Business Regulation Committee

Tuesday, September 13, 2005
9:00 AM - 12:00 PM
REED HALL

Allan G. Bense
Speaker

Frank Attkisson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Business Regulation Committee

Start Date and Time:	Tuesday, September 13, 2005 09:00 am
End Date and Time:	Tuesday, September 13, 2005 12:00 pm
Location:	Reed Hall (102 HOB)
Duration:	3.00 hrs

Workshops:

1. Implementation of Constitutional Amendment authorizing slot machines at certain pari-mutuel facilities in Broward and Miami-Dade counties. Testimony requested from the pari-mutuel industry and the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering.

2. Direct Shipment of Wine to Florida Consumers from out-of-state wineries:

A) Overview presentation by Richard M. Blau, Chairman , ABA Committee on Beverage Alcoholic Practice, relating to the "Three Tier System" of alcoholic beverage distribution and how Florida's distribution system may be affected by recent federal court decisions concerning the direct shipment of wine by out-of-state shippers to Florida consumers.

B) Committee discussion of direct shipping with a panel consisting of persons interested in the direct shipment issue.

TABLE OF CONTENTS

TAB 1	Implementation of Slot Machine Gaming – Status Update
TAB 2	Article X, Section 23 of the Florida Constitution (Authorizing Slot Machines)
TAB 3	Side by Side Comparison of HB 1901 2nd Eng, CS/CS/CS SB 1174, and Senate Amendment to the House Bill
TAB 4	HB 1901 2nd Eng Pari-Mutuel Wagering (bill history and bill language)
TAB 5	CS/CS/CS SB 1174 Pari-Mutuel Wagering (bill history and bill language)
TAB 6	Senate Amendment to HB 1901 2nd Eng (barcode 873066) and Senate Amendment to the Amendment to HB 1901 2nd Eng (barcode 224858)
TAB 7	Direct Shipping of Wine – Status Update
TAB 8	Brief Biography of Richard M. Blau, Chairman of the American Bar Association's Committee on Beverage Alcohol Practice
TAB 9	Written Statement from Richard M. Blau
TAB 10	*Granholm v. Heald*, 125 S.Ct. 1885 (May 16, 2005) Justice Kennedy Majority Opinion
TAB 11	*Granholm v. Heald*, 125 S.Ct. 1885 (May 16, 2005) Justice Thomas Minority Dissent
TAB 12	*Granholm v. Heald*, 125 S.Ct. 1885 (May 16, 2005) Justice Stevens and O'Connor Dissent
TAB 13	*Bainbridge v. Turner*, Case No. 8:99-CV-2681-T-27TBM

TAB 1

Implementation of Slot Machine Gaming

September 2, 2005

Status Update

During the 2004 general election, voters approved an amendment to the Florida Constitution that permitted two counties, Miami-Dade and Broward, to hold referenda on whether to permit slot machines in certain pari-mutuel facilities within their respective counties. County-wide referenda were held in Miami-Dade and Broward Counties on March 8, 2005. The referendum was defeated in Miami-Dade, but passed in Broward County.

Article X, Section 23, specifies that in the regular session following voter approval of the amendment that "the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment." Both the Senate and House passed their own versions of slot machine implementing legislation during the regular session, but an agreed upon version failed to pass.

Subsequent to the adjournment of the 2005 Legislative Session three separate legal challenges have arisen. In addition, the Broward County Commission has contracted with a consultant to begin drafting rules for the operation of slot machines at pari-mutuel facilities in Broward County.

PPI, Inc. et al. v. DBPR (Filed at DBPR; currently on appeal at the 1st DCA)

Representative Ellyn Bogdanoff petitioned the Department of Business and Professional Regulation (DBPR) for a declaratory statement holding that the slot machine constitutional amendment is of no force or effect until the Florida Legislature enacts implementing legislation and therefore the Division of Pari-Mutuel Wagering has the right to take disciplinary action against any licensee that possesses or operates a slot machine. The Division determined that it has jurisdiction to issue the declaratory statement.

The tracks filed a petition in the First District Court of Appeal asking the court to prohibit DBPR from responding to the petition for declaratory statement, arguing that the declaration is in excess of the Division's jurisdiction.

The First DCA issued an Order to Show Cause to DBPR why the writ of prohibition should not be granted. DBPR filed a Response on July 20 and the appellants filed their Reply on August 15, 2005.

No Casinos, Inc. v. Hartman & Tyner, et al. (Circuit Court in Leon County)

No Casinos, Inc., a Florida association interested in limiting gambling in Florida, brought suit against the four pari-mutuel facilities and DBPR seeking a declaratory judgment that the amendment is of no force or effect until the Legislature enacts implementing legislation. The tracks filed a motion to dismiss or, in the alternative, to change venue to Broward County. This case was voluntarily dismissed by the plaintiffs on August 23, 2005.

Hartman & Tyner, Inc. et al. v. Satz (Circuit Court in Broward County)
Satz v. Hartman & Tyner, Inc. et al. (4th DCA)

The pari-mutuels filed this suit asking the court to declare that they are entitled to transport, possess, install, and operate slot machines and to permanently enjoin the State Attorney from prosecuting these facilities for transporting, possessing, installing, or operating slot machines at their facilities in Broward County.

At a hearing on June 21, Judge Moe denied the state attorney's motions for continuance, dismissal, and for failure to join an indispensable party and granted the declaratory and injunctive relief that was requested. The State Attorney was permanently enjoined from initiating criminal or civil action against the plaintiffs for transporting, possessing, installing, or operating slot machines on or after July 1, 2005. The judge retained jurisdiction to allow the Broward County Commission to enact rules and regulations to implement the amendment.

The rules of appellate procedure provide that the final judgment is stayed (not effective) during the time the appeal is pending unless a party successfully demonstrates a compelling reason to the court to vacate the stay. At an August 22nd hearing on the plaintiffs' motion to vacate the stay Judge Moe found for the plaintiffs. The Order Granting Motion to Vacate Automatic Stay on Appeal, filed on August 30, 2005, stated that there were compelling circumstances which warranted the lifting of the stay that being "the people's right to have their vote count, and the Legislature's deliberate or negligent thwarting of that most compelling right" and the automatic stay was vacated during the pendency of the Appeal of that Final Judgment. It is anticipated that a motion seeking reinstatement of the stay will be filed in the near future with the 4th DCA.

State Attorney Mike Satz filed a notice of appeal with the Fourth District Court of Appeal. The tracks moved that the appeal be expedited, which was denied. The court has granted the motions of both the Legislature and the Governor to file amicus briefs in the case, which will be due in mid-September.

Implementation of Slots Regulations by Broward County

Pursuant to Judge Moe's ruling, the Broward County Commission on June 28, 2005 directed commission staff to hire a consultant to draft rules and regulations for operation of slot machines at pari-mutuel facilities in Broward County.

Broward County has contracted with Gaming Laboratories International [GLI], an independent gaming device and systems test laboratory, to prepare draft regulations. According to the Broward County Administrator's office, GLI will also identify policy issues for the Board; prepare final regulations which include a comprehensive set or rules, regulations and internal control procedures; and provide an overview of actions and resources required for the County to regulate slots. The consultant will provide the Board with a set of draft regulations in early September.

TAB 2

CONSTITUTION
OF THE
STATE OF FLORIDA

ARTICLE X

MISCELLANEOUS

[1]SECTION 23. Slot machines.--

(a) 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 parimutuel 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 parimutuel 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.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

History.--Proposed by Initiative Petition filed with the Secretary of State May 28, 2002; adopted 2004.

[1]**Note.**--This section, originally designated section 19 by Amendment No. 4, 2004, proposed by Initiative Petition filed with the Secretary of State May 28, 2002, adopted 2004, was redesignated section 23 by the editors in order to avoid confusion with already existing section 19, relating to the high speed ground transportation system.

TAB 3

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

May 6, 2005

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
YELLOW HIGHLIGHTED AREAS ARE POSITIONS NOT AGREED TO BY HOUSE NEGOTIATORS			
Type Gaming Machine	Class II machines are technological aides to playing bingo; legislative intent to authorize only those established by agency or court in nonappealable final order	Language describes Class III machines; so-called "Vegas-style" machines	**Senate Position: Vegas-style machines**
Cash-in/Cash-out	Slot machine definition encompasses insertion of cash or coin and payment in cash, coin or tickets or credits to be exchanged for cash	Similar but some language differences	Senate Position on cash-in/cash-out
Number of Machines	Maximum of 3,000 per facility	No limit	**Senate Position: No limit on number of machines**
Slot Machine Revenue Definition	All cash and property received less cash, cash equivalents, credits, and prizes paid to winners	Same	Same
Payout	Payout no less than 85% and no more than 93%	No less than 85% per facility	Senate Position: no less than 85%
Tax Rate on Machine Revenue	55% of slot machine revenues	Variable revenue based: 30% up to $150M; 35% above $150M up to $300M; 40% on all above $300M	**Modified Senate Position: 35% of $125 M or less; 40% on greater than $125 M up to $250 M; 45% above $250 M up to $500 M; 55% above $500 M**
Laptop Computers	Provides that slot machine tax revenues must first be expended for a grant program administered by DOE available to all school districts and charter schools to provide laptop computers to 7th grade students. If student passes 10th grade FCAT the computers are upgraded and given to the student.	Not addressed	Senate Position: no ear-marking of funds deposited into EETF
Penalty for Failure to Pay Tax	$1,000 per day; if willful, grounds for suspension, revocation or non-renewal	Same	Same
Payment of Taxes	Requires corporations to apply for and be issued a certificate of status assuring existence and authorization for conducting business in the state; requires DOR certification to Governor of payment of all state and local taxes; subjects licensee to revocation, suspension or non-renewal for non-payment of taxes	Not addressed	Senate Position: revocation or suspension of license for non-payment of taxes covered in other provisions of bill
Trust Fund for Deposit of Tax on Slot Machine Revenue	Slot Machine Administrative TF for immediate transfer to EETF	Directly to PECO rather than first into Pari-mutuel Wagering TF for immediate transfer to PECO	Modified House Position: PMW TF for immediate transfer to EETF
Slot Machine License Holder Fee	$4M per licensed slot machine facility; requires evaluation of fees by Division in consultation with Board to determine optimal level for funding regulatory program	$4M per licensed slot machine facility for lst year only; thereafter, $1,000 per slot machine	House Position: $4 M annual license fee per facility rather than $4 M for first year and $1,000 per machine fee thereafter

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
Per Machine Fee/Tax	Not addressed	$500 per machine for Broward Co. School Board; expenditures for impacts not directly related to slot operations must be returned to EETF; also see license holder per machine fee applicable after the first year: $100 per machine fee to pay for compulsive gambling program	House Position: No per machine fee for Broward County School Board
Sales Tax Exemption	Slot machines made exempt from 4% sales tax applicable to coin operated amusement games	Not addressed	House Position: Exemption from 4% sales tax applicable to coin-operated amusement machines
Hours of Operation	From 10:00 AM until 2:00 AM daily - expressly provided can operate 365 days a year	16 hours per day daily - expressly provided can operate 365 days a year	Senate Position: 16 Hours per day but not limited to between 10:00 AM and 2:00 AM
Definition of Designated Slot Machine Gaming Area	Area of facility in which slot machine gaming may be conducted	Similar, but additional language including any addition, alteration or new structure on pari-mutuel premises	Senate Position: Slot gaming area not limited to existing structures on premises
Slot Facility Required Physical Connection to Live Pari-mutuel Gaming	Not addressed	Division establishes standards for physical layout and construction of facility including that slot machine gaming area must be connected and contiguous to live gaming facility	Senate Position: Requires slot gaming area to be connected and contiguous to pari-mutuel gaming facility
Pari-mutuel Wagering in Slots Area	Requires equipment to observe & wager on races & games in slots area	Similar language	Senate Position: Language for requiring equipment for observing and wagering on pari-mutuel events in slots area
Required Number of Live Events	Full schedule; the number of live events required may be reduced by the number that cannot be conducted due "Act of God" or other events beyond licensee's control; however, CS/HB 181 was amended in F&T on 4/12/05 to specify that a "full schedule" of live games for purposes of intertrack wagering for jai alai permitholders is a combination of at least 150 days of performances during the preceding year - [current law requires 100 performances]	Similar, however, does not contain "Act of God" provision; also, SB 342 companion to CS/HB 181 is traveling with one amendment that redefines a full-schedule as 40 performances for a non-slot jai alai permitholder; permitholders who are slots licensees still required to perform a full-schedule, i.e., 100 performances	Senate Position requiring conducting no fewer than the greater number of live races or games that were conducted at the facility in calendar year 2002 or 2003 with "Act of God" provision
Authority to Amend Annual License	Grants authority to amend pari-mutuel license [presumably to change number of days or specific days of operation] within 60 days of the effective date of the act in order to expedite the operation of slot machines	Same	Same
Bond Requirements	$2M bond for 1st year; then division determination of amount to ensure tax payments but no less than $2M	Similar but can adjust up or down	Senate Position: $2 M bond the first year; division may adjust for adequacy annually thereafter
ATMs & Financial Transactions	ATMs cannot be located within 50' of a designated slot machine gaming area; no third-party check cashing by licensee	ATMs not allowed to be located on the property of the facilities of the slot machine licensee	Senate Position: No ATMs anywhere on property of pari-mutuel or slots facility

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
Near Win/Miss Programming	No programming to display a result that appears to be a near-win or gives the impression of getting close to a win by giving false impression that chance is improved by another play	Not addressed	House Position: No near win/miss programming
Manipulation and Tampering	Division or FDLE must have capacity using centralized system to suspend play if suspicion of manipulation or tampering	Not addressed	Modified House language to shut down particular affected machines or entire operating system if manipulation is of the entire system
Minors	Person under 21 cannot play, have access to, or be employed in designated slot machine gaming area	Same	Same
Alcoholic Beverage Sales	No complimentary alcohol; authorizes an alcoholic beverage license for designated gaming area [caterer's license]	Same	Same
Sign Posting (Odds, Compulsive Gaming Toll-Free Hotline)	Requires signs in designated slot machine gaming area re: warning of risks of gambling, odds of winning, and toll-free number for compulsive gambling	Same	Same
Compulsive Gambling Programs	Division may contract for prevention & treatment services with private provider; accountability standards required; make consult with DOL; funding from annual slot machine license fee	Same language regarding division contracting for prevention and treatment but also includes a $100 per machine fee to fund program. Bill contains provision not in HB requiring slot machine operator to offer employees training on responsible gaming working through treatment program in DCF.	Blended House/Senate position: Program limited to prevention; no $100 per machine fee to fund program; competitive bidding required for private provider contract for prevention services
Effective Date	1-Jul-05	Upon becoming law, except as otherwise expressly provided	Senate Position: Upon becoming law except as otherwise provided [Greyhound reporting takes effect July 1, 2005]
Statutory Purse Provisions	Not addressed	Not addressed	Not addressed
REGULATORY STRUCTURE			
Regulatory Agency	Creates a new Division of Slot Machines within the DBPR	Placed in Division of Pari-Mutuel Wagering within the DBPR	Senate Position: Division of Pari-Mutuel Wagering
Centralized System	Centralized computer management system for real-time auditing & financial purposes	Similar, but language differences	Senate Position: Use of Senate language for central system
Progressive Games	No linking of a licensee's operating system or machines to another licensee's operating system or machines	Progressive games defined but term not contained in substantive provisions of bill	Senate Position: Allows inter-facility progressive games
Occupational Licenses	Requires 3 types; general, professional & Business; up to $50 for general paid by facility; up to $1,000 for professional license; employees required to wear ID badges; extensive language relating to FDLE fingerprinting procedures and requirements	Similar, except for ID badges and extensive FDLE fingerprint procedures	Blended House/Senate Position: No requirement to wear ID badges in gaming area; FDLE fingerprint procedures specified
Powers & Duties	Authority for investigating, licensing, inspecting & tax collection	Similar authority for investigation, licensing, inspection & tax collection	Senate Position for powers and duties

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
Division Rules for Licensure and Oversight	Rule-making authority for implementing substantive provisions of bill; no license issued until all rules filed for adoption with Sec. of State; changes in 5% or more of ownership interest must be approved ; licensees must provide detailed description of operating system including source codes; games and machines must be certified by independent testing lab; division review and approval of internal control procedures; records retention for 5 years with availability for audit & inspection by division, FDLE, and local law enforcement; required monthly reports by licensee; required filing of audit by licensee of all receipts and distributions of slot machine revenue by independent CPA	Similar rule-making authority for implementing substantive provisions of the bill but does not include numerous other provisions mentioned under HB description	Modified House position change of 5% or more in ownership interest requires approval by the division with an exception for publicly traded corporations on national stock exchanges; no requirement that *all* rules be filed prior to licensure. Senate position on no specific reference to source codes since it is believed that codes are available to the division under requirements for central control system
Regulatory and Law Enforcement Presence at Facility	Requires slot machine licensees provide adequate office space to division and FDLE	Not addressed	House Position: Licensee required to provide office space for division and FDLE
Exclusion of Persons by Division	Grants authority to Division to bar undesirable persons from slot machine area	Similar, but allows Division discretion to readmit previously barred person if found not adverse to public interest	Senate Position: Allows division discretion to readmit previously barred person
Emergency Rule-Making Authority	Authorizes emergency rules only after slot machine licenses have been issued	Authorizes emergency rules to expedite licensing process	Senate Position: Emergency rules to expedite licensing rather than authorizing emergency rules only after licensing
Trust Fund for Administration	Slot Machine Administrative Trust Fund; repository for $4M license holder fee; penalties for failure to pay tax; occupational license fees; and slot machine tax revenue for immediate transfer into EETF	Pari-mutuel Wagering Trust Fund; no similar language for receiving slot machine tax revenue for transfer to PECO	Blended House/Senate Position: PMW TF with technical language requiring deposit of slot machine tax revenues into Fund for immediate transfer into EETF
Preemption	Preemption of local regulation of operation and wagering at slot machine facilities	Not addressed	House Position: Preemption of local regulation
Specific Appropriation	Specific appropriations for: DBPR - $4.8 M recurring & 4M non-recurring-64 FTEs; FDLE - $2.6 M recurring and $1.8 non-recurring -57 FTEs; and Broward State Attorney's Office - $158,154 recurring and $24,498 non-recurring-10 FTEs; all funds and positions held in reserve for approval by Ex. Ofc of Gov and chair and v-chair of LBC	Same appropriation for DBPR & FDLE; however, appropriates $608,118 recurring for State Attorney, and $1M recurring for compulsive gambling.	Senate Position: No appropriation for 17th Circuit State Attorney for first year; $1 M appropriation for compulsive gambling prevention program from license fee; $13.2 for DBPR and FDLE held in reserve until approval by Gov. and LBC
MISCELLANEOUS			

