any similar games, whether or not such games are determined through the use of a random number generator.

(a) If, after January 1, 2018, state law is amended, implemented, or interpreted to allow the operation of Class III gaming or other casino-style gaming at any location under the jurisdiction of the state that was not in operation as of January 1, 2018, or a new form of Class III gaming or other casino-style gaming that was not in operation as of January 1, 2018, and such gaming is offered to the public as a result of

the amendment, implementation, or interpretation, the Tribe, no fewer than 30 days after the commencement of such new gaming or 90 days after the state's receipt of written notice from the Tribe pursuant to subsection (b), whichever occurs later, may elect to begin making the affected portion of its payments due to the state pursuant to subsections (2) and (7) of Part XI, into an escrow account.

(b) In order to exercise the provisions of paragraph (a), the Tribe must first notify the state, within 90 days after such amendment, implementation, or interpretation of state law, of the Tribe's objections to such action or interpretation and further specify the basis for the Tribe's contention that such action or interpretation infringes upon the substantial exclusivity afforded under this compact. As part of its written notice, the Tribe must also indicate, if applicable, its intention to begin making the affected portion of its payments due to the state into an escrow account.

(c) Upon receipt of written notice from the Tribe, the state may elect to:

1. Invoke the dispute resolution provisions of Part XIII to determine whether the Tribe's contention is well-founded. In such proceeding, the Tribe carries the burden of proof and persuasion. The pendency of such proceeding tolls the time periods set forth in paragraph (1)(a) of Part XI for the duration of the dispute or litigation; or

2. Seek through enforcement action, legislation, or other means to stop the conduct of such new games.

(d)1. If, within 15 months following the state's receipt of written notice from the Tribe, the Tribe's contention is deemed not to be well-founded at the conclusion of dispute resolution or new gaming is made illegal and is halted, then all funds being held in the escrow account shall be released to the state and all further payments due to the state pursuant to subsections (2) and (7) of Part XI shall promptly resume.

2. If, after 15 months following the state's receipt of written notice from the Tribe, the Tribe's contention is deemed to be well-founded at the conclusion of dispute resolution and such gaming is not made illegal and halted, then all funds being held in escrow shall be returned to the Tribe and all further payments due to the state pursuant to subsections (2) and (7) of Part XI shall cease or be reduced as provided in subsection (2) until such gaming is no longer operated, in which event the payments shall promptly resume.

(2) The following are exceptions to the exclusivity provisions of subsection (1):

(a) Any Class III gaming authorized by a compact between the state and any other federally recognized tribe pursuant to Indian Gaming Regulatory Act, provided that the tribe has land in federal trust in the state as of January 1, 2018.

(b) The operation of slot machines, which does not include

any game played with tangible playing cards, at each of the four currently operating licensed pari-mutuel facilities in Broward County and the four currently operating licensed pari-mutuel facilities in Miami-Dade County, whether or not currently operating slot machines, provided that such licenses are not transferred or otherwise used to move or operate such slot machines at any other location.

(c)1. If state law is amended to allow for the play of any additional type of Class III or other casino-style gaming at any of the presently operating licensed pari-mutuel facilities in Broward and Miami-Dade Counties, the Tribe may be entitled to a reduction in the revenue sharing payment as described in subparagraph 2.

2. If the Tribe's annual net win from its facilities located in Broward County for the 12 month period after the gaming specified in subparagraph 1. begins to be offered for public or private use is less than the net revenue base, the revenue share payments due to the state, pursuant to subparagraph (2)(a)2. of Part XI, for the next revenue sharing cycle and future revenue sharing cycles shall be calculated by reducing the Tribe's payment on revenue generated from its facilities in Broward County by 50 percent of that reduction in annual net win from its facilities in Broward County. This paragraph does not apply if the decline in net win is due to acts of God, war, terrorism, fires, floods, or accidents causing

damage to or destruction of one or more of its facilities or property necessary to operate the facility or facilities.

3. If the Tribe's annual net win from its facilities located in Broward County subsequently equals or exceeds the net revenue base, then the Tribe's payments due to the state pursuant to subparagraph (2)(a)2. of Part XI shall again be calculated without any reduction, but may be reduced again under the provisions set forth in subparagraph 2.

(d) If state law is amended to allow the play of Class III gaming or other casino-style gaming, as defined in this part, at any location in Miami-Dade County or Broward County under the jurisdiction of the state that is not presently licensed for the play of such games at such locations, other than those facilities set forth in paragraph (c) and this paragraph, and such games were not in play as of January 1, 2018, and such gaming begins to be offered for public or private use, the payments due the state pursuant to subparagraph (c)2., shall be calculated by excluding the net win from the Tribe's facilities in Broward County.

(e) The operation of a combined total of not more than 350 historic racing machines, connected to a central server at that facility, and electronic bingo machines at each pari-mutuel facility licensed as of January 1, 2018, and not located in either Broward County or Miami-Dade County.

(f) The operation of pari-mutuel wagering activities at

pari-mutuel facilities licensed by the state, provided such facilities annually conduct a full schedule of live races or games in a manner that would comply with the Florida Statutes in effect as of January 1, 2018.

(g) The operation of poker, including no-limit poker but excluding any game involving a bank, at card rooms licensed by the state; provided all such card rooms are located at pari-mutuel facilities that annually conduct a certain number of live performances in a manner that would comply with cardroom license renewal requirements set forth in the Florida Statutes in effect as of January 1, 2018.

(h) The operation by the Department of the Lottery of those types of lottery games authorized under chapter 24 as of January 1, 2018, but not including any player-activated or operated machine or device other than a lottery vending machine or any banked or banking card or table game. However, not more than ten lottery vending machines may be installed at any facility or location and no lottery vending machine that dispenses electronic instant tickets may be installed at any licensed pari-mutuel facility.

(i) The operation of games authorized by chapter 849 as of January 1, 2018, which does not authorize any card game in which any person, operator, or other party serves as a bank, paying all winners and collecting from all losers.

(3) To the extent that the exclusivity provisions of this

part are breached or otherwise violated and the Tribe's ongoing payment obligations to the state pursuant to subsections (2) and (7) of Part XI cease, any outstanding payments that would have been due the state from the Tribe's facilities before the breach or violation shall be made within 30 business days after the breach or violation.

(4) The breach of this part's exclusivity provisions and the cessation of payments pursuant to subsections (2) and (7) of Part XI shall not excuse the Tribe from continuing to comply with all other provisions of this compact, including continuing to pay the state the annual oversight assessment as set forth in subsection (3) of Part XI.

PART XIII

DISPUTE RESOLUTION.—In the event that the Tribe or State believes that the other party has failed to comply with any requirements of this compact, or in the event of any dispute hereunder, including, but not limited to, a dispute over the proper interpretation of the terms and conditions of this compact, the goal of the parties is to resolve all disputes amicably and voluntarily whenever possible. In pursuit of this goal, the following procedures may be invoked:

(1) A party asserting noncompliance or seeking an interpretation of this compact first shall serve written notice

on the other party. The notice shall identify the specific compact provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and any factual basis for the claim. Representatives of the Tribe and state shall meet within 30 calendar days after receipt of notice in an effort to resolve the dispute, unless they mutually agree to extend this period.

(2) A party asserting noncompliance or seeking an interpretation of this compact under this part shall be deemed to have certified that to the best of the party's knowledge, information, and belief formed after reasonable inquiry, the claim of noncompliance or the request for interpretation of this compact is warranted and made in good faith and not for any improper purpose, such as to harass or to cause unnecessary delay or the needless incurring of the cost of resolving the dispute.

(3) If the parties are unable to resolve a dispute through the process specified in subsections (1) and (2), either party may call for mediation under the Commercial Mediation Procedures of the American Arbitration Association or any successor procedures, provided that such mediation does not last more than 60 calendar days, unless an extension to this time limit is negotiated by the parties. Only matters arising under the terms of this compact may be available for resolution through mediation. If the parties are unable to resolve a dispute

through the process specified in this part, notwithstanding any other provision of law, either party may bring an action in a United States District Court having venue regarding a dispute arising under this compact. If the court declines to exercise jurisdiction, or federal precedent exists that holds that the court would not have jurisdiction over such a dispute, either party may bring the action in the appropriate court of the Seventeenth Judicial Circuit in Broward County, Florida. The parties are entitled to all rights of appeal permitted by law in the court system in which the action is brought.

(4) For purposes of actions based on disputes between the state and the Tribe that arise under this compact and the enforcement of any judgment resulting from such action, the Tribe and the state each expressly waive the right to assert sovereign immunity from suit and from enforcement of any ensuing judgment, and further consent to be sued in federal or state court, including the right of appeal specified above, as the case may be, provided that:

(a) The dispute is limited solely to issues arising under this compact.

(b) There is no claim for monetary damages, except that payment of any money required by the terms of this compact, as well as injunctive relief or specific performance enforcing a provision of this compact requiring the payment of money to the state may be sought.