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
Security Plan	Requires submission of a security plan by licensee with floor plan, location of security cameras, and listing of security equipment to the Division; in the licensure sections of the bill requirement for detailed descriptions of internal control procedures and independent testing of games and computer operating system; and division access to source codes for each game and machine	Same language for submission of a security plan but does not include numerous other provisions mentioned in HB description	House Position but no specific references to source code availability, since they are believed to be available under provisions relating to central control system
Popular Name	Cites act as the "Keep The Promise Act of 2005"	Not addressed	Senate Position: No popular name
Capital Reinvestment by Licensees	Require a report by licensee to the Board for purposes of documenting continuing capital reinvestment for economic benefit of community; report to be considered in the 2008 program evaluation by OPPAGA and each year thereafter.	Provides intent language that each facility develop into tourist destination, provide sufficient parking & facilitate access to pari-mutuel portion of facility	Senate Position: Intent language regarding development of facility
Prohibited Relationships and Activities	Prohibits division employee or person acting on behalf of the division or the board from certain relationships with licensees or holding of interests in business of licensee. Prohibits manufacturers or distributors from financial tie-in or revenue sharing w/licensee; division employees and relatives living in same household cannot play any licensed facility; employees and relatives living in same household cannot play at facility where employed; no moonlighting by local law enforcement or regulatory agency employees with jurisdiction over slots premises if employment is in slots area or other slots operations. Other moonlighting at pari-mutuel facility not involving slots requires primary employer approval	Same, except does not include prohibitions against playing by division employees and facility employees	Blended House/Senate Position: No prohibition against playing by division or facility employees; no moonlighting by local law enforcement or regulatory agency employees with jurisdiction over slots premises if employment is in slots area or other slots operations. Other moonlighting at pari-mutuel facility not involving slots requires primary employer approval
Civil/Criminal Penalties for Certain Acts	Criminal penalties; adds slot machine crimes as underlying offense for RICO violations [racketeering]	Similar acts are prohibited and are specifically punished by administrative fine or civil penalties of between $10,000 and $25,000; specific criminal penalty for intentional tampering or manipulation of slot machine - 3rd degree felony	Blended House/Senate language includes underlying criminal offense of tampering & theft as RICO violations
Criminal Jurisdiction of Division and Local Authorities	Concurrent criminal law enforcement jurisdiction for division, FDLE, and local law enforcement; division, FDLE, and local law enforcement unrestricted access to facilities for inspections; rules of construction to assure FDLE and local law enforcement criminal jurisdiction, access to facility and records; criminal investigations in conjunction with state attorney	Similar language for authority of division; rules of construction for local law enforcement but FDLE enforcement not expressly addressed	House Position on authority of FDLE and local law enforcement

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
Possession and Transportation of Gambling Devices	Exempts the transportation/shipment of slot machines into a county in the state where slot machine gambling is authorized from federal Johnson Act, provided the destination is to a licensed, eligible facility.	Not addressed	House Position on possession and transportation of gambling devices
Greyhound Welfare	Not addressed	Division required to maintain records and establish reporting requirements of greyhound injuries and the disposition of retired greyhounds	**Senate Position requiring reporting of greyhound injuries and disposition**
Hialeah Thoroughbred Permit	Preservation of Hialeah permit which is currently under revocation and in appellate litigation	Not addressed	**Senate Position: No language protecting the Hialeah permit from revocation and forfeiture to the state for not having operated during the last several seasons**
Tribal Compact	Requires ratification by Legislature of Governor negotiated compact for Indian gaming	Not addressed	House Position with additional language referencing to slot machines and other Class III gaming
Definitions Section of Bill	Slot machine licensee definition licenses permitholder	Slot Machine licensee definition similar but licenses facility; definitions for "Central Control Computer," "Distributor," "Eligible Facility," "Independent Testing," "Manufacturer," "Progressive System," "Slot Machine License," and "Slot Machine Operator" not addressed in HB.	Blended House/Senate use of definitions
SOCIO-ECONOMIC IMPACTS			
Advisory Board	9-member Board of Slot Machines housed in Division; members appointed by Governor & confirmed by Senate	Not addressed	Senate Position: No Board
Division Rules for Board and Keep-the-Promise Rules	Board recommends to Division rules providing the means, method and timing of reporting by licensee in specified areas; for example: detailed summary of lobbying activities by or on behalf of licensee, including amount and source of funds expended	Not addressed	Senate Position: No licensee reporting to Board
Preferences in Purchasing and Employment	Requires preference in employment to Florida residents; preference in regard to purchases made from Florida vendors; requires slot machine licensees to create opportunities to purchase from minority vendors; and the practice of nondiscriminatory employment practices for hiring various protected groups of persons	Not addressed	**House Position on preferences in purchasing and employment but requiring a written policy from licensee rather than absolute requirement**
Law Enforcement Affidavits	Local chief of law enforcement must verify by affidavit fiscal needs have been met; affidavits sent to Board which includes description in its annual report; OPPAGA considers in its 2008 evaluation and annually thereafter	Not addressed	Senate Position: No law enforcement affidavits

COMPARISON OF HB 1901 2nd Eng and SENATE AMENDMENT
SLOT MACHINES

SUBJECT	HB 1901 2nd ENGROSSED	CS/CS/CS/SB 1174	SENATE AMENDMENT TO HB 1901 2nd ENGROSSED
County & Municipality Resolutions	Local government resolutions by governing bodies of nearby jurisdictions that facility not harmful to community; resolutions sent to Board which includes description in its annual report; OPPAGA considers in its 2008 evaluation and annually thereafter	Not addressed	Senate Position: No local resolutions required
Tourist Development Council Resolutions	TDC resolutions required throughout state addressing impact on tourism within their jurisdiction; resolutions sent to the Board which includes description in its annual report; OPPAGA considers in its 2008 evaluation and annually thereafter	Not addressed	Senate Position: No Tourist Development Council resolutions required
Local Referenda	Provides for local county referenda de-authorizing slot machine gaming and also straw ballot referenda declaring slot machine gaming an undue burden	No similar language for de-authorization or straw ballots. However, language providing procedures for payment by licensees for referenda election to authorize slot machine gaming pursuant to constitution. Also provisions for licensee to be licensed before an authorizing referendum but not to actually operate slot machine gaming until approval pursuant to referendum.	**Senate Position: No express authorization for county deauthorization referenda or straw ballot provision. Authority for provisional licensing prior to a local authorizing referenda and authority for facility to pay local government for expenses related to referenda to authorize slot machine gaming**
DOT Study & Report	DOT Study of Access Routes to Pari-mutuel and Indian Slot Machine Gaming Facilities	Not addressed	Senate Position: No DOT Study
OPPAGA Program Evaluation	Evaluation consists of performance audit of Board & Division and performance of licensees; due date of first report to 1/1/08 and require annual updates	Not addressed	Modified House Position: OPPAGA study of Division and licensees
Shaded Rows Represent Identical Provisions			

TAB 4

Select Year: 2005 **Select Chamber:** House Go

Jump To: Bill Text (5) | Amendments (23) | Staff Analysis (4) | Vote History (4) | Citations

◄ Previous House Bill Next House Bill ►

House 1901: Relating to Keep the Promise Act of 2005

H1901 GENERAL BILL/2ND ENG by Business Regulation (CC); Attkisson; (CO-SPONSORS) Zapata (Linked 1ST ENG/H 1903, 1ST ENG/H 1905, Compare H 1075, H 1569, H 1571, **CS/CS/CS/**S 1174, S 1342, S 2004, S 2122**)**
Keep the Promise Act of 2005; establishes Slot Machines Div. in DBPR; authorizes slot machines & slot machine gaming within certain pari-mutuel facilities located in Miami-Dade & Broward Counties upon approval by local referendum; prohibits licensees or any entity conducting business on or within licensed slot operation from employing employees of certain law enforcement or regulatory agencies, etc. Amends FS. APPROPRIATION: $18,092,579. EFFECTIVE DATE: 07/01/2005.

04/04/05 HOUSE Filed
04/05/05 HOUSE Introduced, referred to Commerce Council; Fiscal Council -HJ 00354, -HJ 00457
04/12/05 HOUSE On Council agenda-- Commerce Council, 04/14/05, 12:45 pm, 404-H
04/14/05 HOUSE Favorable with CS amendment by Commerce Council; YEAS 10 NAYS 0 -HJ 00564
04/17/05 HOUSE Pending review of CS under Rule 6.3(b); Now in Fiscal Council -HJ 00564
04/18/05 HOUSE On Council agenda-- Fiscal Council, 04/20/05, 3:45 pm, 212-K --Temporarily deferred
04/21/05 HOUSE On Council agenda-- Fiscal Council, 04/22/05, 1:30 pm, 212-K
04/22/05 HOUSE Favorable with CS amendment by- Fiscal Council; YEAS 18 NAYS 0 -HJ 00726
04/25/05 HOUSE Pending review of CS -under Rule 6.3(b); Placed on Calendar -HJ 00726
04/27/05 HOUSE Placed on Special Order Calendar; Read second time -HJ 00795; Amendment(s) adopted -HJ 00797; Amendment(s) failed -HJ 00798; Ordered engrossed -HJ 00800
04/28/05 HOUSE Temporarily postponed, on Third Reading -HJ 00998
05/02/05 HOUSE Read third time -HJ 01097; Amendment(s) adopted -HJ 01099; Passed as amended; YEAS 91 NAYS 24 -HJ 01099
05/02/05 SENATE In Messages
05/03/05 SENATE Received, referred to Regulated Industries; Judiciary; Ways and Means -SJ 00903
05/06/05 SENATE Withdrawn from Regulated Industries; Judiciary; Ways and Means -SJ 01559; Substituted for CS/CS/CS/SB 1174 -SJ 01560; Read second time -SJ 01559; Amendment(s) adopted -SJ 01560; Read third time -SJ 01569; Passed as amended; YEAS 28 NAYS 10 -SJ 01569; Died in Senate

Bill Text

Version:	Posted:	Format:
H 1901	04/03/2005	Web Page | PDF

1 A bill to be entitled
2 An act relating to pari-mutuel wagering; creating the Keep
3 the Promise Act of 2005 to implement s. 23, Art. X of the
4 State Constitution; providing for administration and
5 regulation by the Division of Slot Machines of the
6 Department of Business and Professional Regulation;
7 amending s. 20.165, F.S.; establishing a Division of Slot
8 Machines in the Department of Business and Professional
9 Regulation; amending s. 550.5251, F.S.; revising licensing
10 and permit requirements relating to required operating
11 days for certain thoroughbred racing permitholders;
12 revising timeframe for application of certain
13 requirements; deleting requirement that certain
14 thoroughbred permitholders operate the full number of
15 days; providing for validity of certain permits; creating
16 chapter 551, F.S.; implementing s. 23, Art. X of the State
17 Constitution; authorizing slot machines and slot machine
18 gaming within certain pari-mutuel facilities located in
19 Miami-Dade and Broward Counties upon approval by local
20 referendum; providing for administration and regulation by
21 the Division of Slot Machines of the Department of
22 Business and Professional Regulation; providing
23 definitions; providing legislative intent; providing
24 powers and duties of the division; providing for
25 construction of such provisions; directing the division to
26 adopt rules necessary to implement, administer, and
27 regulate slot machine gaming; requiring such rules to
28 include application procedures, certain technical

29 requirements, procedures relating to revenue, certain
30 regulation and management and auditing procedures, certain
31 bond requirements, and requirements for record
32 maintenance, and payouts; providing for investigations by
33 the division, the Department of Law Enforcement, and local
34 law enforcement; providing for the investigation of
35 violations in conjunction with other agencies; providing
36 specified law enforcement powers to the division;
37 providing for access to slot machine licensee facilities
38 by the division, the Department of Law Enforcement, or
39 local law enforcement; authorizing the division, the
40 Department of Law Enforcement, or local law enforcement to
41 make certain inspections and examinations; authorizing the
42 division to collect certain monies and deny, revoke,
43 suspend, or place conditions on the license under certain
44 circumstances; providing for suspension or revocation of
45 the license of an unqualified applicant or licensee;
46 authorizing the division to adopt emergency rules for the
47 regulation of slot machine gaming; providing for licensure
48 to conduct slot machine gaming; prohibiting the division
49 from accepting applications or issuing slot machine
50 licenses prior to adoption of rules; providing for
51 application for licensure; providing conditions for
52 conducting slot machine gaming; providing requirements for
53 receiving and maintaining a license which include
54 compliance with slot machine regulations and regulations
55 relating to pari-mutuel wagering, maintaining the pari-
56 mutuel permit and license, conducting a certain number of

57 live races or games, allowing access by the division, and
58 submission of security plans; requiring prior approval by
59 the division of certain changes in ownership of slot
60 machine licenses; requiring notice to the division of
61 certain changes in ownership; requiring permitholders to
62 submit certain information and certification relating to
63 games to the division and the Department of Law
64 Enforcement; requiring review and approval of games by
65 division; requiring a slot machine licensee to submit
66 internal control procedures to the division for review and
67 approval; authorizing the amendment of a pari-mutuel
68 license within a specified time; providing for a reduction
69 in the required number of live races or games under
70 certain circumstances; prohibiting transfer of a license;
71 providing a limit on the number of slot machines at a
72 facility; requiring slot machine licensees to maintain
73 certain reports for submission to the division; providing
74 for an audit by an independent certified public accountant
75 of the receipt and distribution of slot machine revenues;
76 providing for annual renewal of the license; providing for
77 a renewal application and procedures for approval;
78 requiring corporate slot machine licensees to apply for
79 and be issued a certificate of status; specifying the
80 payment of state and local taxes as a condition for a slot
81 machine license; requiring certification by the Department
82 of Revenue of the payment of certain state and local taxes
83 by a slot machine licensee; directing the division to
84 revoke, suspend, or refuse to renew the license for

85 failure to pay such taxes; requiring the slot machine
86 licensee pay to the division an initial and annual license
87 fee; providing for deposit of the fee into the Slot
88 Machine Administrative Trust Fund for certain purposes;
89 requiring the division to evaluate the license fee and
90 make recommendations to the Legislature; providing for a
91 tax on slot machine revenues to be deposited into the
92 Educational Enhancement Trust Fund; requiring that slot
93 machine taxes shall be used to supplement and not supplant
94 public education dollars; requiring tax proceeds be first
95 used to fund a grant program for laptop computers for
96 certain students; directing the State Board of Education
97 to adopt rules to implement such program; providing
98 payment procedures; providing penalties for failure to
99 make payments; providing for submission of funds by
100 electronic funds transfer; providing for general,
101 professional, and business occupational licenses;
102 prohibiting transfer of such licenses; prohibiting a slot
103 machine licensee from employing or doing business with
104 persons or businesses unless such person or business is
105 properly licensed; requiring occupational licensees to
106 display identification cards under certain circumstances;
107 providing for application forms, fees, and procedures;
108 authorizing the division to adopt rules relating to
109 applications, licensure, and renewal of licensure and fees
110 therefor; requiring slot machine licensee to pay licensure
111 fees of general occupational licensees; providing for
112 reciprocal disciplinary actions with other jurisdictions;

113 providing for disciplinary actions against a licensee for
114 certain violations of regulations or laws; requiring
115 fingerprints and criminal records checks of applicants or
116 licensees; requiring certain costs of the records check be
117 borne by the applicant or licensee; requiring licensees to
118 provide equipment for electronic submission of
119 fingerprints; authorizing the retention of fingerprints
120 for the purposes of entering fingerprints into the
121 statewide automated fingerprint identification system by a
122 certain date; requiring licensees to inform the division
123 of conviction of disqualifying criminal offenses;
124 requiring certain racetracks and frontons to pay an annual
125 fee; authorizing the Department of Law Enforcement to
126 adopt rules relating to fingerprinting costs and
127 procedures; requiring periodic additional criminal history
128 checks for purposes of screening following issuance of a
129 license; providing for distribution of funds into the Slot
130 Machine Administrative Trust Fund; prohibiting certain
131 relationships between employees of the division or board
132 and licensees of the division; prohibiting division
133 employees and occupational licensees and certain of their
134 relatives from wagering on slot machines at certain
135 facilities; prohibiting contracts that provide for revenue
136 sharing between a manufacturer or distributor and slot
137 machine licensees; prohibiting ownership or financial
138 interests in slot machine licensees by certain
139 manufacturers or distributors; prohibiting licensees or
140 any entity conducting business on or within a licensed

141 slot operation from employing employees of certain law
142 enforcement or regulatory agencies; prohibiting certain
143 false statements, exclusion of revenue for certain
144 purposes, cheating, and theft of proceeds; providing
145 penalties; providing for arrest and recovery; limiting
146 liability for arrest and detention; providing penalties
147 for resisting recovery efforts; authorizing manufacture,
148 sale, distribution, possession, and operation of slot
149 machines under certain circumstances; authorizing the
150 division to exclude any person from licensed facilities
151 under certain circumstances; directing the division to
152 require certain signage in designated gaming areas and
153 require certain equipment or facilities relating to races
154 or games within the gaming area; requiring permitholder to
155 provide office space; prohibiting a licensee and employees
156 and agents of the licensee from allowing a person under a
157 certain age to operate slot machines or to have access to
158 the gaming area; prohibiting complimentary alcoholic
159 beverages, loans or credit, acceptance or cashing of
160 third-party checks, and automatic teller machines;
161 authorizing the suspension of play of slot machines by the
162 division or the Department of Law Enforcement for
163 suspicion of tampering or manipulation; limiting linkage
164 of operating systems; prohibiting certain player
165 enticements; providing for the hours of operation of slot
166 machines; providing that the slot machine licensee is
167 eligible for a caterer license under specified provisions;
168 requiring the slot machine licensee maintain certain

169 purchasing and hiring policies, use a certain job listing
170 service provided by the Agency for Workforce Innovation,
171 and implement certain equal employment opportunities;
172 providing penalties for certain violations by a licensee;
173 providing for deposit of fines collected; creating the
174 State Slot Machine Gaming Board within the division;
175 providing that the board is not a state entity; providing
176 for public meetings and records of the board; providing
177 for offices and personnel of the board; requiring the
178 board comply with specified ethics provisions; providing
179 for expenditures of state funds derived from regulatory
180 fees; requiring the division provide administrative
181 support for the board; providing purpose of the board;
182 providing for membership of the board; providing for
183 appointment and confirmation and terms of members;
184 requiring financial disclosure; prohibiting interests in
185 any slot machine licensee or the gambling industry;
186 providing that members are state officers for specified
187 purposes; authorizing per diem and travel expenses;
188 providing for removal of members; providing for
189 organization and meetings of the board; providing powers
190 and duties of the board; authorizing the board to receive
191 certain information and testimony; providing for
192 evaluations, recommendations, and reports; directing the
193 division to provide the board with certain proposed rules
194 for review and response; requiring the board to prepare an
195 annual report to be submitted to the Governor and
196 Legislature; providing for content of the report;

197 directing the Office of Program Policy Analysis and
198 Government Accountability to conduct an annual performance
199 audit of the board, the division, and slot machine
200 licensees; providing for content of the audit; directing
201 that office to submit the audit's findings and
202 recommendations to the Governor and the Legislature;
203 requiring the chief law enforcement officer of certain
204 counties and municipalities to annually execute and
205 transmit to the board an affidavit relating to certain
206 funding; requiring the governing body of certain counties
207 and municipalities and tourist development councils to
208 annually adopt and transmit to the board a resolution
209 relating to the operations of slot machine gaming;
210 authorizing other governing bodies to transmit such a
211 resolution to the board; authorizing the division to
212 contract for a compulsive gambling treatment and
213 prevention program; amending s. 849.15, F.S.; providing
214 for transportation of certain gaming devices in accordance
215 with federal law; amending s. 895.02, F.S.; providing that
216 specified violations related to slot machine gaming
217 constitute racketeering activity; providing that certain
218 debt incurred in violation of specified provisions
219 relating to slot machine gaming constitutes unlawful debt;
220 preempting slot machine regulation to the state; providing
221 for referenda deauthorizing slot machine operations as an
222 undue burden; authorizing referenda declaring slot machine
223 operations an undue burden; requiring a petition for a
224 referendum; providing for ratification of tribal-state

225 compacts by the Legislature; directing the Department of
226 Transportation to conduct a study on the access roads to
227 pari-mutuel facilities and Indian reservation lands where
228 gaming activities occur; providing for content of the
229 study; requiring a report to the Governor and the
230 Legislature; providing appropriations for the Department
231 of Business and Professional Regulation, the Department of
232 Law Enforcement, and the Office of the State Attorney to
233 carry out the provisions of the act; providing an
234 effective date.
235
236 Be It Enacted by the Legislature of the State of Florida:
237
238 Section 1. <u>This act may be cited as the "Keep The Promise</u>
239 <u>Act of 2005."</u>
240 Section 2. Subsection (2) of section 20.165, Florida
241 Statutes, is amended to read:
242 20.165 Department of Business and Professional
243 Regulation.--There is created a Department of Business and
244 Professional Regulation.
245 (2) The following divisions of the Department of Business
246 and Professional Regulation are established:
247 (a) Division of Administration.
248 (b) Division of Alcoholic Beverages and Tobacco.
249 (c) Division of Certified Public Accounting.
250 1. The director of the division shall be appointed by the
251 secretary of the department, subject to approval by a majority
252 of the Board of Accountancy.