(c) Nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Tribe with respect to any third party that is made a party or intervenes as a party to the action. In the event that intervention, joinder, or other participation by any additional party in any action between the state and the Tribe would result in the waiver of the Tribe's sovereign immunity as to that additional party, the waiver of the Tribe may be revoked.

(5) The state may not be precluded from pursuing any mediation or judicial remedy against the Tribe on the grounds that the state has failed to exhaust its Tribal administrative remedies.

(6) Notwithstanding any other provision of this part, any failure of the Tribe to remit the payments pursuant to the terms of Part XI entitles the state to seek injunctive relief in federal or state court, at the state's election, to compel the payments after the dispute resolution process in subsections (1) and (2) is exhausted.

PART XIV

CONSTRUCTION OF COMPACT; SEVERANCE; FEDERAL APPROVAL.—

(1) Each provision of this compact shall stand separate and independent of every other provision. In the event that a federal district court in Florida or other court of competent

jurisdiction shall find any provision of this compact to be invalid, the remaining provisions shall remain in full force and effect, provided that severing the invalidated provision does not undermine the overall intent of the parties in entering into this compact. However, if subsection (6) of Part III, Part XI, or Part XII is held by a court of competent jurisdiction to be invalid, this compact will become null and void.

(2) It is understood that Part XII, which provides for a cessation of the payments to the state under Part XI, does not create any duty on the state but only a remedy for the Tribe if gaming under state jurisdiction is expanded.

(3) This compact is intended to meet the requirements of the Indian Gaming Regulatory Act as it reads on the effective date of this compact, and where reference is made to the Indian Gaming Regulatory Act, or to an implementing regulation thereof, the reference is deemed to have been incorporated into this document. Subsequent changes to the Indian Gaming Regulatory Act that diminish the rights of the state or Tribe may not be applied retroactively to alter the terms of this compact, except to the extent that federal law validly mandates that retroactive application without the respective consent of the state or the Tribe. In the event that a subsequent change in the Indian Gaming Regulatory Act, or to an implementing regulation thereof, mandates retroactive application without the respective consent of the state or the Tribe, the parties agree that this compact

is voidable by either party if the subsequent change materially alters the provisions in the compact relating to the play of covered games, revenue sharing payments, suspension or reduction of payments, or exclusivity.

(4) Neither the presence of language that is not included in this compact, nor the absence in this compact of language that is present in another state-tribal compact shall be a factor in construing the terms of this compact.

(5) The Tribe and the state shall defend the validity of this compact.

(6) The parties shall cooperate in seeking approval of this compact from the Secretary of the Department of the Interior.

PART XV

NOTICES.—All notices required under this compact shall be given by certified mail, return receipt requested, commercial overnight courier service, or personal delivery, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chairman and General Counsel of the Seminole Tribe of Florida.

PART XVI

EFFECTIVE DATE AND TERM.—

(1) This compact, if identical to the version ratified by the Legislature in s. 285.710(3)(c), Florida Statutes, in 2018, shall become effective upon its approval as a tribal-state compact within the meaning of the Indian Gaming Regulatory Act either by action of the Secretary of the Department of the Interior or by operation of law under 25 U.S.C. s. 2710(d)(8) upon publication of a notice of approval in the Federal Register under 25 U.S.C. s. 2710(d)(8)(D).

(2) This compact shall have a term of twenty years beginning on the first day of the month following the month in which the compact becomes effective under subsection (1).

(3) The Tribe's authorization to offer covered games under this compact shall automatically terminate twenty years after the effective date unless renewed by an affirmative act of the Legislature.

PART XVII

AMENDMENT OF COMPACT AND REFERENCES.—

(1) Amendment of this compact may only be made by written agreement of the parties, subject to approval by the Secretary of the Department of the Interior, either by publication of the notice of approval in the Federal Register or by operation of law under 25 U.S.C. s. 2710(d)(8).

(2) Legislative ratification is required for any amendment to the compact that alters the provisions relating to covered games, the amount of revenue sharing payments, suspension or reduction in payments, or exclusivity.

(3) Changes in the provisions of tribal ordinances, regulations, and procedures referenced in this compact may be made by the Tribe with 30 days' advance notice to the state. If the state has an objection to any change to the tribal ordinance, regulation, or procedure which is the subject of the notice on the ground that its adoption would be a violation of the Tribe's obligations under this compact, the state may invoke the dispute resolution provisions provided in Part XIII.

PART XVIII

MISCELLANEOUS.—

(1) Except to the extent expressly provided in this compact, this compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

(2) If, after the effective date of this compact, the state enters into a compact with any other Tribe that contains more favorable terms with respect to the provisions of this Compact and the Secretary of the Department of the Interior approves such compact, either by publication of the notice of

approval in the Federal Register or by operation of law under 25 U.S.C. s. 2710(d)(8), upon tribal notice to the state and the Secretary, this compact shall be deemed amended to contain the more favorable terms, unless the state objects to the change and can demonstrate, in a proceeding commenced under Part XIII, that the terms in question are not more favorable.

(3) Upon the occurrence of certain events beyond the Tribe's control, including acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of its facilities or property necessary to operate the facility or facilities, the Tribe's obligation to pay the guaranteed minimum compact term payment described in Part XI shall be reduced pro rata to reflect the percentage of the total net win lost to the Tribe from the impacted facility or facilities and the net win specified under subsection (2) of Part XII for purposes of determining whether the Tribe's payments described in Part XI shall cease, shall be reduced pro rata to reflect the percentage of the total net win lost to the Tribe from the impacted facility or facilities. The foregoing shall not excuse any obligations of the Tribe to make payments to the state as and when required hereunder or in any related document or agreement.

(4) The Tribe and the state recognize that opportunities to engage in gaming in smoke-free or reduced-smoke environments provides both health and other benefits to patrons, and the

Tribe has instituted a nonsmoking section at its Seminole Hard Rock Hotel & Casino-Hollywood Facility. As part of its continuing commitment to this issue, the Tribe shall:

(a) Install and utilize a ventilation system at all new construction at its facilities, which system exhausts tobacco smoke to the extent reasonably feasible under existing state-of-the-art technology.

(b) Designate a smoke-free area for slot machines at all new construction at its facilities.

(c) Install nonsmoking, vented tables for table games installed in its facilities sufficient to reasonably respond to demand for such tables.

(d) Designate a nonsmoking area for gaming within all of its facilities within five years after the effective date of the compact.

(5) The annual average minimum pay-out of all slot machines in each facility may not be less than 85 percent.

(6) Nothing in this compact shall alter any of the existing memoranda of understanding, contracts, or other agreements entered into between the Tribe and any other federal, state, or local governmental entity.

(7) The Tribe currently has, as set forth in its Employee Fair Treatment and Dispute Resolution Policy, and agrees to maintain, standards that are comparable to the standards provided in federal laws and state laws forbidding employers

from discrimination in connection with the employment of persons working at the facilities on the basis of race, color, religion, national origin, gender, age, disability, or marital status. Nothing herein shall preclude the Tribe from giving preference in employment, promotion, seniority, lay-offs, or retention to members of the Tribe and other federally recognized tribes.

(8) The Tribe shall, with respect to any facility where covered games are played, adopt and comply with tribal requirements that meet the same minimum state requirements applicable to businesses in the state with respect to environmental and building standards.

PART XIX

EXECUTION.—The Governor of the State of Florida affirms that he has authority to act for the state in this matter and that, provided that this compact is identical to the compact ratified by the Legislature pursuant to s. 285.710(3)(c), Florida Statutes, no further action by the state or any state official is necessary for this compact to take effect upon federal approval by action of the Secretary of the Department of the Interior or by operation of law under 25 U.S.C. s. 2710(d)(8) by publication of the notice of approval in the Federal Register. The Governor affirms that he will proceed with obtaining such federal approval and take all other appropriate

action to effectuate the purposes and intent of this Compact. The undersigned Chairman of the Tribal Council of the Seminole Tribe of Florida affirms that he is duly authorized and has the authority to execute this Compact on behalf of the Tribe. The Chairman also affirms that he will assist in obtaining federal approval and take all other appropriate action to effectuate the purposes and intent of this Compact.

Section 2. Subsection (4) of section 285.712, Florida Statutes, is amended to read:

285.712 Tribal-state gaming compacts.—

(4) Upon execution ~~receipt~~ of ~~an act ratifying~~ a tribal-state compact entered pursuant to s. 285.710(3)(b), the Governor shall provide a copy to the Secretary of State who shall forward a copy of the executed compact and the ratifying act to the United States Secretary of the Interior for his or her review and approval, in accordance with 25 U.S.C. s. 2710(d)(8) ~~2710(8)(d)~~.