253 2. The offices of the division shall be located in
254 Gainesville.
255 (d) Division of Florida Land Sales, Condominiums, and
256 Mobile Homes.
257 (e) Division of Hotels and Restaurants.
258 (f) Division of Pari-mutuel Wagering.
259 (g) Division of Professions.
260 (h) Division of Real Estate.
261 1. The director of the division shall be appointed by the
262 secretary of the department, subject to approval by a majority
263 of the Florida Real Estate Commission.
264 2. The offices of the division shall be located in
265 Orlando.
266 (i) Division of Regulation.
267 (j) Division of Slot Machines.
268 (k) Division of Technology, Licensure, and Testing.
269 Section 3. Subsections (1), (2), and (3) of section
270 550.5251, Florida Statutes, are amended to read:
271 550.5251 Florida thoroughbred racing; certain permits;
272 operating days.--
273 (1) Each thoroughbred permitholder under whose permit
274 thoroughbred racing was conducted in this state at any time
275 between January 1, 1987, and January 1, 2005 ~~1988~~, shall
276 annually be entitled to apply for and annually receive
277 thoroughbred racing days and dates as set forth in this section.
278 As regards such permitholders, the annual thoroughbred racing
279 season shall be from June 1 of any year through May 31 of the

280 following year and shall be known as the "Florida Thoroughbred
281 Racing Season."
282 (2) Each permitholder referred to in subsection (1) shall
283 annually, during the period commencing December 15 of each year
284 and ending January 4 of the following year, file in writing with
285 the division its application to conduct one or more thoroughbred
286 racing meetings during the thoroughbred racing season commencing
287 on the following June 1. Each application shall specify the
288 number and dates of all performances that the permitholder
289 intends to conduct during that thoroughbred racing season. On or
290 before February 15 of each year, the division shall issue a
291 license authorizing each permitholder to conduct performances on
292 the dates specified in its application. Up to March 31 of each
293 year, each permitholder may request and shall be granted changes
294 in its authorized performances~~; but thereafter, as a condition~~
295 ~~precedent to the validity of its license and its right to retain~~
296 ~~its permit, each permitholder must operate the full number of~~
297 ~~days authorized on each of the dates set forth in its license~~.
298 (3) Each thoroughbred permit referred to in subsection
299 (1), including, but not limited to, any permit originally issued
300 as a summer thoroughbred horse racing permit, is hereby
301 validated and shall continue in full force and effect,
302 irrespective of any action that the division may take or may
303 have heretofore taken against the permit.
304 Section 4. Chapter 551, Florida Statutes, consisting of
305 sections 551.101, 551.103, 551.105, 551.107, 551.1073, 551.1075
306 551.108, 551.1091, 551.1111, 551.1113, 551.1115, 551.1119,

307 551.121, 551.125, 551.20, 551.202, 551.204, 551.25, 551.30,
308 551.33, 551.34, 551.341, and 551.40, is created to read:
309 CHAPTER 551
310 SLOT MACHINES
311 551.101 Slot machine gaming authorized.--Any existing,
312 licensed pari-mutuel facility located in Miami-Dade County or
313 Broward County at the time of adoption of s. 23, Art. X of the
314 State Constitution that has conducted live racing or games
315 during calendar years 2002 and 2003 may possess slot machines
316 and conduct slot machine gaming at the location where the pari-
317 mutuel permitholder is authorized to conduct pari-mutuel
318 wagering activities pursuant to such permitholder's valid pari-
319 mutuel permit or as otherwise authorized by law provided a
320 majority of voters in a countywide referendum have approved the
321 possession of slot machines at such facility in the respective
322 county. Notwithstanding any other provision of law, it is not a
323 crime for a person to participate in slot machine gaming at a
324 pari-mutuel facility licensed to possess slot machines and
325 conduct slot machine gaming.
326 551.103 Definitions.--As used in this chapter, unless the
327 context clearly requires otherwise, the term:
328 (1) "Board" means the State Slot Machine Gaming Board.
329 (2) "Department" means the Department of Business and
330 Professional Regulation.
331 (3) "Designated slot machine gaming area" means the area
332 of a facility of a slot machine licensee in which slot machine
333 gaming may be conducted in accordance with the provisions of
334 this chapter.

335 (4) "Division" means the Division of Slot Machines of the
336 Department of Business and Professional Regulation.
337 (5) "Electronic or electromechanical facsimile" means a
338 game played in an electronic or electromechanical format that
339 replicates a game of chance by incorporating all of the
340 characteristics of the game, except when, for bingo, the
341 electronic or electromechanical format broadens participation by
342 allowing multiple players to play with or against each other
343 rather than with or against a machine.
344 (6) "Mechanical, electronic, computerized, or other
345 technological aids" means any machine or device that assists a
346 player or the playing of a bingo game as defined in s. 849.0931
347 and broadens participation by allowing multiple players at one
348 slot machine facility to play with or against each other in a
349 bingo game for a common prize or prizes. Such aids may use
350 alternative displays, including, but not limited to, a
351 simulation of spinning reels, to illustrate aspects of the game
352 of bingo such as when a player joins the game or when prizes
353 have been awarded, as long as such aid continuously and
354 prominently displays the electronic bingo card so that it is
355 apparent that the player is actually engaged in the play of
356 bingo. Such aids shall not:
357 (a) Determine or change the outcome of any game of bingo;
358 (b) Be an electronic or electromechanical facsimile that
359 replicates a game of bingo; or
360 (c) Allow players to play with or against the machine or
361 house for a prize.

362 (7) "Slot machine" means a mechanical, electronic,
363 computerized gaming device that is a technological aid to the
364 playing of the game of bingo and that offers wagering on the
365 game of bingo as defined in s. 849.0931, is owned by the slot
366 machine licensee, and is capable of being linked to a
367 centralized computer management system for regulating, managing,
368 and auditing the operation, financial data, and program
369 information, as required by the division. A slot machine may be
370 activated by insertion of a coin, bill, ticket, token, or
371 similar object or upon payment of any consideration whatsoever,
372 including the use of any electronic payment system except a
373 credit card or debit card and may entitle the person playing or
374 operating the machine to receive or may deliver to the person
375 cash, billets, tickets, tokens, or electronic credits to be
376 exchanged for cash. A slot machine is not a "coin-operated
377 amusement machine" as defined in s. 212.02(24), and slot
378 machines are not subject to the tax imposed by s. 212.05(1)(h).
379 It is the intent of the Legislature to authorize only those
380 mechanical, computerized, electronic or other technological aids
381 that a federal agency or a court in a final, nonappealable order
382 has concluded expressly meet the definition of a mechanical,
383 computerized, electronic, or other technological aid to Class II
384 gaming pursuant to 25 U.S.C. 2703, the Indian Gaming Regulatory
385 Act. The Legislature does not intend to authorize any other
386 gaming device.
387 (8) "Slot machine licensee" means a pari-mutuel
388 permitholder who holds a license issued by the division pursuant
389 to this chapter which authorizes such person to possess a slot

390 machine within facilities specified in s. 23, Art. X of the
391 State Constitution and allows slot machine gaming.
392 (9) "Slot machine revenues" means the total of all cash
393 and property received by the slot machine licensee from slot
394 machine gaming operations less the amount of cash, cash
395 equivalents, credits, and prizes paid to winners of slot machine
396 gaming.
397 551.105 Division of Slot Machines; powers and duties.--
398 (1) The division shall adopt, pursuant to the provisions
399 of ss. 120.536 and 120.54, all rules necessary to implement,
400 administer, and regulate slot machine gaming as authorized in
401 this chapter. Such rules shall include:
402 (a) Procedures for applying for a license and renewal of a
403 license.
404 (b) Establishing technical requirements in addition to the
405 qualifications which shall be necessary to receive a slot
406 machine license or slot machine occupational license.
407 (c) Procedures relating to slot machine revenues,
408 including verifying and accounting for such revenues, auditing,
409 and collecting taxes and fees consistent with this chapter.
410 (d) Procedures for regulating, managing, and auditing the
411 operation, financial data, and program information relating to
412 slot machines through a centralized computer system that shall
413 allow the division and the Florida Department of Law Enforcement
414 to audit the operation, financial data, and program information
415 of a slot machine licensee, as required by the division or the
416 Florida Department of Law Enforcement and shall provide the
417 division and the Florida Department of Law Enforcement with the

418 ability to monitor on a real-time basis at any time wagering
419 patterns, payouts, tax collection, and compliance with any rules
420 adopted by the division for the regulation and control of slot
421 machines operated under this section. Such continuous and
422 complete access on a real-time basis at any time shall include
423 the ability to immediately suspend slot machine operations if
424 monitoring of the computer operating system indicates possible
425 tampering or manipulation of slot machines or of the computer
426 operating system itself.
427 (e) Requiring each licensee at his or her own cost and
428 expense to supply the division with a bond with the penal sum of
429 $2 million payable to the Governor and his or her successors in
430 office for the licensee's first year of slot machine operations;
431 and, thereafter, the licensee shall file a bond with the penal
432 sum as determined by the division pursuant to rules promulgated
433 to approximate anticipated state revenues from the licensee's
434 slot machine operations, but in no case shall the bond be less
435 than $2 million. Any bond shall be issued by a surety or
436 sureties to be approved by the division and the Chief Financial
437 Officer, conditioned to faithfully make the payments to the
438 Chief Financial Officer in his or her capacity as treasurer of
439 the division. The licensee shall be required to keep its books
440 and records and make reports as provided in this chapter and to
441 conduct its slot machine operations in conformity with this
442 chapter and all other provisions of law. The division may review
443 the bond for adequacy and require adjustments each fiscal year.
444 Such bond shall be separate and distinct from the bond required
445 in s. 550.125.

446 (f) Requiring licensees to maintain specified records and
447 submit any data, information, record, or report, including
448 financial and income records, required by this chapter or
449 determined by the division to be necessary to the proper
450 implementation and enforcement of this chapter.
451 (g) Requiring that the payout percentage of a slot machine
452 shall be no less than 85 percent or more than 93 percent per
453 facility.
454 (2) The division shall conduct such investigations that
455 the division determines necessary to fulfill its
456 responsibilities under the provisions of this chapter.
457 (3) The division, the Department of Law Enforcement, and
458 local law enforcement agencies shall have concurrent
459 jurisdiction to investigate criminal violations of this chapter
460 and may investigate any other criminal violation of law
461 occurring on the facilities of a slot machine licensee, and such
462 investigations may be conducted in conjunction with the
463 appropriate state attorney. The division and its employees and
464 agents shall have such other law enforcement powers as specified
465 in ss. 943.04 and 943.10.
466 (4)(a) The division, the Department of Law Enforcement,
467 and local law enforcement agencies shall have unrestricted
468 access to the slot machine licensee facility at all times and
469 shall require of each slot machine licensee strict compliance
470 with the laws of this state relating to the transaction of such
471 business. The division, the Department of Law Enforcement, and
472 local law enforcement agencies:

473 1. May inspect and examine premises where slot machines
474 are offered for play.
475 2. May inspect slot machines and related equipment and
476 supplies.
477 (b) In addition, the division:
478 1. May collect taxes, assessments, fees, and penalties.
479 2. May deny, revoke, suspend, or place conditions on the
480 license of a person who violates any provision of this chapter
481 or rule adopted pursuant thereto.
482 (5) The division shall revoke or suspend the license of
483 any person who is no longer qualified or who is found, after
484 receiving a license, to have been unqualified at the time of
485 application for the license.
486 (6) Nothing in this section shall be construed to:
487 (a) Prohibit the Department of Law Enforcement or any law
488 enforcement authority whose jurisdiction includes a slot machine
489 licensee facility from conducting criminal investigations
490 occurring on the facilities of the slot machine licensee;
491 (b) Restrict access to the slot machine licensee facility
492 by the Department of Law Enforcement or any local law
493 enforcement authority whose jurisdiction includes the slot
494 machine licensee facility; or
495 (c) Restrict access to information and records necessary
496 to the investigation of criminal activity that is contained
497 within the slot machine licensee facility by the Department of
498 Law Enforcement or local law enforcement authorities.
499 (7) The division may, at any time after the issuance of a
500 license pursuant to s. 551.107, adopt emergency rules pursuant

501 to s. 120.54. The Legislature finds that such emergency
502 rulemaking power is necessary for the preservation of the rights
503 and welfare of the people in order to provide additional funds
504 to benefit the public. The Legislature further finds that the
505 unique nature of legalized gambling requires, from time to time,
506 that the division respond as quickly as is practicable to
507 changes in the marketplace and changes in technology that may
508 affect legalized gambling conducted at pari-mutuel facilities in
509 this state. Therefore, in adopting such emergency rules, the
510 division need not make the findings required by s. 120.54(4)(a).
511 Emergency rules adopted to implement the provisions of this
512 chapter are exempt from s. 120.54(4)(c) and shall remain in
513 effect until replaced by other emergency rules or by rules
514 adopted under nonemergency rulemaking procedures of chapter 120.
515 551.107 License to conduct slot machine gaming.--
516 (1) Upon application and a finding by the division after
517 investigation that the application is complete and the applicant
518 is qualified, and payment of the initial license fee the
519 division shall issue a license to conduct slot machine gaming in
520 the designated slot machine gaming area of the slot machine
521 licensee's facility. Once licensed, slot machine gaming may be
522 conducted subject to the requirements of this chapter and rules
523 adopted pursuant thereto. The division shall not be authorized
524 to accept an application or issue a license to operate slot
525 machine gaming at a pari-mutuel wagering facility until such
526 time as all rules mandated by this chapter for slot machine
527 operations have been filed for adoption with the Secretary of
528 State.

529 (2) An application may be approved by the division only
530 after the voters of the county where the applicant's facility is
531 located have authorized by referendum slot machines within pari-
532 mutuel facilities in that county as specified in s. 23, Art. X
533 of the State Constitution.
534 (3) A slot machine license may only be issued to a
535 licensed pari-mutuel permitholder and slot machine gaming may
536 only be conducted at the same facility at which the permitholder
537 is authorized under its valid pari-mutuel wagering permit to
538 conduct pari-mutuel wagering activities.
539 (4) As a condition of licensure and to maintain continued
540 authority for the conduct of slot machine gaming the slot
541 machine licensee shall:
542 (a) Continue to be in compliance with this chapter.
543 (b) Continue to be in compliance with chapter 550, where
544 applicable, and maintain the pari-mutuel permit and license in
545 good standing pursuant to the provisions of chapter 550.
546 Notwithstanding any contrary provision of law and in order to
547 expedite the operation of slot machines at eligible facilities,
548 any eligible facility shall be entitled within 60 days after the
549 effective date of this act to amend its 2005-2006 license issued
550 by the Division of Pari-mutuel Wagering and shall be granted the
551 requested changes in its authorized performances pursuant to
552 such amendment. The Division of Pari-mutuel Wagering shall issue
553 a new license to the eligible facility to effectuate an
554 amendment.
555 (c) Conduct not less than a full schedule of live races or
556 games as defined in s. 550.002(11). However, when a permitholder

557 fails to conduct such number of live races or games, that number
558 of live races or games shall be reduced by the number of races
559 or games which could not be conducted due to the direct result
560 of fire, war, or other disaster or event beyond the ability of
561 the permitholder to control.
562 (d) Upon approval of any changes relating to the pari-
563 mutuel permit by the Division of Pari-mutuel Wagering in the
564 Department of Business and Professional Regulation, be
565 responsible for providing appropriate current and accurate
566 documentation on a timely basis to the division in order to
567 continue the slot machine license in good standing. Changes in
568 ownership or interest of a slot machine gaming license of 5
569 percent or more of the stock or other evidence of ownership or
570 equity in the slot machine license or any parent corporation or
571 other business entity that in any way owns or controls the slot
572 machine license shall be approved by the division prior to such
573 change, unless the owner is an existing holder of that license
574 who was previously approved by the division. Changes in
575 ownership or interest of a slot machine license of less than 5
576 percent shall be reported to the division within 20 days after
577 the change. The division may then conduct an investigation to
578 ensure that the license is properly updated to show the change
579 in ownership or interest.
580 (e) Allow unrestricted access and right of inspection by
581 the division to facilities of a slot machine licensee in which
582 any activity relative to the conduct of slot machine gaming is
583 conducted.

584 (f) Submit a security plan, including a slot machine floor
585 plan, location of security cameras, and the listing of security
586 equipment which shall be capable of observing and electronically
587 recording activities being conducted in the designated slot
588 machine gaming area.
589 (g) Provide the division with a detailed operating system
590 description, including, but not limited to, any operating
591 software, access to the source codes for each game and slot
592 machine it will offer for play at its slot machine facility, and
593 certification by an independent testing laboratory that the
594 games, slot machines, and computer operating system conform to
595 the requirements of this chapter. Such descriptions shall also
596 be made available to the Department of Law Enforcement. The
597 division shall review and approve each game and machine for
598 compliance with this chapter and rules regulating games and slot
599 machines prior to approval of the game and machine. A slot
600 machine licensee shall not operate any game or machine prior to
601 its approval for use in its facility by the division.
602 (h) Provide the division with a complete copy of internal
603 control procedures adopted by the licensee for its slot machine
604 operations. The division shall review and approve such internal
605 control procedures for compliance with rules adopted to ensure
606 patron safety, payout procedures, and security of tax revenues
607 to be paid to the state. Rules regarding requirements for the
608 internal control procedures shall include, but not be limited
609 to, audit and tax collection procedures, security procedures for
610 the collection of money for vouchers issued for slot machines,
611 and security and public safety procedures.