Section 3. Subsections (9), (11), (13), and (14) of section 550.054, Florida Statutes, are amended to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(9)(a) After a permit has been granted by the division and has been ratified and approved by the majority of the electors participating in the election in the county designated in the permit, the division shall grant to the lawful permitholder,

subject to the conditions of this chapter, a license to conduct pari-mutuel operations under this chapter, and, except as provided in s. 550.5251, the division shall fix annually the time, place, and number of days during which pari-mutuel operations may be conducted by the permitholder at the location fixed in the permit and ratified in the election. After the first license has been issued to the holder of a ratified permit for racing in any county, all subsequent annual applications for a license by that permitholder must be accompanied by proof, in such form as the division requires, that the ratified permitholder still possesses all the qualifications prescribed by this chapter and that the permit has not been recalled at a later election held in the county.

(b) The division may revoke or suspend any permit or license issued under this chapter upon a ~~the~~ willful violation by the permitholder or licensee ~~of any provision~~ of chapter 551, chapter 849, or this chapter or rules ~~of any rule~~ adopted pursuant to those chapters ~~under this chapter~~. With the exception of the revocation of permits required in paragraphs (c) and (f) ~~In lieu of suspending or revoking a permit or license~~, the division, in lieu of suspending or revoking a permit or license, may impose a civil penalty against the permitholder or licensee for a violation of this chapter or rules adopted pursuant thereto ~~any rule adopted by the division~~. The penalty so imposed may not exceed $1,000 for each count or

separate offense. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

(c)1. The division shall revoke the permit of any permitholder that fails to make payments due pursuant to chapter 550, chapter 551, or s. 849.086 for more than 24 consecutive months unless such failure was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to make payments.

2. The division shall revoke the permit of any permitholder that has not obtained an operating license in accordance with s. 550.01215 for a period of more than 24 consecutive months after June 30, 2012. The division shall revoke the permit upon adequate notice to the permitholder. Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to operate.

(d) A new permit to conduct pari-mutuel wagering may not be approved or issued after January 1, 2018.

(e) A permit revoked under this subsection is void and may not be reissued.

(11)(a) A permit granted under this chapter may not be transferred or assigned except upon written approval by the division pursuant to s. 550.1815~~, except that the holder of any~~

~~permit that has been converted to a jai alai permit may lease or build anywhere within the county in which its permit is located~~.

(13)~~(a)~~ Notwithstanding any provision ~~provisions~~ of this chapter or chapter 551, a pari-mutuel ~~no thoroughbred horse racing~~ permit or license issued under this chapter may not ~~shall~~ be transferred~~, or reissued when such reissuance is in the nature of a transfer so as to permit or authorize a licensee to change the location of a thoroughbred horse racetrack except upon proof in such form as the division may prescribe that a referendum election has been held:~~

~~1. If the proposed new location is within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and that a majority of the electors voting on that question in such election voted in favor of the transfer of such license.~~

~~2. If the proposed new location is not within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and in the county where the licensee is already licensed to conduct the race meeting and that a majority of the electors voting on that question in each such election voted in favor of the transfer of such license.~~

~~(b) Each referendum held under the provisions of this subsection shall be held in accordance with the electoral procedures for ratification of permits, as provided in s.~~

~~550.0651. The expense of each such referendum shall be borne by the licensee requesting the transfer~~.

(14)~~(a)~~ Notwithstanding any other provision of law, a pari-mutuel permit, cardroom, or slot machine facility may not be relocated, and a pari-mutuel permit may not be converted to another class of permit. ~~Any holder of a permit to conduct jai alai may apply to the division to convert such permit to a permit to conduct greyhound racing in lieu of jai alai if:~~

~~1. Such permit is located in a county in which the division has issued only two pari-mutuel permits pursuant to this section;~~

~~2. Such permit was not previously converted from any other class of permit; and~~

~~3. The holder of the permit has not conducted jai alai games during a period of 10 years immediately preceding his or her application for conversion under this subsection.~~

~~(b) The division, upon application from the holder of a jai alai permit meeting all conditions of this section, shall convert the permit and shall issue to the permitholder a permit to conduct greyhound racing. A permitholder of a permit converted under this section shall be required to apply for and conduct a full schedule of live racing each fiscal year to be eligible for any tax credit provided by this chapter. The holder of a permit converted pursuant to this subsection or any holder of a permit to conduct greyhound racing located in a county in~~

~~which it is the only permit issued pursuant to this section who operates at a leased facility pursuant to s. 550.475 may move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary and such location is approved under the zoning regulations of the county or municipality in which the permit is located, and upon such relocation may use the permit for the conduct of pari-mutuel wagering and the operation of a cardroom. The provisions of s. 550.6305(9)(d) and (f) shall apply to any permit converted under this subsection and shall continue to apply to any permit which was previously included under and subject to such provisions before a conversion pursuant to this section occurred.~~

Section 4. Section 550.0555, Florida Statutes, is repealed.