612 (5) A slot machine license shall not be transferable.
613 (6) A slot machine licensee may make available for play up
614 to 3,000 slot machines within its designated slot machine gaming
615 areas.
616 (7) A slot machine licensee shall keep and maintain
617 permanent daily records of its slot machine operation and shall
618 maintain such records for a period of not less than 5 years.
619 These records shall include all financial transactions and
620 contain sufficient detail to determine compliance with the
621 requirements of this section. All records shall be available for
622 audit and inspection by the division, the Department of Law
623 Enforcement, or other law enforcement agencies during the
624 licensee's regular business hours. The information required in
625 such records shall be determined by division rule.
626 (8) A slot machine licensee shall file with the division a
627 report containing the required records of such slot machine
628 operation. A slot machine licensee shall file such report
629 monthly. The required reports shall be submitted on forms
630 prescribed by the division and shall be due at the same time as
631 the monthly pari-mutuel reports are due to the Division of Pari-
632 mutuel Wagering, and the reports shall be deemed public records
633 once filed.
634 (9) A slot machine licensee shall file with the division
635 an audit of the receipt and distribution of all slot machine
636 revenues provided by an independent certified public accountant
637 verifying compliance with all statutes and regulations imposed
638 by this chapter and the rules promulgated hereunder. The audit
639 shall include verification of compliance with all statutes and

640 regulations regarding all required records of slot machine
641 operations. Such audit shall be filed within 60 days after the
642 completion of the permitholder's pari-mutuel meet.
643 (10) The division may share any information with the
644 Department of Law Enforcement or any other law enforcement
645 agency having jurisdiction over slot machine gaming or pari-
646 mutuel activities. Any law enforcement agency having
647 jurisdiction over slot machine gaming or pari-mutuel activities
648 may share any information obtained or developed by it with the
649 division.
650 551.1073 Slot machine license renewal.--
651 (1) Slot machine licenses shall be renewed annually. The
652 application for renewal shall contain all revisions to the
653 information submitted in the prior year's application that are
654 necessary to maintain such information as both accurate and
655 current.
656 (2) The applicant for renewal shall attest that any
657 information changes do not affect the applicant's qualifications
658 for license renewal.
659 (3) The applicant shall submit information required by ss.
660 551.30 and be in compliance with rules adopted by the division.
661 (4) Upon determination by the division that the
662 application for renewal is complete and qualifications have been
663 met, including payment of the renewal fee, the slot machine
664 license shall be renewed annually.
665 551.1075 Payment of taxes; determination and certification
666 of payment of state and local taxes.--

667 (1) Any domestic or foreign corporation holding a slot
668 machine license must have applied for and been issued a
669 certificate of status by the Department of State evidencing
670 conclusively that the corporation is in existence and authorized
671 to do business in this state.
672 (2) As a condition for license renewal and for
673 continuation of a license in good standing, the division may
674 determine whether the slot machine licensee has failed to pay
675 all taxes due to the division as a result of the licensee's
676 pari-mutuel and slot machine gaming operations. If the division
677 determines that the slot machine licensee is delinquent in the
678 payment of any such tax, it shall revoke, suspend, or refuse to
679 renew the license of the slot machine licensee.
680 (3) On or before July 31 of each fiscal year, the
681 Department of Revenue shall certify to the Governor that a
682 corporation or other business entity or an individual holding a
683 slot machine license is current and in good standing in regard
684 to the payment of all state or local taxes due and payable to
685 the Department of Revenue or to an applicable local jurisdiction
686 for the prior fiscal year. If the Department of Revenue does not
687 certify that a licensee is current and in good standing, the
688 division shall revoke, suspend, or refuse to renew the license
689 of a slot machine licensee.
690 551.108 License fee; tax rate.--
691 (1) LICENSE FEE.--
692 (a) Upon approval of the application for a slot machine
693 license, the licensee must pay to the division a license fee of
694 $4 million. The license fee shall be paid annually upon renewal

695 of the slot machine license and shall be deposited into the Slot
696 Machine Administrative Trust Fund in the Department of Business
697 and Professional Regulation for the regulation of slot machine
698 gaming under this chapter.
699 (b) Prior to January 1, 2006, the division shall evaluate
700 the license fee and, in consultation with the board, shall make
701 recommendations to the President of the Senate and the Speaker
702 of the House of Representatives. The recommendations shall focus
703 on the optimum level of slot machine license fees or a
704 combination of fees in order to properly support the slot
705 machine regulatory program.
706 (2) TAX ON SLOT MACHINE REVENUES.--
707 (a) The tax rate on slot machine revenues at each facility
708 shall be 55 percent.
709 (b) The facility shall collect and transmit the tax to the
710 department on a daily basis for deposit into the Slot Machine
711 Administrative Trust Fund in the Department of Business and
712 Professional Regulation for immediate transfer to the
713 Educational Enhancement Trust Fund in the Department of
714 Education. Any interest earnings on the tax revenues shall also
715 be transferred to the Educational Enhancement Trust Fund.
716 (c) Any expenditures of slot machine taxes shall be used
717 to supplement and not supplant public education dollars. Tax
718 proceeds shall be used first to fund the Laptops for Achievers
719 grant program, which shall be administered by the Department of
720 Education. All school districts are eligible to submit grant
721 applications to participate in the program, in a format to be
722 determined by the department. Each district's grant program

723 shall provide for the laptops to be made available to every
724 public school seventh grade student, including charter school
725 students, and shall require:
726 1. Integrated use of the laptops with curriculum design,
727 instructional planning, training, and delivery, and
728 communication with parents;
729 2. School site wiring and appropriate technology
730 infrastructure needs;
731 3. Assignment of a laptop computer on loan to each student
732 entering seventh grade for use through grade 12;
733 4. A contract with each student stipulating that if the
734 student earns a passing score on the grade 10 FCAT, as required
735 by ss. 1003.43(5) and 1003.429, the loaned laptop will be
736 upgraded and given to the student to keep as a reward for the
737 student's achievement.
738
739 The State Board of Education shall adopt rules to implement the
740 Laptops for Achievers program.
741 (3) PAYMENT PROCEDURES.--Tax payments shall be remitted
742 daily, as determined by rule of the division. The slot machine
743 licensee shall file a report under oath by the 5th day of each
744 calendar month for all taxes remitted during the preceding
745 calendar month that shall show all slot machine activities for
746 the preceding calendar month and such other information as may
747 be required by the division.
748 (4) FAILURE TO PAY TAX; PENALTIES.--A slot machine
749 licensee who fails to make tax payments as required under this
750 section shall be subject to an administrative penalty of up to

751 $1,000 for each day the tax payment is not remitted. All
752 administrative penalties imposed and collected shall be
753 deposited into the Slot Machine Administrative Trust Fund in the
754 Department of Business and Professional Regulation. If any slot
755 machine licensee fails to pay penalties imposed by order of the
756 division under this subsection, the division may suspend,
757 revoke, or refuse to renew the license of the slot machine
758 licensee.
759 (5) FAILURE TO PAY TAX; GROUNDS TO SUSPEND, REVOKE, OR
760 REFUSE TO RENEW THE LICENSE.--In addition to the penalties
761 imposed under subsection (4), any willful or wanton failure by a
762 slot machine licensee to make payments of the tax constitutes
763 sufficient grounds for the division to suspend, revoke, or
764 refuse to renew the license of the slot machine licensee.
765 (6) SUBMISSION OF FUNDS.--The division may require slot
766 machine licensees to remit taxes, fees, fines, and assessments
767 by electronic funds transfer.
768 551.1091 Occupational license required; application;
769 fee.--
770 (1) The individuals and entities that are licensed under
771 this section require heightened state scrutiny, including the
772 submission by the individual licensees or persons associated
773 with the entities described in this chapter of fingerprints for
774 a criminal records check.
775 (2)(a) The following licenses shall be issued to persons
776 or entities with access to the designated slot machine gaming
777 area or to persons who, by virtue of the position they hold,

778 might be granted access to these areas or to any other person or
779 entity in one of the following categories.
780 1. General occupational licenses for general employees,
781 food service, maintenance, and other similar service and support
782 employees with access to the designated slot machine gaming
783 area. Service and support employees with a current pari-mutuel
784 occupational license issued pursuant to chapter 550 and a
785 current background check are not required to submit to an
786 additional background check for a slot machine occupational
787 license as long as the pari-mutuel occupational license remains
788 in good standing.
789 2. Professional occupational licenses for any person,
790 proprietorship, partnership, corporation, or other entity that
791 is authorized by a slot machine licensee to manage, oversee, or
792 otherwise control daily operations as a slot machine manager,
793 floor supervisor, security personnel, or any other similar
794 position of oversight of gaming operations.
795 3. Business occupational licenses for any slot machine
796 management company or slot machine business associated with slot
797 machine gaming or a person who manufactures, distributes, or
798 sells slot machines, slot machine paraphernalia, or other
799 associated equipment to slot machine licensees or any person not
800 an employee of the slot machine licensee who provides
801 maintenance, repair, or upgrades or otherwise services a slot
802 machine or other slot machine equipment.
803 (b) Slot machine occupational licenses are not
804 transferable.

805 (3) A slot machine licensee shall not employ or otherwise
806 allow a person to work at a slot machine facility unless such
807 person holds a valid occupational license. A slot machine
808 licensee shall not contract or otherwise do business with a
809 business required to hold a slot machine occupational license
810 unless the business holds such a license. A slot machine
811 licensee shall not employ or otherwise allow a person to work in
812 a supervisory or management professional level at a slot machine
813 facility unless such person holds a valid occupational license.
814 All slot machine occupational licensees, while present in the
815 slot machine gaming area, shall be required to display on their
816 persons their occupational license identification cards.
817 (4)(a) A person seeking a slot machine occupational
818 license, or renewal thereof, shall make application on forms
819 prescribed by the division and include payment of the
820 appropriate application fee. Initial and renewal applications
821 for slot machine occupational licenses shall contain all the
822 information the division, by rule, may determine is required to
823 ensure eligibility.
824 (b) The division shall establish, by rule, a schedule for
825 the annual renewal of slot machine occupational licenses.
826 (c) Pursuant to rules adopted by the division, any person
827 may apply for and, if qualified, be issued an occupational
828 license valid for a period of 3 years upon payment of the full
829 occupational license fee for each of the 3 years for which the
830 license is issued. The occupational license shall be valid
831 during its specified term at any slot machine facility where
832 slot machine gaming is authorized to be conducted.

833 (d) The slot machine occupational license fee for initial
834 application and annual renewal shall be determined by rule of
835 the division but shall not exceed $50 for a general or
836 professional occupational license for an employee of the slot
837 machine licensee or $1,000 for a business occupational license
838 for nonemployees of the licensee providing goods or services to
839 the slot machine licensee. License fees for general occupational
840 licensees shall be paid for by the slot machine licensee.
841 Failure to pay the required fee shall be grounds for
842 disciplinary action by the division against the slot machine
843 license but shall not be considered a violation of this chapter
844 or rules of the division by the general occupational licensee or
845 a prohibition against the issuance of the initial or the renewal
846 of the general occupational license.
847 (5) If the state gaming commission or other similar
848 regulatory authority of another state or jurisdiction extends to
849 the division reciprocal courtesy to maintain disciplinary
850 control, the division may:
851 (a) Deny an application for or revoke, suspend, or place
852 conditions or restrictions on a license of a person or entity
853 who has been refused a license by any other state gaming
854 commission or similar authority; or
855 (b) Deny an application for or suspend or place conditions
856 on a license of any person or entity who is under suspension or
857 has unpaid fines in another jurisdiction.
858 (6)(a) The division may deny, suspend, revoke, or declare
859 ineligible any occupational license if the applicant for or
860 holder thereof has violated the provisions of this chapter or

861 the rules of the division governing the conduct of persons
862 connected with slot machine gaming. In addition, the division
863 may deny, suspend, revoke, or declare ineligible any
864 occupational license if the applicant for such license has been
865 convicted in this state, in any other state, or under the laws
866 of the United States of a capital felony, a felony, or an
867 offense in any other state which would be a felony under the
868 laws of this state involving arson; trafficking in, conspiracy
869 to traffic in, smuggling, importing, conspiracy to smuggle or
870 import, or delivery, sale, or distribution of a controlled
871 substance; or a crime involving a lack of good moral character,
872 or has had a slot machine gaming license revoked by this state
873 or any other jurisdiction for an offense related to slot machine
874 gaming.
875 (b) The division may deny, declare ineligible, or revoke
876 any occupational license if the applicant for such license or
877 the licensee has been convicted of a felony or misdemeanor in
878 this state, in any other state, or under the laws of the United
879 States, if such felony or misdemeanor is related to gambling or
880 bookmaking as contemplated in s. 849.25.
881 (7) Fingerprints for all slot machine occupational license
882 applications shall be taken in a manner approved by the division
883 and shall be submitted to the Department of Law Enforcement and
884 the Federal Bureau of Investigation for a level II criminal
885 records check upon initial application and every 5 years
886 thereafter. All persons associated with, having a direct or
887 indirect ownership interest in, or employed by or working within
888 a licensed premise, excluding division employees and law

889 enforcement officers assigned by their employing agencies to
890 work within the premises as part of their official duties, are
891 required to not be convicted of any disqualifying criminal
892 offenses as established by division rule. To facilitate the
893 required review of criminal history information, each person
894 listed here is required to submit fingerprints to the division.
895 The division shall forward the fingerprints to the Department of
896 Law Enforcement for state processing. The Department of Law
897 Enforcement shall forward the fingerprints to the Federal Bureau
898 of Investigation for national processing.
899 (a) Fingerprints shall be taken in a manner approved by
900 the division and shall be submitted electronically to the
901 Department of Law Enforcement and the Federal Bureau of
902 Investigation for a criminal records check upon initial taking,
903 or as required thereafter by rule of the division, and every 5
904 years thereafter. Licensees are required to provide necessary
905 equipment approved by the Department of Law Enforcement to
906 facilitate such electronic submission. The division may by rule
907 require annual criminal history record checks of all persons
908 required to submit to the fingerprint-based criminal records
909 check. The division requirements under this subsection shall be
910 instituted in consultation with the Department of Law
911 Enforcement.
912 (b) The cost of processing fingerprints and conducting a
913 records check shall be borne by the licensee or the person being
914 checked. The Department of Law Enforcement may invoice the
915 division for the fingerprints submitted each month.

916 (c) Beginning February 1, 2006, all fingerprints submitted
917 to the Department of Law Enforcement and required by this
918 section shall be retained by the Department of Law Enforcement
919 in a manner provided by rule of the Department of Law
920 Enforcement and entered into the statewide automated fingerprint
921 identification system as authorized by s. 943.05(2)(b). Such
922 fingerprints shall thereafter be available for all purposes and
923 uses authorized for arrest fingerprint cards entered into the
924 statewide automated fingerprint identification system pursuant
925 to s. 943.051.
926 (d) Beginning February 1, 2006, the Department of Law
927 Enforcement shall search all arrest fingerprints received under
928 s. 943.051 against the fingerprints retained in the statewide
929 automated fingerprint identification system under paragraph (c).
930 Any arrest record that is identified with the retained
931 fingerprints of a person subject to the criminal history
932 screening requirements of this section shall be reported to the
933 division. Each racetrack or fronton is required to participate
934 in this search process by payment of an annual fee to the
935 division which shall forward the payment to the Department of
936 Law Enforcement. The division shall inform the Department of Law
937 Enforcement of any change in the license status of licensees
938 whose fingerprints are retained under subparagraph (c). The
939 amount of the annual fee to be imposed upon each racetrack or
940 fronton for performing these searches and the procedures for the
941 retention of licensee fingerprints and the dissemination of
942 search results shall be established by rule of the Department of

943 Law Enforcement. The fee shall be borne by the person
944 fingerprinted or the licensee.
945 (e) Every 5 years following issuance of a license or upon
946 conducting a criminal history check as required herein, each
947 person who is so licensed or who was so checked must meet the
948 screening requirements as established by the division rule, at
949 which time the division shall request the Department of Law
950 Enforcement to forward the fingerprints to the Federal Bureau of
951 Investigation for a criminal records check. If, for any reason
952 following initial licensure or criminal history check, the
953 fingerprints of a person who is licensed or who was checked are
954 not retained by the Department of Law Enforcement as provided in
955 this section, the person must file a complete set of
956 fingerprints with the division. Upon submission of fingerprints
957 for this purpose, the division shall request the Department of
958 Law Enforcement to forward the fingerprints to the Federal
959 Bureau of Investigation for a criminal records check, and the
960 fingerprints shall be retained by the Department of Law
961 Enforcement as authorized herein. The cost of the state and
962 national criminal history check required herein shall be borne
963 by the licensee or the person fingerprinted. Under penalty of
964 perjury, each person who is licensed or who is checked as
965 required by this section must agree to inform the division
966 within 48 hours if he or she is convicted of any disqualifying
967 offense while he or she is so licensed.
968 (8) All moneys collected pursuant to this section shall be
969 deposited into the Slot Machine Administrative Trust Fund.
970 551.1111 Prohibited relationships.--

971 (1) A person employed by or performing any function on
972 behalf of the division or the board shall not:
973 (a) Be an officer, director, owner, or employee of any
974 person or entity licensed by the division.
975 (b) Have or hold any interest, direct or indirect, in or
976 engage in any commerce or business relationship with any person
977 licensed by the division.
978 (2) No employee of the division or relative living in the
979 same household of such employee of the division shall be allowed
980 to wager at any time on a slot machine located at a facility
981 licensed by the division.
982 (3) No occupational licensee or relative living in the
983 same household of such occupational licensee shall be allowed to
984 wager at any time on a slot machine located at a facility where
985 that person is employed.
986 (4) A manufacturer or distributor of slot machines shall
987 not enter into any contract with a slot machine licensee that
988 provides for any revenue sharing of any kind or nature that is,
989 directly or indirectly, calculated on the basis of a percentage
990 of slot machine revenues. Any maneuver, shift, or device whereby
991 this provision is violated shall be a violation of this chapter
992 and shall render any such agreement void.
993 (5) A manufacturer or distributor of slot machines or any
994 equipment necessary for the operation of slot machines or an
995 officer, director, or employee of any such manufacturer or
996 distributor shall not have any ownership or financial interest
997 in a slot machine license or in any business owned by the slot
998 machine licensee.

999 (6) No licensee or any entity conducting business on or
1000 within a licensed slot operation shall employ any employee of a
1001 law enforcement or regulatory agency that has jurisdiction over
1002 the licensed premises in an off-duty or secondary employment
1003 capacity for work within any enclosure or area containing a slot
1004 machine or in any restricted area that supports slot machine
1005 operations that requires an occupational license to enter. If
1006 approved by the employee's primary employing agency, off-duty or
1007 secondary employment not prohibited by this section may be
1008 permitted.
1009 551.1113 False statements; skimming of slot machine
1010 proceeds; cheating; theft; arrest and recovery; penalties.--
1011 (1) Any person who intentionally makes or causes to be
1012 made or aids, assists, or procures another to make a false
1013 statement in any report, disclosure, application, or any other
1014 document required under this chapter or any rule adopted under
1015 this chapter commits a misdemeanor of the first degree,
1016 punishable as provided in s. 775.082 or s. 775.083.
1017 (2) Any person who intentionally excludes, or takes any
1018 action in an attempt to exclude, anything or its value from the
1019 deposit, counting, collection, or computation of revenues from
1020 slot machine activity or any person who by trick or sleight of
1021 hand performance, or by a fraud or fraudulent scheme, or device,
1022 for himself or herself or for another, wins or attempts to win
1023 money or property or a combination thereof or reduces a losing
1024 wager or attempts to reduce a losing wager in connection with
1025 slot machine gaming commits a felony of the third degree,
1026 punishable as provided in s. 775.082, s. 775.083, or. 775.084.