Section 5. Section 550.0745, Florida Statutes, is repealed.

Section 6. Subsection (3) of section 550.09512, Florida Statutes, is amended to read:

550.09512 Harness horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(3)~~(a)~~ The division shall revoke the permit of a harness horse racing permitholder who does not pay tax on handle for live harness horse performances for a full schedule of live

races for more than 24 consecutive months ~~during any 2 consecutive state fiscal years shall be void and shall escheat to and become the property of the state~~ unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder does ~~shall~~ not, in and of itself, constitute just cause for failure to operate and pay tax on handle. A permit revoked under this subsection is void and may not be reissued.

~~(b) In order to maximize the tax revenues to the state, the division shall reissue an escheated harness horse permit to a qualified applicant pursuant to the provisions of this chapter as for the issuance of an initial permit. However, the provisions of this chapter relating to referendum requirements for a pari-mutuel permit shall not apply to the reissuance of an escheated harness horse permit. As specified in the application and upon approval by the division of an application for the permit, the new permitholder shall be authorized to operate a harness horse facility anywhere in the same county in which the escheated permit was authorized to be operated, notwithstanding the provisions of s. 550.054(2) relating to mileage limitations.~~

Section 7. Subsections (3) and (7) of section 550.09515, Florida Statutes, are amended to read:

550.09515 Thoroughbred horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(3) ~~(a)~~ The division shall revoke the permit of a thoroughbred racing ~~horse~~ permitholder that ~~who~~ does not pay tax on handle for live thoroughbred horse performances for a full schedule of live races for more than 24 consecutive months ~~during any 2 consecutive state fiscal years shall be void and shall escheat to and become the property of the state~~ unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder does ~~shall~~ not, in and of itself, constitute just cause for failure to operate and pay tax on handle. A permit revoked under this subsection is void and may not be reissued.

~~(b) In order to maximize the tax revenues to the state, the division shall reissue an escheated thoroughbred horse permit to a qualified applicant pursuant to the provisions of this chapter as for the issuance of an initial permit. However, the provisions of this chapter relating to referendum requirements for a pari-mutuel permit shall not apply to the reissuance of an escheated thoroughbred horse permit. As specified in the application and upon approval by the division of an application for the permit, the new permitholder shall be authorized to operate a thoroughbred horse facility anywhere in the same county in which the escheated permit was authorized to be operated, notwithstanding the provisions of s. 550.054(2)~~

~~relating to mileage limitations.~~

~~(7) If a thoroughbred permitholder fails to operate all performances on its 2001-2002 license, failure to pay tax on handle for a full schedule of live races for those performances in the 2001-2002 fiscal year does not constitute failure to pay taxes on handle for a full schedule of live races in a fiscal year for the purposes of subsection (3). This subsection may not be construed as forgiving a thoroughbred permitholder from paying taxes on performances conducted at its facility pursuant to its 2001-2002 license other than for failure to operate all performances on its 2001-2002 license. This subsection expires July 1, 2003.~~

Section 8. Section 550.3345, Florida Statutes, is amended to read:

550.3345 ~~Conversion of quarter horse permit to a~~ Limited thoroughbred racing permit.—

(1) In recognition of the important and long-standing economic contribution of the thoroughbred horse breeding industry to this state and the state's vested interest in promoting the continued viability of this agricultural activity, the state intends to provide a limited opportunity for the conduct of live thoroughbred horse racing with the net revenues from such racing dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under this chapter; the general promotion of the thoroughbred horse

breeding industry; and the care in this state of thoroughbred horses retired from racing.