1027 (a) Any law enforcement officer or slot machine operator
1028 who has probable cause to believe that a violation of this
1029 subsection has been committed by a person and that the officer
1030 or operator can recover the lost proceeds from such activity by
1031 taking the person into custody may, for the purpose of
1032 attempting to effect such recovery or for prosecution, take the
1033 person into custody on the premises and detain the person in a
1034 reasonable manner and for a reasonable period of time. If the
1035 operator takes the person into custody, a law enforcement
1036 officer shall be called to the scene immediately. The taking
1037 into custody and detention by a law enforcement officer or slot
1038 machine operator, if done in compliance with this subsection,
1039 does not render such law enforcement officer or slot machine
1040 operator criminally or civilly liable for false arrest, false
1041 imprisonment, or unlawful detention.
1042 (b) Any law enforcement officer may arrest, either on or
1043 off the premises and without warrant, any person if there is
1044 probable cause to believe that person has violated this
1045 subsection.
1046 (c) Any person who resists the reasonable effort of a law
1047 enforcement officer or slot machine operator to recover the lost
1048 slot machine proceeds that the law enforcement officer or slot
1049 machine operator had probable cause to believe had been stolen
1050 from the eligible facility, and who is subsequently found to be
1051 guilty of violating this subsection, commits a misdemeanor of
1052 the first degree, punishable as provided in s. 775.082 or s.
1053 775.083, unless such person did not know or did not have reason
1054 to know that the person seeking to recover the lost proceeds was

1055 a law enforcement officer or slot machine operator. For purposes
1056 of this section, the charge of theft and the charge of resisting
1057 apprehension may be tried concurrently.
1058 (d) Theft of any slot machine proceeds or of property
1059 belonging to the slot machine operator or eligible facility by
1060 an employee of the operator or facility or by an employee of a
1061 person, firm, or entity that has contracted to provide services
1062 to the establishment constitutes a felony of the third degree,
1063 punishable as provided in s. 775.082 or s. 775.083.
1064 551.1115 Slot machines; authorization.--Notwithstanding
1065 any provision of law to the contrary, no slot machine
1066 manufactured, sold, distributed, possessed, or operated
1067 according to the provisions of this chapter shall be considered
1068 unlawful.
1069 551.1119 Facilities of slot machine licensees.--
1070 (1) In addition to the power to exclude certain persons
1071 from any facility of a slot machine licensee in this state, the
1072 division may exclude any person from any facility of a slot
1073 machine licensee in this state for conduct that would
1074 constitute, if the person were a licensee, a violation of this
1075 chapter or the rules of the division. The division may exclude
1076 from any facility of a slot machine licensee any person who has
1077 been ejected from a facility of a slot machine licensee in this
1078 state or who has been excluded from any facility of a slot
1079 machine licensee or gaming facility in another state by the
1080 governmental department, agency, commission, or authority
1081 exercising regulatory jurisdiction over the gaming in such other
1082 state.

1083 (2) This section shall not be construed to abrogate the
1084 common law right of a slot machine licensee to exclude a patron
1085 absolutely in this state.
1086 (3) The division shall require the posting of signs in the
1087 designated slot machine gaming areas warning of the risks and
1088 dangers of gambling, showing the odds of winning, and informing
1089 patrons of the toll-free telephone number available to provide
1090 information and referral services regarding compulsive or
1091 problem gambling.
1092 (4) The division shall require slot machine licensees to
1093 provide in the designated slot machine gaming area facilities
1094 and equipment sufficient to allow the observation of and
1095 wagering on live, intertrack, and simulcast races and games.
1096 (5) The permitholder shall provide adequate office space
1097 at no cost to the division and the Department of Law Enforcement
1098 for the oversight of slot machines operations. The division
1099 shall promulgate rules setting the criteria for adequate space,
1100 configuration, and location and needed electronic and
1101 technological requirements for office space required by this
1102 subsection.
1103 551.121 Minors prohibited from playing slot machines.--
1104 (1) A slot machine licensee or agent or employee of a slot
1105 machine licensee shall not:
1106 (a) Allow a person who has not attained 21 years of age to
1107 play any slot machine.
1108 (b) Allow a person who has not attained 21 years of age
1109 access to the designated slot machine gaming area of a facility
1110 of a slot machine licensee.

1111 (c) Allow a person who has not attained 21 years of age to
1112 be employed in any position allowing or requiring access to the
1113 designated slot machine gaming area of a facility of a slot
1114 machine licensee.
1115 (2) No person licensed under this chapter, or any agent or
1116 employee of a licensee under this chapter, shall intentionally
1117 allow a person who has not attained 21 years of age to play or
1118 operate a slot machine or have access to the designated slot
1119 machine area of a facility of a slot machine licensee.
1120 551.125 Prohibited activities and devices.--
1121 (1) No complimentary alcoholic beverages shall be served
1122 to patrons within the designated slot machine gaming areas.
1123 (2) A slot machine licensee shall not make any loan or
1124 provide credit or advance cash to enable a person to play a slot
1125 machine.
1126 (3) A slot machine licensee shall not allow any automated
1127 teller machine or similar device designed to provide credit or
1128 dispense cash to be located within 50 feet of a designated slot
1129 machine gaming area within the facilities of the slot machine
1130 licensee.
1131 (4) A slot machine licensee shall not accept or cash any
1132 third party, corporate, business, or government-issued check
1133 from any person.
1134 (5) Each slot machine approved for use in this state shall
1135 be protected against manipulation or tampering to affect the
1136 random probabilities of winning plays, and the centralized
1137 computer management system shall enable the division or the
1138 Department of Law Enforcement to suspend play upon suspicion of

1139 any manipulation or tampering. When play has been suspended on
1140 any slot machine, the division or the Department of Law
1141 Enforcement may examine any slot machine to determine whether
1142 the machine has been tampered with or manipulated and whether
1143 the machine should be returned to operation.
1144 (6) No slot machine or the computer operating system
1145 linking the slot machine shall be linked by any means to any
1146 other slot machine or computer operating system of another slot
1147 machine licensee.
1148 (7) No outcome of play or continuation of play may be
1149 manipulated, through programming or otherwise, to display a
1150 result that appears to be a near win, gives the impression that
1151 the player is getting close to a win, or in any way gives a
1152 false impression that the chance to win is improved by another
1153 play; however, this subsection does not apply to general
1154 promotional enticements such as graphic displays and sound
1155 effects that do not falsely imply that the chance of winning
1156 improves by continued play.
1157 551.20 Days and hours of operation.--Slot machine gaming
1158 areas may be open 365 days a year. The slot machine gaming areas
1159 may be open only from 10:00 a.m. until 2:00 a.m. Sunday through
1160 Saturday.
1161 551.202 Catering license.--A slot machine licensee is
1162 entitled to a caterer's license pursuant to s. 565.02 on days in
1163 which the pari-mutuel facility is open to the public for slot
1164 machine game play as authorized by this chapter.
1165 551.204 Purchasing and employment by slot machine
1166 licensee.--

1167 (1) The slot machine licensee shall maintain a policy of
1168 making purchases from vendors in this state. Furthermore, the
1169 slot machine licensee shall create opportunities to purchase
1170 from minority vendors and shall implement the policy and
1171 purchasing opportunities in a nondiscriminatory manner.
1172 (2) The slot machine licensee shall maintain a policy of
1173 awarding preference in employment to residents of this state, as
1174 defined by law.
1175 (3) The slot machine licensee shall use the Internet-based
1176 job listing system of the Agency for Workforce Innovation in
1177 advertising employment opportunities. Further, each slot machine
1178 licensee in its gaming operations shall create equal employment
1179 opportunities which shall be implemented in a nondiscriminatory
1180 manner in hiring and promoting employees to achieve the full and
1181 fair participation of women, Asians, blacks, Hispanics, Native
1182 Americans, persons with disabilities, and other protected groups
1183 within the city where the pari-mutuel facility is located, and
1184 an action plan and programs shall be implemented by each slot
1185 machine licensee designed to ensure that the percentage of the
1186 minority population in which the pari-mutuel facility is located
1187 is considered to the extent minority applications are submitted
1188 in equal proportion to the number of jobs open for hiring at
1189 entry level, managerial, supervisory, and any other positions,
1190 unless there is a bona fide occupational qualification requiring
1191 a distinct and unique employment expertise which a minority
1192 applicant does not possess.
1193 551.25 Penalties for violations by licensee.--The division
1194 may revoke or suspend any license issued under this chapter upon

1195 the willful violation by the licensee of any provision of this
1196 chapter or of any rule adopted under this chapter. In lieu of
1197 suspending or revoking a license, the division may impose a
1198 civil penalty against the licensee for a violation of this
1199 chapter or any rule adopted by the division. Except as otherwise
1200 provided in this chapter, the penalty so imposed may not exceed
1201 $1,000 for each count or separate offense. All penalties imposed
1202 and collected must be deposited into the Slot Machine
1203 Administrative Trust Fund in the department.
1204 551.30 State Slot Machine Gaming Board.--
1205 (1) CREATION.--
1206 (a) There is created a board known as the State Slot
1207 Machine Gaming Board which shall be housed within the division.
1208 (b) The board is not a unit or entity of state government.
1209 However, the board is subject to the provisions of s. 24, Art. I
1210 of the State Constitution and chapter 119, relating to public
1211 meetings and records and the provisions of chapter 286 relating
1212 to public meetings and records.
1213 (c) The principal office of the board shall be in
1214 Tallahassee; however, the board may conduct meetings in any
1215 county where slot machine gaming is authorized to be conducted.
1216 (d) The board shall hire or contract for all staff
1217 necessary for the proper execution of its powers and duties
1218 within the funds appropriated to implement this section and
1219 shall comply with the code of ethics for public officers and
1220 employees under part III of chapter 112. In no case may the
1221 board expend more than its annual appropriation for staffing and
1222 necessary administrative expenditures, including, but not

1223 limited to, travel and per diem and audit expenditures, using
1224 funds appropriated to implement this section. The funds
1225 appropriated shall be derived from a portion of the imposition
1226 of regulatory fees to offset the costs of regulation.
1227 (e) The division shall provide administrative support to
1228 the board as requested by the board. In the event of the
1229 dissolution of the board, the division shall be the board's
1230 successor in interest and shall assume all rights, duties, and
1231 obligations of the board.
1232 (2) PURPOSE.--The board's purpose shall be to provide
1233 administrative advisory oversight to the division's regulation
1234 of slot machine gaming, monitor the impacts of slot machine
1235 gaming in the affected communities and the state as a whole, and
1236 ensure that the intent of s. 23, Art. X of the State
1237 Constitution is met as it relates to the expenditures of taxes
1238 on slot machines to supplement public education.
1239 (3) MEMBERSHIP.--
1240 (a) The board shall consist of nine voting members of high
1241 moral character, impeccable reputation, and demonstrable
1242 business expertise. No more than two members shall be residents
1243 of a county where slot machine gaming is authorized to be
1244 conducted. The Governor shall appoint the members of the board.
1245 The director of the division shall serve as an ex officio,
1246 nonvoting member of the board. Appointment of members of the
1247 board shall be confirmed by the Senate.
1248 (b) Each member of the board shall serve for a term of 4
1249 years, except that initially the Governor shall appoint three
1250 members for a term of 1 year, three members for a term of 2

1251 years, and three members for a term of 4 years to achieve
1252 staggered terms among the members of the board. A member is not
1253 eligible for reappointment to the board, except that a member
1254 appointed to an initial term of 1 year or 2 years may be
1255 reappointed for an additional term of 4 years and a person
1256 appointed to fill a vacancy with 2 years or less remaining on
1257 the term may be reappointed for an additional term of 4 years.
1258 (c) The Governor shall fill a vacancy on the board. A
1259 vacancy that occurs before the scheduled expiration of the term
1260 of the member shall be filled for the remainder of the unexpired
1261 term.
1262 (d) Each member of the board who is not otherwise required
1263 to file financial disclosure under s. 8, Art. II of the State
1264 Constitution or s. 112.3144 shall file disclosure of financial
1265 interests under s. 112.3145.
1266 (e) A person may not be appointed to the board if he or
1267 she has any direct or indirect interest in any slot machine
1268 licensee or any aspect of the gambling industry or any
1269 affiliated activities. A person appointed to the board shall be
1270 deemed an appointed state officer for the purposes of s.
1271 112.313.
1272 (f) Each member of the board shall serve without
1273 compensation, but shall receive travel and per diem expenses as
1274 provided in s. 112.061 while in the performance of his or her
1275 duties.
1276 (g) Each member of the board is accountable for the proper
1277 performance of the duties of office, and each member owes a
1278 fiduciary duty to the people of the state to ensure that all

1279 activities are conducted in furtherance of this section. The
1280 Governor may remove a member for malfeasance, misfeasance,
1281 neglect of duty, incompetence, permanent inability to perform
1282 official duties, unexcused absence from three consecutive
1283 meetings of the board, arrest or indictment for a crime that is
1284 a felony or a misdemeanor involving theft or moral turpitude, a
1285 crime of dishonesty, or pleading nolo contendere to, or being
1286 found guilty of, any crime.
1287 (4) ORGANIZATION; MEETINGS.--
1288 (a)1. The board shall annually elect a chairperson and a
1289 vice chairperson from among the board's members. The members
1290 may, by a vote of five of the nine board members, remove a
1291 member from the position of chairperson or vice chairperson
1292 prior to the expiration of his or her term as chairperson or
1293 vice chairperson. His or her successor shall be elected to serve
1294 for the balance of the removed chairperson's or vice
1295 chairperson's term.
1296 2. The chairperson is responsible to ensure that records
1297 are kept of the proceedings of the board and is the custodian of
1298 all books, documents, and papers filed with the board, the
1299 minutes of meetings of the board, and the official seal of the
1300 board.
1301 (b)1. The board shall meet upon the call of the
1302 chairperson or at the request of a majority of the members, but
1303 no less than quarterly per calendar year.
1304 2. A majority of the voting members of the board
1305 constitutes a quorum. Except as otherwise provided in this
1306 section, the board may take official action by a majority vote

1307 of the members present at any meeting at which a quorum is
1308 present. Members may not vote by proxy.
1309 3. A member of the board may participate in a meeting of
1310 the board by telephone or video conference through which each
1311 member may hear every other member.
1312 (5) POWERS AND DUTIES.--The board:
1313 (a) May perform all acts and things necessary or
1314 convenient to carry out the powers expressly granted in this
1315 section.
1316 (b) May recommend to the division and the Legislature
1317 expenditures from regulatory funds provided by this chapter,
1318 including any necessary administrative expenditures consistent
1319 with its powers, and ways to supplement public education from
1320 taxes collected from slot machine gaming.
1321 (c) May receive and review reports and financial
1322 documentation provided by the slot machine licensee pursuant to
1323 this chapter to monitor compliance with the provisions of this
1324 chapter.
1325 (d) May receive testimony and information from law
1326 enforcement officials regarding the impact of slot machine
1327 gaming on criminal activity in and around slot machine
1328 facilities.
1329 (e) May receive testimony and information from local
1330 governments and tourist development councils regarding the
1331 impact of slot machine gaming on their communities and the
1332 tourism of their respective areas.
1333 (f) May make recommendations to the division and to the
1334 Office of Program Policy Analysis and Government Accountability

1335 on the performance measures for the regulatory responsibilities
1336 set forth in this chapter.
1337 (g) May monitor criminal activity in and around the slot
1338 machine facilities in this state and recommend to the
1339 Legislature ways to curb such activity.
1340 (h) May receive testimony from education officials,
1341 education groups, and the public regarding the expenditures of
1342 taxes received from slot machine gaming and make recommendations
1343 to the Legislature on ways to spend these funds to supplement
1344 public education.
1345 (i) Shall prepare an annual report as prescribed herein.
1346 (j) Shall make recommendations to the division on
1347 reporting requirements on slot machine gaming facilities. The
1348 board shall recommend to the division the means, method, and
1349 timing of reporting, at a minimum, in the following areas:
1350 1. The net number and dollar value of all jobs created,
1351 including the number of jobs held by Florida residents.
1352 2. The total net amount of revenues generated for state
1353 government from all tax and fee sources related to the slot
1354 machine operation.
1355 3. The measures taken by the slot machine licensee to
1356 prevent, control, and treat problem gambling.
1357 4. The operational status and quality of operation of the
1358 slot machine licensee's preslot machine pari-mutuel enterprise.
1359 5. Documentation of continuing capital reinvestment by the
1360 slot machine licensee for the economic benefit of the community.

1361 6. Information relating to all complaints and charges of
1362 violations by a slot machine facility constituting a nuisance
1363 and the outcome of such charges.
1364 7. A detailed summary of all lobbying activities conducted
1365 by or on behalf of the slot machine licensee, including the
1366 amount and source of funds expended.
1367 (6) REVIEW OF RULES.--The division shall provide a copy of
1368 any proposed rules to the board and allow sufficient time for
1369 review and response by the board. Emergency rules shall not be
1370 subject to this requirement.
1371 (7) ANNUAL REPORT.--By December 1 of each year, the board
1372 shall prepare a report of the activities and outcomes under this
1373 section for the preceding fiscal year. The report, at a minimum,
1374 must include:
1375 (a) A description of the activities of the board and slot
1376 machine licensees and a description of the substance of reports
1377 required for submission by the licensee to the board.
1378 (b) A description of the public testimony received by the
1379 board.
1380 (c) A description of any resolutions from county or
1381 municipal governments or tourist development councils or
1382 affidavits from law enforcement officials received by the board.
1383 (d) Information on the number and salary level of jobs
1384 created by each of the slot machine licensees, including the
1385 number and salary level of jobs created for residents of this
1386 state.
1387 (e) Information collected, if any, on the amount and
1388 nature of economic activity generated through the slot machine

1389 operations-related activities of each of the slot machine
1390 licensees.
1391 (f) A compliance and financial audit of the accounts and
1392 records of the board at the end of the preceding fiscal year
1393 conducted by the division.
1394 (g) A description of any recommendations made to the
1395 division or the Legislature by the board consistent with its
1396 grant of authority herein.
1397
1398 The board shall submit the report to the Governor, the President
1399 of the Senate, and the Speaker of the House of Representatives.
1400 (8) OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT
1401 ACCOUNTABILITY; PROGRAM EVALUATION.--
1402 (a) Before January 1, 2008, and annually thereafter, the
1403 Office of Program Policy Analysis and Government Accountability
1404 shall conduct a performance audit of the board, the division,
1405 and slot machine licensees relating to the provisions of this
1406 chapter. The audit shall assess the implementation and outcomes
1407 of activities under this chapter. The audit shall include an
1408 evaluation of reports and financial documentation provided to
1409 the board under paragraphs (5)(c)-(e) by the slot machine
1410 licensee, law enforcement officials, local governments, and
1411 tourist development councils, and reports provided to the board
1412 under paragraph (5)(j) including documentation of continuing
1413 capital reinvestment by the slot machine licensee and
1414 information relating to violations by a slot machine facility
1415 constituting a nuisance. At a minimum, the audit shall address:

1416 1. Performance of the slot machine licensees in operating
1417 slot machine gaming and complying with the rules under this
1418 chapter.
1419 2. Performance of the board under this chapter.
1420 3. Compliance by the board with the provisions of this
1421 section and the provisions of the rules.
1422 4. Economic activity generated through slot machine
1423 operations by the slot machine licensees.
1424 5. The expenditure of slot machine taxes and whether these
1425 expenditures supplemented or supplanted public education
1426 dollars.
1427 (b) A report of each audit's findings and recommendations
1428 shall be submitted to the Governor, the President of the Senate,
1429 and the Speaker of the House of Representatives.
1430 551.33 Law enforcement affidavits.--The chief law
1431 enforcement officer of any county or municipality where a slot
1432 machine licensee is authorized to conduct slot machine gaming at
1433 a pari-mutuel facility and the chief law enforcement officer of
1434 any municipality contiguous to a municipality where such slot
1435 machine licensee is authorized to conduct slot machine gaming
1436 shall execute at least once annually an affidavit verifying,
1437 based upon information or belief, whether the applicable local
1438 budgeting authority has provided sufficient funding to
1439 adequately address additional law enforcement responsibilities
1440 directly or indirectly resulting from the slot machine gaming
1441 operations. The affidavit shall be transmitted to the board.
1442 551.34 Local government resolutions.--

1443 (1) The board of county commissioners and the governing
1444 body of a municipality where a slot machine licensee is
1445 authorized to conduct slot machine gaming and any municipality
1446 contiguous to the municipality where such slot machine licensee
1447 is authorized to conduct slot machine gaming must adopt a
1448 resolution at least once annually that expresses, at a minimum,
1449 whether slot machine gaming is being operated in a manner that
1450 demonstrates a commitment to ameliorate detriment to the public
1451 economic and social health, safety, and welfare of the community
1452 governed by the applicable body.
1453 (2) The governing body of any municipality that is not
1454 required to adopt a resolution pursuant to subsection (1) may
1455 adopt a resolution addressing slot machine gaming impacts on the
1456 local community. The resolution should contain a recitation of
1457 those factual circumstances which support a conclusion that the
1458 operations of the slot machine licensee have a substantial
1459 effect on the public economic and social health, safety, and
1460 welfare of the municipality.
1461 (3) The resolution shall be transmitted to the board.
1462 551.341 Tourist development council resolutions.--
1463 (1) Any tourist development council, organized under the
1464 provisions of part I of chapter 125, or the board of county
1465 commissioners if there is no tourist development council in that
1466 county, must adopt a resolution at least once annually that
1467 expresses, at a minimum, whether slot machine gaming is being
1468 operated in a manner that demonstrates a commitment to the
1469 growth and expansion of tourism in this state and a commitment
1470 to ameliorate detriment to communities that are current tourist

1471 destinations but do not have slot machine gaming being conducted
1472 at pari-mutuel facilities within their jurisdiction.
1473 (2) The resolution should contain a recitation of those
1474 factual circumstances which support a conclusion that the
1475 operations of slot machine licensees have a substantial positive
1476 or negative effect on the expansion and growth of tourism within
1477 their jurisdiction. Tourism impacts shall be supported, as a
1478 part of the resolution, by statistical data and other practical
1479 collateral impacts and evidence on local tourism activity.
1480 (3) The resolution shall be transmitted to the board.
1481 551.40 Compulsive gambling program.--The division may
1482 contract for provision of services related to the prevention and
1483 treatment of compulsive and addictive gambling. The terms of any
1484 contract for the provision of such services shall include
1485 accountability standards that must be met by any private
1486 provider. The failure of any private provider to meet any
1487 material terms of the contract, including the accountability
1488 standards, shall constitute a breach of contract or grounds for
1489 nonrenewal. The division may consult with the Department of the
1490 Lottery in the development of the program and the development
1491 and analysis of any procurement for contractual services for its
1492 compulsive or addictive gambling treatment program. The
1493 compulsive or addictive gambling treatment program shall be
1494 funded from the annual nonrefundable regulatory fee provided for
1495 in s. 551.108(1)(a).
1496 Section 5. Section 849.15, Florida Statutes, is amended to
1497 read:

1498 849.15 Manufacture, sale, possession, etc., of coin-
1499 operated devices prohibited.--
1500 (1) It is unlawful:
1501 (a) ~~(1)~~ To manufacture, own, store, keep, possess, sell,
1502 rent, lease, let on shares, lend or give away, transport, or
1503 expose for sale or lease, or to offer to sell, rent, lease, let
1504 on shares, lend or give away, or permit the operation of, or for
1505 any person to permit to be placed, maintained, or used or kept
1506 in any room, space, or building owned, leased or occupied by the
1507 person or under the person's management or control, any slot
1508 machine or device or any part thereof; or
1509 (b) ~~(2)~~ To make or to permit to be made with any person any
1510 agreement with reference to any slot machine or device, pursuant
1511 to which the user thereof, as a result of any element of chance
1512 or other outcome unpredictable to him or her, may become
1513 entitled to receive any money, credit, allowance, or thing of
1514 value or additional chance or right to use such machine or
1515 device, or to receive any check, slug, token or memorandum
1516 entitling the holder to receive any money, credit, allowance or
1517 thing of value.
1518 (2) Pursuant to section 2 of that certain chapter of the
1519 Congress of the United States entitled "An act to prohibit
1520 transportation of gaming devices in interstate and foreign
1521 commerce", approved January 2, 1951, being c. 1194, 64 Stat.
1522 1134, and also designated as 15 U.S.C. 1171-1177, the State of
1523 Florida, acting by and through its duly elected and qualified
1524 members of its Legislature, does hereby in this section, and in
1525 accordance with and in compliance with the provisions of section

1526 2 of such chapter of Congress, declare and proclaim that any
1527 county of the State of Florida, within which slot machine gaming
1528 is authorized pursuant to chapter 551 is exempt from the
1529 provisions of section 2 of that certain chapter of the Congress
1530 of the United States entitled "An act to prohibit transportation
1531 of gaming devices in interstate and foreign commerce",
1532 designated U.S.C. 1171-1177, approved January 2, 1951. All
1533 shipments of gaming devices, including slot machines, into any
1534 county of this state within which slot machine gaming is
1535 authorized pursuant to chapter 551, the registering, recording,
1536 and labeling of which have been duly done by the manufacturer or
1537 distributor thereof in accordance with sections 3 and 4 of that
1538 certain chapter of the Congress of the United States entitled,
1539 "An act to prohibit transportation of gaming devices in
1540 interstate and foreign commerce", approved January 2, 1951,
1541 being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C.
1542 1171-1177, shall be deemed legal shipments thereof into any such
1543 county provided the destination of such shipments is to a
1544 licensed eligible facility as defined s. 551.103.
1545 Section 6. Subsections (1) and (2) of section 895.02,
1546 Florida Statutes, are amended to read:
1547 895.02 Definitions.--As used in ss. 895.01-895.08, the
1548 term:
1549 (1) "Racketeering activity" means to commit, to attempt to
1550 commit, to conspire to commit, or to solicit, coerce, or
1551 intimidate another person to commit:

1552 (a) Any crime which is chargeable by indictment or
1553 information under the following provisions of the Florida
1554 Statutes:
1555 1. Section 210.18, relating to evasion of payment of
1556 cigarette taxes.
1557 2. Section 403.727(3)(b), relating to environmental
1558 control.
1559 3. Section 409.920 or s. 409.9201, relating to Medicaid
1560 fraud.
1561 4. Section 414.39, relating to public assistance fraud.
1562 5. Section 440.105 or s. 440.106, relating to workers'
1563 compensation.
1564 6. Section 465.0161, relating to distribution of medicinal
1565 drugs without a permit as an Internet pharmacy.
1566 7. Sections 499.0051, 499.0052, 499.00535, 499.00545, and
1567 499.0691, relating to crimes involving contraband and
1568 adulterated drugs.
1569 8. Part IV of chapter 501, relating to telemarketing.
1570 9. Chapter 517, relating to sale of securities and
1571 investor protection.
1572 10. Section 550.235, s. 550.3551, or s. 550.3605, relating
1573 to dogracing and horseracing.
1574 11. Chapter 550, relating to jai alai frontons.
1575 12. Section 551.1113, relating to slot machine gaming.
1576 13.~~12.~~ Chapter 552, relating to the manufacture,
1577 distribution, and use of explosives.
1578 14.~~13.~~ Chapter 560, relating to money transmitters, if the
1579 violation is punishable as a felony.

1580 15.~~14.~~ Chapter 562, relating to beverage law enforcement.
1581 16.~~15.~~ Section 624.401, relating to transacting insurance
1582 without a certificate of authority, s. 624.437(4)(c)1., relating
1583 to operating an unauthorized multiple-employer welfare
1584 arrangement, or s. 626.902(1)(b), relating to representing or
1585 aiding an unauthorized insurer.
1586 17.~~16.~~ Section 655.50, relating to reports of currency
1587 transactions, when such violation is punishable as a felony.
1588 18.~~17.~~ Chapter 687, relating to interest and usurious
1589 practices.
1590 19.~~18.~~ Section 721.08, s. 721.09, or s. 721.13, relating
1591 to real estate timeshare plans.
1592 20.~~19.~~ Chapter 782, relating to homicide.
1593 21.~~20.~~ Chapter 784, relating to assault and battery.
1594 22.~~21.~~ Chapter 787, relating to kidnapping.
1595 23.~~22.~~ Chapter 790, relating to weapons and firearms.
1596 24.~~23.~~ Section 796.03, s. 796.035, s. 796.04, s. 796.045,
1597 s. 796.05, or s. 796.07, relating to prostitution and sex
1598 trafficking.
1599 25.~~24.~~ Chapter 806, relating to arson.
1600 26.~~25.~~ Section 810.02(2)(c), relating to specified
1601 burglary of a dwelling or structure.
1602 27.~~26.~~ Chapter 812, relating to theft, robbery, and
1603 related crimes.
1604 28.~~27.~~ Chapter 815, relating to computer-related crimes.
1605 29.~~28.~~ Chapter 817, relating to fraudulent practices,
1606 false pretenses, fraud generally, and credit card crimes.

1607 30.~~29.~~ Chapter 825, relating to abuse, neglect, or
1608 exploitation of an elderly person or disabled adult.
1609 31.~~30.~~ Section 827.071, relating to commercial sexual
1610 exploitation of children.
1611 32.~~31.~~ Chapter 831, relating to forgery and
1612 counterfeiting.
1613 33.~~32.~~ Chapter 832, relating to issuance of worthless
1614 checks and drafts.
1615 34.~~33.~~ Section 836.05, relating to extortion.
1616 35.~~34.~~ Chapter 837, relating to perjury.
1617 36.~~35.~~ Chapter 838, relating to bribery and misuse of
1618 public office.
1619 37.~~36.~~ Chapter 843, relating to obstruction of justice.
1620 38.~~37.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
1621 or s. 847.07, relating to obscene literature and profanity.
1622 39.~~38.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or
1623 s. 849.25, relating to gambling.
1624 40.~~39.~~ Chapter 874, relating to criminal street gangs.
1625 41.~~40.~~ Chapter 893, relating to drug abuse prevention and
1626 control.
1627 42.~~41.~~ Chapter 896, relating to offenses related to
1628 financial transactions.
1629 43.~~42.~~ Sections 914.22 and 914.23, relating to tampering
1630 with a witness, victim, or informant, and retaliation against a
1631 witness, victim, or informant.
1632 44.~~43.~~ Sections 918.12 and 918.13, relating to tampering
1633 with jurors and evidence.

1634 (b) Any conduct defined as "racketeering activity" under
1635 18 U.S.C. s. 1961(1).
1636 (2) "Unlawful debt" means any money or other thing of
1637 value constituting principal or interest of a debt that is
1638 legally unenforceable in this state in whole or in part because
1639 the debt was incurred or contracted:
1640 (a) In violation of any one of the following provisions of
1641 law:
1642 1. Section 550.235, s. 550.3551, or s. 550.3605, relating
1643 to dogracing and horseracing.
1644 2. Chapter 550, relating to jai alai frontons.
1645 3. Section 551.1113, relating to slot machine gaming.
1646 4.~~3.~~ Chapter 687, relating to interest and usury.
1647 5.~~4.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or
1648 s. 849.25, relating to gambling.
1649 (b) In gambling activity in violation of federal law or in
1650 the business of lending money at a rate usurious under state or
1651 federal law.
1652 Section 7. The Legislature has exclusive authority over
1653 the conduct of all wagering occurring at a slot machine facility
1654 in this state. Only the division and other authorized state
1655 agencies shall administer chapter 551, Florida Statutes, and
1656 regulate the slot machine gaming industry, including operation
1657 of slot machine facilities, games, slot machines, and
1658 centralized computer management systems authorized in chapter
1659 551 and the rules adopted by the division.
1660 Section 8. Referenda.--

1661 (1) Notwithstanding any other provision of law, a county
1662 in which a slot machine facility is located may call a
1663 referendum to give the voters an opportunity to deauthorize slot
1664 machine operations as an undue burden on the county, and shall
1665 call such referendum upon a petition signed by the lesser of
1666 10,000 electors or 1 percent of the electors residing within the
1667 county.
1668 (2) When a referendum is called as a result of a petition
1669 having been signed by a sufficient number of the electors of a
1670 county, the county supervisor of elections shall conduct such
1671 referendum on the day of any state or county primary or general
1672 election that is being held for any purpose other than for the
1673 purpose of deauthorizing slot machine operations as an undue
1674 burden. The question on the ballot shall be:
1675 SHOULD THE OPERATION OF SLOT MACHINES IN [COUNTY NAME] BE
1676 DEAUTHORIZED AS AN UNDUE BURDEN UPON THE COUNTY?
1677 (3) The results shall be certified to the Division of
1678 Elections of the Department of State.
1679 (4) Notwithstanding any other provision of law, each
1680 municipality and county in which a slot machine facility is
1681 located and each municipality that is contiguous to a
1682 municipality where a slot machine facility is located may call a
1683 referendum to give the voters an opportunity to declare the slot
1684 machine operation an undue burden on the community, and shall
1685 call such referendum upon:
1686 (a) Petition signed by the lesser of 1,000 electors or 5
1687 percent of the electors residing within the municipality; or

1688 (b) Petition signed by the lesser of 10,000 electors or 1
1689 percent of the electors residing within the county.
1690 (5) When a referendum is called as a result of a
1691 sufficient number of petitions having been signed by the
1692 electors of a county or municipality, the county supervisor of
1693 elections shall conduct such referendum on the day of any state,
1694 county, or municipal primary or general election or on the day
1695 of any election of such county or municipality that is being
1696 held for any purpose other than for the purpose of declaring
1697 whether the operation of slot machines is an undue burden. The
1698 question on the ballot shall be:
1699 SHOULD THE OPERATION OF SLOT MACHINES IN [NAME OF
1700 COUNTY] [NAME OF MUNICIPALITY] OR IN A MUNICIPALITY
1701 CONTIGUOUS TO [NAME OF MUNICIPALITY] BE DECLARED AN UNDUE
1702 BURDEN?
1703 (6) The results shall be transmitted to the board for its
1704 consideration and inclusion in its annual report and to the
1705 Office of Program Policy Analysis and Government Accountability
1706 for its use in conducting performance audits and evaluations.
1707 (7) Once the question on the ballot has been placed before
1708 the electors of a county or municipality, the question shall not
1709 be presented in another referendum in that county or that
1710 municipality for at least 2 years.
1711 Section 9. Any tribal-state compact relating to gaming
1712 activities which is entered into by an Indian tribe in this
1713 state and the Governor pursuant to the Indian Gaming Regulatory
1714 Act, 25 U.S.C. ss. 2701 et seq., must be conditioned upon
1715 ratification by the Legislature.

1716 Section 10. Department of Transportation study of
1717 transportation facilities providing access to pari-mutuel
1718 facilities and Indian reservations; report and recommendations
1719 authorized.--
1720 (1) The Department of Transportation is directed to
1721 conduct a study of the impacts that slot machine gaming at pari-
1722 mutuel facilities and on Indian reservation lands are having on
1723 public roads and other transportation facilities, regarding
1724 traffic congestion and other mobility issues, facility
1725 maintenance and repair costs, emergency evacuation readiness,
1726 costs of potential future widening or other improvements, and
1727 other impacts on the motoring, nongaming public.
1728 (2) The study shall include, but is not limited to, the
1729 following information:
1730 (a) A listing, description, and functional classification
1731 of the access roads to and from pari-mutuel facilities and
1732 Indian reservations that conduct slot machine gaming in the
1733 state.
1734 (b) An identification of the access roads identified under
1735 paragraph (a) that are either scheduled for improvements within
1736 the Department of Transportation's 5-year work program or are
1737 listed on the 20-year, long-range transportation plan of the
1738 department or a metropolitan planning organization.
1739 (c) The most recent traffic counts on the access roads and
1740 projected future usage, as well as any projections of impacts on
1741 secondary, feeder, or connector roads, interstate highway exit
1742 and entrance ramps, or other area transportation facilities.

1743 (d) The safety and maintenance ratings of each access road
1744 and a detailed review of impacts on local and state emergency
1745 management agencies to provide emergency or evacuation services.
1746 (e) The estimated infrastructure costs to maintain,
1747 improve, or widen these access roads based on future projected
1748 needs.
1749 (f) The feasibility of implementing tolls on these access
1750 roads or, if already tolled, raising the toll to offset and
1751 mitigate the impacts of traffic generated by pari-mutuel and by
1752 Indian reservation slot machine gaming activities on nontribal
1753 communities in the state and to finance projected future
1754 improvements to the access roads.
1755 (3) The department shall present its findings and
1756 recommendations in a report to be submitted to the Governor, the
1757 President of the Senate, and the Speaker of the House of
1758 Representatives by January 15, 2006. The report may include any
1759 department recommendations for proposed legislation.
1760 Section 11. (1) Sixty-four full-time equivalent positions
1761 are authorized and the sum of $4,792,259 in recurring and
1762 $4,036,486 in nonrecurring funds is hereby appropriated from the
1763 Slot Machine Administrative Trust Fund in the Department of
1764 Business and Professional Regulation for the purpose of carrying
1765 out all regulatory activities provided herein. The Executive
1766 Office of the Governor shall place these funds and positions in
1767 reserve until such time as the Department of Business and
1768 Professional Regulation submits an expenditure plan for approval
1769 to the Executive Office of the Governor, and the chair and vice

1770 chair of the Legislative Budget Commission in accordance with
1771 the provisions of section 216.177, Florida Statutes.
1772 (2) The sum of $2,634,349 in recurring and $1,814,916 in
1773 nonrecurring funds is hereby appropriated from the Slot Machine
1774 Administrative Trust Fund in the Department of Business and
1775 Professional Regulation for transfer to the Department of Law
1776 Enforcement for the purpose of investigations, intelligence
1777 gathering, background investigations, and any other
1778 responsibilities as provided for herein. Fifty-seven full-time
1779 equivalent positions are authorized and the sum of $2,634,349 in
1780 recurring and $1,814,916 in nonrecurring funds is hereby
1781 appropriated from the Operating Trust Fund in the Department of
1782 Law Enforcement for the purpose of investigations, intelligence
1783 gathering, background investigations, and any other
1784 responsibilities as provided for herein. The Executive Office of
1785 the Governor shall place these funds and positions in reserve
1786 until such time as the Department of Law Enforcement submits an
1787 expenditure plan for approval to the Executive Office of the
1788 Governor and the chair and vice chair of the Legislative Budget
1789 Commission in accordance with the provisions of section 216.177,
1790 Florida Statutes.
1791 (3) The sum of $158,154 in recurring and $24,498 in
1792 nonrecurring funds is hereby appropriated from the Slot Machine
1793 Administrative Trust Fund in the Department of Business and
1794 Professional Regulation for transfer to the Office of the State
1795 Attorney, 17th Judicial Circuit, for the purpose of prosecution
1796 of offenses associated with gaming operations. Ten full-time
1797 equivalent positions are authorized and the sum of $158,154 in

1798 recurring and $24,498 in nonrecurring funds is hereby
1799 appropriated from the Grants and Donations Trust Fund in the
1800 Office of the State Attorney, 17th Judicial Circuit, for the
1801 purpose of prosecution of offenses associated with gaming
1802 operations. The Executive Office of the Governor shall place
1803 these funds and positions in reserve until such time as the
1804 Office of the State Attorney, 17th Judicial Circuit, submits an
1805 expenditure plan for approval to the Executive Office of the
1806 Governor and the chair and vice chair of the Legislative Budget
1807 Commission in accordance with the provisions of section 216.177,
1808 Florida Statutes.
1809 Section 12. This act shall take effect July 1, 2005.