(2) A limited thoroughbred racing permit previously converted from ~~Notwithstanding any other provision of law, the holder of~~ a quarter horse racing permit pursuant to chapter 2010-29, Laws of Florida, ~~issued under s. 550.334~~ may only be held by~~, within 1 year after the effective date of this section, apply to the division for a transfer of the quarter horse racing permit to~~ a not-for-profit corporation formed under state law to serve the purposes of the state as provided in subsection (1). The board of directors of the not-for-profit corporation must be composed ~~comprised~~ of 11 members, 4 of whom shall be designated by the applicant, 4 of whom shall be designated by the Florida Thoroughbred Breeders' Association, and 3 of whom shall be designated by the other 8 directors, with at least 1 of these 3 members being an authorized representative of another thoroughbred racing permitholder in this state. A limited thoroughbred racing ~~The not-for-profit corporation shall submit an application to the division for review and approval of the transfer in accordance with s. 550.054. Upon approval of the transfer by the division, and notwithstanding any other provision of law to the contrary, the not-for-profit corporation may, within 1 year after its receipt of the permit, request that the division convert the quarter horse racing permit to a permit authorizing the holder to conduct pari-mutuel wagering meets of~~

~~thoroughbred racing. Neither the transfer of the quarter horse racing permit nor its conversion to a limited thoroughbred permit shall be subject to the mileage limitation or the ratification election as set forth under s. 550.054(2) or s. 550.0651. Upon receipt of the request for such conversion, the division shall timely issue a converted permit. The converted~~ permit and the not-for-profit corporation are ~~shall be~~ subject to the following requirements:

(a) All net revenues derived by the not-for-profit corporation under the thoroughbred ~~horse~~ racing permit, after the funding of operating expenses and capital improvements, shall be dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under this chapter; the general promotion of the thoroughbred horse breeding industry; and the care in this state of thoroughbred horses retired from racing.

(b) From December 1 through April 30, ~~no~~ live thoroughbred racing may not be conducted under the permit on any day during which another thoroughbred racing permitholder is conducting live thoroughbred racing within 125 air miles of the not-for-profit corporation's pari-mutuel facility unless the other thoroughbred racing permitholder gives its written consent.

(c) After ~~the conversion of the quarter horse racing permit and the~~ issuance of its initial license to conduct pari-mutuel wagering meets of thoroughbred racing, the not-for-profit

corporation shall annually apply to the division for a license pursuant to s. 550.5251.

(d) Racing under the permit may take place only at the location for which the original quarter horse racing permit was issued, which may be leased by the not-for-profit corporation for that purpose~~; however, the not-for-profit corporation may, without the conduct of any ratification election pursuant to s. 550.054(13) or s. 550.0651, move the location of the permit to another location in the same county provided that such relocation is approved under the zoning and land use regulations of the applicable county or municipality~~.

(e) A limited thoroughbred racing ~~No~~ permit may not be transferred ~~converted under this section is eligible for transfer~~ to another person or entity.

(3) Unless otherwise provided in this section, ~~after conversion,~~ the permit and the not-for-profit corporation shall be treated under the laws of this state as a thoroughbred racing permit and as a thoroughbred racing permitholder, respectively, with the exception of ss. 550.054(9)(c) and ~~s.~~ 550.09515(3).

Section 9. Subsection (4) of section 551.102, Florida Statutes, is amended to read:

(4) "Eligible facility" means any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during

calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county; or any licensed pari-mutuel facility located within a county as defined in s. 125.011, provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter~~; or any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required licensed fee, and meets the other requirements of this chapter~~.

Section 10. Subsection (1) of section 551.104, Florida Statutes, is amended to read:

551.104 License to conduct slot machine gaming.—

(1) Upon application and a finding by the division after investigation that the application is complete and the applicant is qualified and payment of the initial license fee, the division may issue a license to conduct slot machine gaming in the designated slot machine gaming area of the eligible

facility. Once licensed, slot machine gaming may be conducted subject to the requirements of this chapter and rules adopted pursuant thereto. Notwithstanding any other provision of law, the division may not issue an initial license to conduct slot machine gaming after January 1, 2018, or otherwise authorize the conduct of slot machine gaming at any facility or location which was not conducting slot machine gaming as of January 1, 2018.

Section 11. Paragraphs (a) and (b) of subsection (2), paragraph (d) of subsection (7), subsection (12), paragraph (c) of subsection (14), and paragraph (a) of subsection (17) of section 849.086, Florida Statutes, are amended to read:

849.086 Cardrooms authorized.—

(2) DEFINITIONS.—As used in this section:

(a) "Authorized game" means a game or series of games of traditional poker or dominoes which are played in a pari-mutuel, nonbanking manner, where all players at the table play against all other players at the table and contribute to a common pot of winnings collected by the winner, and which are played in a manner consistent with the rules and requirements set forth in the 1974 edition of Hoyle's Modern Encyclopedia of Card Games.

(b) "Banking game" means a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers, or a game in which any person or party serves as ~~the cardroom establishes~~ a bank against which participants play.

(7) CONDITIONS FOR OPERATING A CARDROOM.—

(d) A cardroom operator may award giveaways, jackpots, and prizes to a player who holds certain combinations of cards specified by the cardroom operator, provided that the award of such giveaway, jackpot, or prize does not constitute a prohibited activity under subsection (12).

(12) PROHIBITED ACTIVITIES.—

(a) ~~No person licensed to operate a cardroom may conduct any banking game or~~ Any game not specifically authorized by this section is prohibited. Prohibited games include, but are not limited to:

1. Any game in which the cardroom or any other person or party serves as a bank or banker against which players play.

2. Any game in which players compete against a designated player instead of competing against all players at the table.

3. Any game in which the number of cards or ranking of hands does not conform to the rules and requirements for traditional poker as set forth in the 1974 edition of Hoyle's Modern Encyclopedia of Card Games.

4. Any other game conducted in a manner that is not consistent with the provisions of this section.

(b) ~~No person~~ Persons under 18 years of age may not be permitted to hold a cardroom or employee license, or engage in any game conducted therein.

(c) ~~No~~ Electronic or mechanical devices, except mechanical

card shufflers, may not be used to conduct any authorized game in a cardroom.

(d) ~~No~~ Cards, game components, or game implements may not be used in playing an authorized game unless such has been furnished or provided to the players by the cardroom operator.

(14) SUSPENSION, REVOCATION, OR DENIAL OF LICENSE; FINE.—

(c) ~~Notwithstanding any other provision of this section,~~ The division may impose an administrative fine not to exceed $1,000 for each violation against any person who has violated or failed to comply with the provisions of this section or any rules adopted pursuant thereto. The division may revoke the license of any person who violates the provisions of subsection (12) on or after August 1, 2018.

(17) CHANGE OF LOCATION; REFERENDUM.—

(a) Notwithstanding any provisions of this section, no cardroom gaming license issued under this section shall be transferred, or reissued when such reissuance is in the nature of a transfer, so as to permit or authorize a licensee to change the location of the cardroom except upon proof in such form as the division may prescribe that a referendum election has been held:

1. If the proposed new location is within the same county as the already licensed location, in the county where the licensee desires to conduct cardroom gaming and that a majority of the electors voting on the question in such election voted in

favor of the transfer of such license. ~~However, the division shall transfer, without requirement of a referendum election, the cardroom license of any permitholder that relocated its permit pursuant to s. 550.0555.~~

2. If the proposed new location is not within the same county as the already licensed location, in the county where the licensee desires to conduct cardroom gaming and that a majority of the electors voting on that question in each such election voted in favor of the transfer of such license.

Section 12. Subsection (1) of section 849.16, Florida Statutes, is amended to read:

849.16 Machines or devices which come within provisions of law defined.—

(1) As used in this chapter, the term "slot machine or device" means any machine or device or system or network of devices that is adapted for use in such a way that, upon activation, which may be achieved by, but is not limited to, the insertion of any piece of money, coin, account number, code, or other object or information, such device or system is directly or indirectly caused to operate or may be operated and if the user, whether by application of skill or by reason of any element of chance or any other outcome unpredictable by the user, <u>regardless of whether the machine or device or system or networks of devices includes a preview of the outcome or whether the outcome is known, displayed, or capable of being known or</u>

displayed to the user, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value;~~, or~~ any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or the opportunity to purchase a subsequently displayed outcome that may have a monetary value, regardless of whether such value is equal to, greater than, or less than the cost of purchasing such outcome; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though the device or system may be available for free play or, in addition to any element of chance or unpredictable outcome of such operation, may also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value. The term "slot machine or device" includes, but is not limited to, devices regulated as slot machines pursuant to chapter 551.

Section 13. All cardroom games involving designated players or a bank of any kind are illegal and prohibited under s. 849.086, Florida Statutes. Any past or future action or inaction by the Division of Pari-Mutuel Wagering considered by any party or construed by a tribunal to constitute permission from the state, either for a licensed cardroom to conduct a banking game for purposes of s. 849.086 or for a licensed

cardroom to conduct a banking or banked card game for purposes of the Gaming Compact between the Seminole Tribe of Florida and the State of Florida executed pursuant to s. 285.710(3)(b), Florida Statutes, exceeds the division's delegated legislative authority, is contrary to will of the Legislature as expressed in the plain words of the Florida Statutes, and does not represent state action for purposes of the Gaming Compact executed pursuant to s. 285.710(3)(b), Florida Statutes.

Section 14. This act shall take effect July 1, 2018.