TAB 5

Select Year: 2005 **Select Chamber:** Senate Go

Jump To: Bill Text (4) | Amendments (46) | Staff Analysis (3) | Vote History (2) | Citations

◄ Previous Senate Bill Next Senate Bill ►

Senate 1174: Relating to Pari-Mutuel Wagering

S1174 GENERAL BILL/CS/CS/CS by Ways and Means; Judiciary; Regulated Industries; Jones (Compare H 1569, H 1571, **2ND ENG/**H 1901, **1ST ENG/**H 1903, S 1342**)**

Pari-Mutuel Wagering; requires Pari-mutuel Wagering Div. in DBPR to maintain certain records re injuries & disposition of greyhounds that race in this state; authorizes slot machines & slot machine gaming within certain pari-mutuel facilities located in Miami-Dade & Broward Counties upon approval by local referendum; clarifies authority of local law enforcement agencies; provides for local supplemental tax; provides compulsive gambling treatment program, etc. Amends FS. APPROPRIATION: $14,910,626. EFFECTIVE DATE: Upon becoming law except as otherwise provided.

02/04/05 SENATE Filed
02/18/05 SENATE Referred to Regulated Industries; Judiciary; Government Efficiency Appropriations; Ways and Means; Rules and Calendar
03/08/05 SENATE Introduced, referred to Regulated Industries; Judiciary; Government Efficiency Appropriations; Ways and Means; Rules and Calendar -SJ 00073
03/10/05 SENATE Withdrawn from- Judiciary; Government Efficiency Appropriations; Ways and Means; Rules and Calendar -SJ 00124; Rereferred to Judiciary; Government Efficiency Appropriations; General Government Appropriations; Ways and Means -SJ 00124
03/22/05 SENATE Withdrawn from- Ways and Means -SJ 00246
03/31/05 SENATE On Committee agenda-- Regulated Industries, 04/05/05, 1:00 pm, 110-S
04/05/05 SENATE CS by Regulated Industries; YEAS 6 NAYS 3 -SJ 00378; CS read first time on 04/07/05 -SJ 00382
04/07/05 SENATE Now in Judiciary -SJ 00378
04/13/05 SENATE Withdrawn from- General Government Appropriations -SJ 00418
04/15/05 SENATE On Committee agenda-- Judiciary, 04/20/05, 9:15 am, 401-S --Not considered
04/20/05 SENATE On Committee agenda-- Judiciary, 04/22/05, 9:30 am, 401-S
04/21/05 SENATE Withdrawn from- Government Efficiency Appropriations -SJ 00553; Rereferred to Ways and Means -SJ 00553
04/22/05 SENATE CS/CS by Judiciary; YEAS 7 NAYS 1 -SJ 00567; CS read first time on 04/26/05 -SJ 00575
04/25/05 SENATE Now in Ways and Means -SJ 00567; On Committee agenda-- Ways and Means, 04/26/05, 5:15 pm, 412-K
04/26/05 SENATE CS/CS/CS by- Ways and Means; YEAS 14 NAYS 1 -SJ 00640; CS read first time on 04/27/05 -SJ 00644
04/27/05 SENATE Placed on Calendar, on second reading -SJ 00640
05/04/05 SENATE Placed on Special Order Calendar -SJ 01074
05/05/05 SENATE Placed on Special Order Calendar
05/06/05 SENATE Placed on Special Order Calendar; Read second time -SJ 01559; Amendment(s) adopted -SJ 01559; Substituted HB 1901 (Died in Senate) -SJ 01560; Laid on Table

Florida Senate - 2005 **CS for CS for CS for SB 1174**

By the Committees on Ways and Means; Judiciary; Regulated Industries; and Senator Jones

576-2329-05

1 A bill to be entitled
2 An act relating to pari-mutuel wagering;
3 amending s. 550.2415, F.S.; requiring the
4 Division of Pari-mutuel Wagering in the
5 Department of Business and Professional
6 Regulation to maintain certain records
7 regarding injuries and the disposition of
8 greyhounds that race in this state; providing
9 guidelines and requirements for injury and
10 disposition report forms; providing for the
11 adoption of rules; providing penalties;
12 creating ch. 551, F.S.; implementing s. 23,
13 Art. X of the State Constitution; authorizing
14 slot machines and slot machine gaming within
15 certain pari-mutuel facilities located in
16 Miami-Dade and Broward Counties upon approval
17 by a local referendum; providing definitions;
18 providing powers and duties of the Division of
19 Pari-mutuel Wagering in the Department of
20 Business and Professional Regulation;
21 clarifying the authority of local law
22 enforcement agencies; providing for licensure
23 to conduct slot machine gaming; providing for
24 slot machine licensure renewal; providing for a
25 license fee, machine fee, and tax rate;
26 providing for a local supplemental tax;
27 requiring occupational licenses and application
28 fees; prohibiting certain business
29 relationships; prohibiting certain acts and
30 providing penalties; providing an exception to
31 prohibitions relating to slot machines;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Florida Senate - 2005 **CS for CS for CS for SB 1174**

576-2329-05

1 providing for the exclusion of certain persons
2 from facilities; prohibiting minors under 21
3 years of age from playing slot machines;
4 designating slot machine gaming areas;
5 prohibiting automated teller machines on the
6 property of a slot machine licensee; providing
7 for days and hours of operation; providing
8 penalties; providing a compulsive gambling
9 treatment program; providing for a fee;
10 providing for a caterer's license; providing
11 for rulemaking; providing for the conduct of a
12 referendum election for slot machines;
13 providing for elections for ratification of
14 slot machine licensing; authorizing additional
15 positions and providing appropriations;
16 providing effective dates.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Effective July 1, 2005, subsection (6) of
21 section 550.2415, Florida Statutes, is amended to read:
22 550.2415 Racing of animals under certain conditions
23 prohibited; penalties; exceptions.--
24 (6)(a) It is the intent of the Legislature that
25 animals that participate in races in this state on which
26 pari-mutuel wagering is conducted and animals that are bred
27 and trained in this state for racing be treated humanely, both
28 on and off racetracks, throughout the lives of the animals.
29 (b) The division shall, by rule, establish the
30 procedures for euthanizing greyhounds. However, a greyhound
31 may not be put to death by any means other than by lethal

1 injection of the drug sodium pentobarbital. A greyhound may
2 not be removed from this state for the purpose of being
3 destroyed.
4 (c) It is a violation of this chapter for an
5 occupational licensee to train a greyhound using live or dead
6 animals. A greyhound may not be taken from this state for the
7 purpose of being trained through the use of live or dead
8 animals.
9 (d) A conviction of cruelty to animals pursuant to s.
10 828.12 involving a racing animal constitutes a violation of
11 this chapter.
12 (e) The division shall maintain accurate records and
13 statistics regarding injuries incurred by greyhounds that race
14 in this state. The division shall adopt rules requiring the
15 reporting of injuries incurred by greyhounds while racing in
16 this state, including schooling races. Such reports must
17 include:
18 1. The greyhound's registered name and right and left
19 ear tattoo numbers.
20 2. The name, business address, and telephone number of
21 the greyhound owner, trainer, and kennel operator.
22 3. The color, weight, and sex of the greyhound.
23 4. The specific type of injury, the cause of the
24 injury, the estimated recovery time, and the location of the
25 injury on the greyhound.
26 5. Where the injury occurred, whether on a racing
27 track or in another area.
28 6. If the injury occurred while the greyhound was
29 racing, the racetrack where the injury occurred; the distance,
30 grade, race, and post position when the injury occurred; and
31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 the weather conditions, time, temperature, and track condition
2 at the time of the injury.
3 7. A certification by the racetrack veterinarian that

4 the form is correct.
5 (f) The division shall maintain accurate records and
6 statistics regarding the disposition of greyhounds that
7 participate in racing in this state. The division shall adopt
8 rules requiring the reporting of the disposition of greyhounds
9 that race in this state, including schooling races. As used in
10 the reporting requirement, the term "disposition" means death,
11 transfer to another jurisdiction, retirement, adoption, sale,
12 or donation for medical research or another purpose. Such
13 reports must include:
14 1. The greyhound's registered name and right and left
15 ear tattoo numbers; the name, business address, and telephone
16 number of the greyhound owner, trainer, and kennel operator;
17 and the name and address of the race track where the greyhound
18 last raced prior to disposition.
19 2. If the greyhound was transferred to another track,
20 the name and address of the track that received the greyhound
21 and the name, business address, telephone number, and driver's
22 license number and state of issuance of the person who
23 received the greyhound on behalf of that track.
24 3. If the greyhound was retired for breeding, the name
25 and address of the facility that received the greyhound and
26 the name, business address, telephone number, and driver's
27 license number and state of issuance of the person who
28 received the greyhound on behalf of that facility.
29 4. If the greyhound was adopted or placed for
30 adoption, the name and address of the person that received the
31 greyhound and, if applicable, the name, business address,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 telephone number, and driver's license number and state of
2 issuance of the person who received the greyhound on behalf of
3 the adoption facility.
4 5. If the greyhound was euthanized, the name, address,
5 professional title, professional affiliation of the person

6 performing the euthanasia, method of euthanasia, and reason
7 the greyhound was euthanized rather than adopted.
8 6. If the greyhound was sold or donated, the name of
9 the person to whom the greyhound was sold or donated, and if
10 donated, the name, business address, telephone number, and
11 driver's license number and state of issuance of the person
12 who received the greyhound on behalf of the donee.
13 7. If the disposition of the greyhound does not fit
14 into any of the above categories, the name of the person to
15 whom the greyhound was transferred, and the name, business
16 address, telephone number, and driver's license number and
17 state of issuance of the person who received the greyhound.
18 8. Certification by the owner, trainer, and kennel
19 operator that the disposition forms are correct.
20 (g) The division shall maintain injury and disposition
21 records for 7 years.
22 (h) In addition to other penalties imposed by law, a
23 person who knowingly makes a false statement on an injury or
24 disposition form commits a misdemeanor of the first degree,
25 punishable as provided in s. 775.082 or s. 775.083. A person
26 who knowingly makes a false statement on an injury or
27 disposition form on a second or subsequent occasion commits a
28 felony of the third degree, punishable as provided in s.
29 775.082, s. 775.083, or s. 775.084.
30 Section 2. Chapter 551, Florida Statutes, consisting
31 of sections 551.101, 551.102, 551.103, 551.104, 551.105,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 551.106, 551.107, 551.108, 551.109, 551.110, 551.111, 551.112,
2 551.113, 551.114, 551.116, 551.117, 551.118, 551.119, 551.120,
3 and 551.121, is created to read:
4 CHAPTER 551
5 SLOT MACHINES
6 551.101 Slot machine gaming authorized.--Any existing,
7 licensed pari-mutuel facility located in Miami-Dade County or
8 Broward County at the time of adoption of s. 23, Art. X of the

9 State Constitution which has conducted live racing or games
10 during calendar years 2002 and 2003 may possess slot machines
11 and conduct slot machine gaming at the location where the
12 pari-mutuel permitholder is authorized to conduct pari-mutuel
13 wagering activities pursuant to such permitholder's valid
14 pari-mutuel permit or as otherwise authorized by law provided
15 a majority of voters in a countywide referendum have approved
16 the possession of slot machines at such facility in the
17 respective county. Notwithstanding any other provision of law,
18 it is not a crime for a person to participate in slot machine
19 gaming at a pari-mutuel facility licensed to possess and
20 conduct slot machine gaming or to participate in slot machine
21 gaming described in this chapter.
22 551.102 Definitions.--As used in this chapter, the
23 term:
24 (1) "Central control computer" means a central site
25 computer controlled and accessible by the division to which
26 all slot machines at a gaming facility communicate for the
27 purposes of auditing capacity; real-time information retrieval
28 of the details of any financial event that occurs in the
29 operation of a slot machine, including, but not limited to,
30 coin in, coin out, ticket in, ticket out, jackpots, machine
31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 door openings and power failure; and remote machine activation
2 and disabling of slot machines.
3 (2) "Designated slot machine gaming area" means the
4 area of an eligible facility, which may include any addition,
5 alteration, or new structure located on the premises described
6 in the pari-mutuel permit issued by the division for the
7 conduct of pari-mutuel wagering, in which slot machine gaming
8 may be conducted in accordance with the provisions of this
9 chapter.
10 (3) "Distributor" means any person that sells, leases,

11 or offers, or otherwise provides, distributes, or services,
12 any slot machine or associated equipment for use or play of
13 slot machines in this state. A manufacturer may be a
14 distributor within the state.
15 (4) "Division" means the Division of Pari-mutuel
16 Wagering of the Department of Business and Professional
17 Regulation.
18 (5) "Eligible facility" means any existing licensed
19 pari-mutuel facility located in Miami-Dade County or Broward
20 County at the time of adoption of s. 23, Art. X of the State
21 Constitution which has conducted live racing or games during
22 calendar years 2002 and 2003 and has been approved by a
23 majority of voters in a countywide referendum to have slot
24 machines at such facility in the respective county.
25 (6) "Independent testing laboratory" means a
26 laboratory of national reputation which is demonstrably
27 competent and qualified to scientifically test and evaluate
28 slot machines for compliance with this chapter and to
29 otherwise perform the functions assigned to it in this
30 chapter. An independent testing laboratory shall not be owned
31 or controlled by a licensee. The use of an independent testing

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 laboratory for any purpose related to the conduct of slot
2 machine gaming by a licensee under this chapter shall be made
3 from a list of one or more laboratories approved by the
4 division.
5 (7) "Manufacturer" means any person who manufactures,
6 builds, rebuilds, fabricates, assembles, produces, programs,
7 designs, or otherwise makes modifications to any slot machine
8 or associated equipment for use or play of slot machines in
9 this state for gaming purposes. A manufacturer may be a
10 distributor within the state.
11 (8) "Progressive system" means a computerized system
12 linking slot machines in one or more licensed facilities
13 within this state and offering one or more common progressive

14 payouts based on the amounts wagered.
15 (9) "Slot machine" means any mechanical or electrical
16 contrivance, terminal, machine, or other device that, upon
17 insertion of a coin, bill, ticket, token, or similar object or
18 upon payment of any consideration whatsoever, including the
19 use of any electronic payment system except a credit card or
20 debit card, is available to play or operate, the play or
21 operation of which, whether by reason of skill or application
22 of the element of chance or both, may deliver or entitle the
23 person or persons playing or operating the contrivance,
24 terminal, machine, or other device to receive cash, billets,
25 tickets, tokens, or electronic credits to be exchanged for
26 cash or to receive merchandise or anything of value
27 whatsoever, whether the payoff is made automatically from the
28 machine or manually. A slot machine:
29 (a) May use spinning reels or video displays or both.
30 (b) May or may not dispense coins, tickets, or tokens
31 to winning patrons.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 (c) May use an electronic credit system for receiving
2 wagers and making payouts.
3
4 The term includes associated equipment necessary to conduct
5 the operation of the contrivance, terminal, machine, or other
6 device.
7 (10) "Slot machine license" means a license issued by
8 the division authorizing an eligible facility to place and
9 operate slot machines as required by the provisions of this
10 chapter and the rules.
11 (11) "Slot machine licensee" means an eligible
12 facility that holds a slot machine license.
13 (12) "Slot machine operator" means a person employed
14 or contracted by the owner of an eligible facility to conduct
15 slot machine gaming at that eligible facility.

16 (13) "Slot machine owner" means a person who holds a
17 material interest in the slot machines.
18 (14) "Slot machine revenues" means the total of all
19 cash and property received by the slot machine licensee from
20 slot machine gaming operations less the amount of cash, cash
21 equivalents, credits, and prizes paid to winners of slot
22 machine gaming.
23 551.103 Powers and duties.--
24 (1) The division shall adopt, pursuant to the
25 provisions of ss. 120.536(1) and 120.54, all rules necessary
26 to implement, administer, and regulate slot machine gaming as
27 authorized in this chapter. Such rules shall include:
28 (a) Procedures for applying for a license and renewal
29 of a license.
30 (b) Procedures for establishing technical requirements
31 in addition to the qualifications that are necessary to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 receive a slot machine license or slot machine occupational
2 license.
3 (c) Procedures relating to slot machine revenues,
4 including verifying and accounting for such revenues,
5 auditing, and collecting taxes and fees consistent with this
6 chapter.
7 (d) Procedures for regulating, managing, and auditing
8 the operation, financial data, and program information
9 relating to slot machines through the central control
10 computer.
11 (e) Procedures for requiring each licensee at his or
12 her own cost and expense to supply the division with a bond
13 having the penal sum of $2 million payable to the Governor and
14 his or her successors in office for the licensee's first year
15 of slot machine operations; and, thereafter, the licensee
16 shall file a bond with the penal sum as determined by the
17 division pursuant to rules adopted to approximate anticipated
18 state revenues from the licensee's slot machine operations.

19 Any bond shall be issued by a surety or sureties to be
20 approved by the division and the Chief Financial Officer,
21 conditioned to faithfully make the payments to the Chief
22 Financial Officer in his or her capacity as treasurer of the
23 division. The licensee shall be required to keep its books and
24 records and make reports as provided in this chapter and to
25 conduct its slot machine operations in conformity with this
26 chapter and all other provisions of law. The division may
27 review the bond for adequacy and require adjustments each
28 fiscal year. Such bond shall be separate and distinct from the
29 bond required in s. 550.125.
30 (f) Procedures for requiring licensees to maintain
31 specified records and submit any data, information, record, or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 report, including financial and income records, required by
2 this chapter or determined by the division to be necessary to
3 the proper implementation and enforcement of this chapter.
4 (g) Procedures for requiring that the payout
5 percentage of a slot machine shall be no less than 85 percent
6 per facility.
7 (2) The division shall conduct such investigations as
8 the division determines necessary to fulfill its
9 responsibilities under the provisions of this chapter.
10 (3) The division shall investigate criminal violations
11 of this chapter and may investigate any other criminal
12 violation of law occurring on the facilities of a slot machine
13 licensee and such investigations may be conducted in
14 conjunction with the appropriate state attorney and
15 appropriate law enforcement agencies. The division and its
16 employees and agents shall have such other law enforcement
17 powers as specified in ss. 943.04 and 943.10.
18 (4) The division shall have unrestricted access to the
19 slot machine licensee facility at all times and shall require
20 of each slot machine licensee strict compliance with the laws

21 of this state relating to the transaction of such business.
22 The division may:
23 (a) Inspect and examine premises where slot machines
24 are offered for play.
25 (b) Inspect slot machines and related equipment and
26 supplies.
27 (c) Collect taxes, assessments, fees, and penalties.
28 (d) Deny, revoke, suspend, or place conditions on the
29 license of a person who violates any provision of this chapter
30 or rule adopted pursuant thereto.
31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 (5) The division shall revoke or suspend the license
2 of any person who is no longer qualified or who is found,
3 after receiving a license, to have been unqualified at the
4 time of application for the license.
5 (6) Nothing in this section shall be construed to
6 prohibit law enforcement authorities within the jurisdiction
7 of a slot machine licensee facility from conducting criminal
8 investigations occurring on the facilities of the slot machine
9 licensee.
10 (7) Nothing in this section shall be construed to
11 restrict access to the slot machine licensee facility by local
12 law enforcement authorities within the jurisdiction of the
13 slot machine licensee facility.
14 (8) Nothing in this section shall be construed to
15 restrict access to information and records necessary to the
16 investigation of criminal activity which are contained within
17 the slot machine licensee facility by local law enforcement
18 authorities.
19 551.104 License to conduct slot machine gaming.--
20 (1) Upon application and a finding by the division
21 after investigation that the application is complete and the
22 applicant is qualified and payment of the initial license fee,
23 the division shall issue a license to conduct slot machine

24 gaming in the designated slot machine gaming area of the slot
25 machine licensee's facility. Once licensed, slot machine
26 gaming may be conducted subject to the requirements of this
27 chapter and rules adopted pursuant thereto.
28 (2) An application may be approved by the division
29 only after the voters of the county where the applicant's
30 facility is located have authorized by referendum slot
31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 machines within pari-mutuel facilities in that county as
2 specified in s. 23, Art. X of the State Constitution.
3 (3) A slot machine license may be issued only to a
4 licensed pari-mutuel permitholder, and slot machine gaming may
5 be conducted only at the same facility at which the
6 permitholder is authorized under its valid pari-mutuel
7 wagering permit to conduct pari-mutuel wagering activities.
8 (4) As a condition of licensure and to maintain
9 continued authority for the conduct of slot machine gaming,
10 the slot machine licensee shall:
11 (a) Continue to be in compliance with this chapter.
12 (b) Continue to be in compliance with chapter 550,
13 where applicable, and maintain the pari-mutuel permit and
14 license in good standing pursuant to the provisions of chapter
15 550. Notwithstanding any contrary provision of law and in
16 order to expedite the operation of slot machines at eligible
17 facilities, any eligible facility shall be entitled within 60
18 days after the effective date of this act to amend its
19 2005-2006 license issued by the Division of Pari-mutuel
20 Wagering and shall be granted the requested changes in its
21 authorized performances pursuant to such amendment. The
22 Division of Pari-mutuel Wagering shall issue a new license to
23 the eligible facility to effectuate an amendment.
24 (c) Conduct not less than a full schedule of live
25 performances or games as defined in s. 550.002(11).

26 (d) Upon approval of any changes relating to the
27 pari-mutuel permit by the division, be responsible for
28 providing appropriate current and accurate documentation on a
29 timely basis to the division in order to continue the slot
30 machine license in good standing.
31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 (e) Allow unrestricted access and right of inspection
2 by the division to facilities of a slot machine licensee in
3 which any activity relative to the conduct of slot machine
4 gaming is conducted.
5 (f) Submit a security plan, including a slot machine
6 floor plan, location of security cameras, and the listing of
7 security equipment that is capable of observing and
8 electronically recording activities being conducted in the
9 designated slot machine gaming area.
10 (g) Use the Internet-based job-listing system of the
11 Agency for Workforce Innovation in advertising employment
12 opportunities. Further, each slot machine licensee in its
13 gaming operations shall create equal employment opportunities
14 that shall be implemented in a nondiscriminatory manner in
15 hiring and promoting employees to achieve the full and fair
16 participation of women, Asians, blacks, Hispanics, Native
17 Americans, persons with disabilities, and other protected
18 groups within the municipality where the pari-mutuel facility
19 is located, and an action plan and programs shall be
20 implemented by each pari-mutuel facility designed to ensure
21 that the percentage of the minority population in the area in
22 which each pari-mutuel facility is located is considered to
23 the extent minority applications are submitted in equal
24 proportion to the number of jobs open for hiring at entry
25 level, managerial, supervisory, and any other positions,
26 unless there is a bona fide occupational qualification
27 requiring a distinct and unique employment expertise that a
28 minority applicant does not possess.

29 (5) A slot machine license is not transferable.

30 551.105 Slot machine license renewal.--

31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 (1) Slot machine licenses shall be renewed annually.
2 The application for renewal shall contain all revisions to the
3 information submitted in the prior year's application which is
4 necessary to maintain such information as both accurate and
5 current.
6 (2) The applicant for renewal shall attest that any
7 information changes do not affect the applicant's
8 qualifications for license renewal.
9 (3) Upon determination by the division that the
10 application for renewal is complete and qualifications have
11 been met, including payment of the renewal fee, the slot
12 machine license shall be renewed annually.
13 551.106 License fee; machine fee; tax rate.--
14 (1) LICENSE FEE.--Upon approval of the application for
15 a slot machine license, the licensee must pay to the division
16 an initial license fee of $4 million for the first year of
17 operation. Thereafter, an annual license fee of $1,000 per
18 slot machine shall be paid. Such payment shall be made
19 directly to the Pari-mutuel Wagering Trust Fund established
20 pursuant to s. 455.116. Such payments shall be accounted for
21 separately from taxes or fees paid pursuant to the provisions
22 of chapter 550. Such funds in such trust fund may be
23 appropriated annually by the Legislature to the division for
24 its administration of this chapter and carrying out of its
25 regulatory functions set forth in this chapter.
26 (2) TAX ON SLOT MACHINE REVENUES.
27 (a) The tax rate on slot machine revenues on each
28 facility shall be:
29 1. Thirty percent on revenue of $100 million or less;
30 2. Thirty-two and one-half percent on revenue greater

31 than $100 million, but less than or equal to $200 million; and

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 3. Thirty-five percent on all revenue greater than
2 $200 million.
3 (b) The tax shall be collected on a daily basis and
4 deposited into the Public Education Capital Outlay and Debt
5 Service Trust Fund.
6 (c) The division shall notify the eligible facility
7 concerning the appropriate tax rate to apply to the slot
8 machine revenues.
9 (3) PAYMENT PROCEDURES.--Tax payments shall be
10 remitted daily, as determined by rule of the division. The
11 slot machine licensee shall file a report under oath by the
12 5th day of each calendar month for all taxes remitted during
13 the preceding calendar month which shall show all slot machine
14 activities for the preceding calendar month and such other
15 information as may be required by the division.
16 (4) FAILURE TO PAY TAX; PENALTIES.--A slot machine
17 licensee who fails to make tax payments as required under this
18 section is subject to an administrative penalty of up to
19 $1,000 for each day the tax payment is not remitted. All
20 administrative penalties imposed and collected shall be
21 deposited into the Pari Mutuel Wagering Trust Fund in the
22 Department of Business and Professional Regulation. If any
23 slot machine licensee fails to pay penalties imposed by order
24 of the division under this subsection, the division may
25 suspend, revoke, or fail to renew the license of the slot
26 machine licensee.
27 (5) FAILURE TO PAY TAX; GROUNDS TO SUSPEND, REVOKE, OR
28 FAIL TO RENEW THE LICENSE.--In addition to the penalties
29 imposed under subsection (4), any willful or wanton failure by
30 a slot machine licensee to make payments of the tax
31 constitutes sufficient grounds for the division to suspend,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 revoke, or fail to renew the license of the slot machine
2 licensee.
3 (6) SUBMISSION OF FUNDS.--The division may require
4 slot machine licensees to remit taxes, fees, fines, and
5 assessments by electronic funds transfer.
6 (7) LOCAL EDUCATION SUPPLEMENTAL SLOT MACHINE TAX.--
7 (a) On January 1 of each year, an annual tax of $500
8 per machine shall be imposed upon each slot machine approved
9 for use at any slot machine licensee's facility. The slot
10 machine licensee shall, on or before March 1 of each year, pay
11 the total amount of such tax to the division. The division
12 shall deposit any tax imposed pursuant to this subsection in
13 the Educational Enhancement Trust Fund in the Department of
14 Education on or before July 1 of each year. The Department of
15 Education shall, on or before August 1 of each year, forward
16 to the school district where a slot machine licensee is
17 located, any tax revenues collected from such slot machine
18 licensee pursuant to this subsection. The school district
19 shall use such revenues to pay additional:
20 1. Supplemental public education instruction expenses;
21 2. Classroom and school facilities construction
22 expenses;
23 3. School safety expenses; or
24 4. Educational infrastructure expenses.
25
26 All expenses under this paragraph must have been incurred as a
27 direct result of the slot machine licensee's operation of slot
28 machines in the school district during the immediately
29 preceding school year.
30 (b) On or before June 30 of each year following a
31 school district's receipt of tax revenues, the Department of

1 Education shall conduct a independent audit for purposes of
2 confirming the amount of any additional expenses to the school
3 district which are attributable to such district as a direct
4 result of the slot machine licensee's operations of slot
5 machines in the school district during the immediately
6 preceding school year. The amount of the tax revenues received
7 from a slot machine licensee pursuant to this section, in
8 excess of the amount of any such additional direct expenses,
9 as determined by the Department of Education audit, shall be
10 returned to the Educational Enhancement Trust Fund within 90
11 days after the audit becomes final.
12 551.107 Occupational license required; application;
13 fee.--
14 (1) The individuals and entities that are licensed
15 under this section require heightened state scrutiny,
16 including the submission by the individual licensees or
17 persons associated with the entities described in this chapter
18 of fingerprints for a criminal records check.
19 (2)(a) The following licenses shall be issued to
20 persons or entities having access to the designated slot
21 machine gaming area or to persons who, by virtue of the
22 position they hold, might be granted access to these areas or
23 to any other person or entity in one of the following
24 categories:
25 1. General occupational licenses for general
26 employees, food service, maintenance, and other similar
27 service and support employees having access to the designated
28 slot machine gaming area. Service and support employees with a
29 current pari-mutuel occupational license issued pursuant to
30 chapter 550 and a current background check are not required to
31 submit to an additional background check for a slot machine

1 occupational license as long as the pari-mutuel occupational
2 license remains in good standing.
3 2. Professional occupational licenses for any person,
4 proprietorship, partnership, corporation, or other entity that
5 is authorized by a slot machine licensee to manage, oversee,
6 or otherwise control daily operations as a slot machine
7 manager, floor supervisor, security personnel, or any other
8 similar position of oversight of gaming operations.
9 3. Business occupational licenses for any slot machine
10 management company or slot machine business associated with
11 slot machine gaming or a person who manufactures, distributes,
12 or sells slot machines, slot machine paraphernalia, or other
13 associated equipment to slot machine licensees or any person
14 not an employee of the slot machine licensee who provides
15 maintenance, repair, or upgrades or otherwise services a slot
16 machine or other slot machine equipment.
17 (b) Slot machine occupational licenses are not
18 transferable.
19 (3) A slot machine licensee shall not employ or
20 otherwise allow a person to work at a slot machine facility
21 unless such person holds a valid occupational license. A slot
22 machine licensee shall not contract or otherwise do business
23 with a business required to hold a slot machine occupational
24 license unless the business holds such a license. A slot
25 machine licensee shall not employ or otherwise allow a person
26 to work in a supervisory or management professional level at a
27 slot machine facility unless such person holds a valid
28 occupational license.
29 (4)(a) A person seeking a slot machine occupational
30 license, or renewal thereof, shall make application on forms
31 prescribed by the division and include payment of the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 appropriate application fee. Initial and renewal applications
2 for slot machine occupational licenses shall contain all the

3 information the division, by rule, may determine is required
4 to ensure eligibility.
5 (b) The division shall establish, by rule, a schedule
6 for the annual renewal of slot machine occupational licenses.
7 (c) Pursuant to rules adopted by the division, any
8 person may apply for and, if qualified, be issued an
9 occupational license valid for a period of 3 years upon
10 payment of the full occupational license fee for each of the 3
11 years for which the license is issued. The occupational
12 license shall be valid during its specified term at any slot
13 machine facility where slot machine gaming is authorized to be
14 conducted.
15 (d) The slot machine occupational license fee for
16 initial application and annual renewal shall be determined by
17 rule of the division but shall not exceed $50 for a general or
18 professional occupational license for an employee of the slot
19 machine licensee or $1,000 for a business occupational license
20 for nonemployees of the licensee providing goods or services
21 to the slot machine licensee. License fees for general
22 occupational licensees shall be paid for by the slot machine
23 licensee. Failure to pay the required fee shall be grounds for
24 disciplinary action by the division against the slot machine
25 licensee but shall not be considered a violation of this
26 chapter or rules of the division by the general occupational
27 licensee or a prohibition against the initial issuance or the
28 renewal of the general occupational license.
29 (5) If the state gaming commission or other similar
30 regulatory authority of another state or jurisdiction extends
31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 to the division reciprocal courtesy to maintain disciplinary
2 control, the division may:
3 (a) Deny an application for or revoke, suspend, or
4 place conditions or restrictions on a license of a person or

5 entity who has been refused a license by any other state
6 gaming commission or similar authority; or
7 (b) Deny an application for or suspend or place
8 conditions on a license of any person or entity who is under
9 suspension or has unpaid fines in another jurisdiction.
10 (6)(a) The division may deny, suspend, revoke, or
11 declare ineligible any occupational license if the applicant
12 for or holder thereof has violated the provisions of this
13 chapter or the rules of the division governing the conduct of
14 persons connected with slot machine gaming. In addition, the
15 division may deny, suspend, revoke, or declare ineligible any
16 occupational license if the applicant for such license has
17 been convicted in this state, in any other state, or under the
18 laws of the United States of a capital felony, a felony, or an
19 offense in any other state which would be a felony under the
20 laws of this state involving arson; trafficking in, conspiracy
21 to traffic in, smuggling, importing, conspiracy to smuggle or
22 import, or delivery, sale, or distribution of a controlled
23 substance; or a crime involving a lack of good moral
24 character, or has had a slot machine gaming license revoked by
25 this state or any other jurisdiction for an offense related to
26 slot machine gaming.
27 (b) The division may deny, declare ineligible, or
28 revoke any occupational license if the applicant for such
29 license or the licensee has been convicted of a felony or
30 misdemeanor in this state, in any other state, or under the
31 laws of the United States, if such felony or misdemeanor is

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 related to gambling or bookmaking as contemplated in s.
2 849.25.
3 (7) Fingerprints for all slot machine occupational
4 license applications shall be taken in a manner approved by
5 the division and shall be submitted to the Department of Law
6 Enforcement and the Federal Bureau of Investigation for a
7 level II criminal records check upon initial application and

8 every 5 years thereafter. The division may by rule require an
9 annual or less frequent records check not to exceed every 5
10 years of all renewal applications for a slot machine
11 occupational license. The cost of processing fingerprints and
12 conducting a records check shall be borne by the applicant.
13 (8) All moneys collected pursuant to this section
14 shall be deposited into the Pari-mutuel Wagering Trust Fund.
15 551.108 Prohibited relationships.--
16 (1) A person employed by or performing any function on
17 behalf of the division shall not:
18 (a) Be an officer, director, owner, or employee of any
19 person or entity licensed by the division.
20 (b) Have or hold any interest, direct or indirect, in
21 or engage in any commerce or business relationship with any
22 person licensed by the division.
23 (2) A manufacturer or distributor of slot machines
24 shall not enter into any contract with a slot machine licensee
25 which provides for any revenue sharing of any kind or nature
26 which is, directly or indirectly, calculated on the basis of a
27 percentage of slot machine revenues. Any maneuver, shift, or
28 device whereby this provision is violated shall be a violation
29 of this chapter and shall render any such agreement void.
30 (3) A manufacturer or distributor of slot machines or
31 any equipment necessary for the operation of slot machines or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 an officer, director, or employee of any such manufacturer or
2 distributor shall not have any ownership or financial interest
3 in a slot machine license or in any business owned by the slot
4 machine licensee.
5 551.109 Prohibited acts.--
6 (1) Except as otherwise provided by law and in
7 addition to any other penalty, any person who intentionally
8 makes or causes to be made or aids, assists, or procures
9 another to make a false statement in any report, disclosure,

10 application, or any other document required under this chapter
11 or any rule adopted under this chapter is subject to an
12 administrative fine or civil penalty of up to $10,000.
13 (2) Except as otherwise provided by law and in
14 addition to any other penalty, any person who possesses a slot
15 machine without the license required by this chapter or who
16 possesses a slot machine at any location other than at the
17 slot machine licensee facility is subject to an administrative
18 fine or civil penalty of up to $10,000.
19 (3) Except as otherwise provided by law and in
20 addition to any other penalty, any person who intentionally
21 excludes, or takes any action in an attempt to exclude,
22 anything or its value from the deposit, counting, collection,
23 or computation of revenues from slot machine activity is
24 subject to an administrative fine or civil penalty of up to
25 $25,000.
26 (4) Any person who, with intent to manipulate the
27 outcome, payoff, or operation of a slot machine by physical
28 tampering, or by use of any object, instrument, or device,
29 whether mechanical, electrical, magnetic, or involving other
30 means, manipulates the outcome, payoff, or operation of a slot
31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 machine commits a felony of the third degree, punishable as
2 provided in s. 775.082, s. 775.083, or s. 775.084.
3 (5) All penalties imposed and collected must be
4 deposited into the Pari-mutuel Wagering Trust Fund in the
5 department.
6 551.110 Illegal devices.--Notwithstanding any
7 provision of law to the contrary, no slot machine
8 manufactured, sold, distributed, possessed, or operated
9 according to the provisions of this chapter shall be
10 considered unlawful.
11 551.111 Exclusions of certain persons.--
12 (1) In addition to the power to exclude certain

13 persons from any facility of a slot machine licensee in this
14 state, the division may exclude any person from any facility
15 of a slot machine licensee in this state for conduct that
16 would constitute, if the person were a licensee, a violation
17 of this chapter or the rules of the division. The division may
18 exclude from any facility of a slot machine licensee any
19 person who has been ejected from a facility of a slot machine
20 licensee in this state or who has been excluded from any
21 facility of a slot machine licensee or gaming facility in
22 another state by the governmental department, agency,
23 commission, or authority exercising regulatory jurisdiction
24 over the gaming in such other state.
25 (2) This section shall not be construed to abrogate
26 the common law right of a slot machine licensee to exclude a
27 patron absolutely in this state.
28 (3) The division may authorize any person who has been
29 ejected or excluded from a facility of a slot machine licensee
30 in this state or another state to attend a facility of a slot
31 machine licensee in this state upon a finding that the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 attendance of such person at a facility of a slot machine
2 licensee would not be adverse to the public interest or to the
3 integrity of the industry; however, this section shall not be
4 construed to abrogate the common law right of a slot machine
5 licensee to exclude a patron absolutely in this state.
6 551.112 Minors prohibited from playing slot
7 machines.--
8 (1) A slot machine licensee or agent or employee of a
9 slot machine licensee shall not:
10 (a) Allow a person who has not attained 21 years of
11 age to play any slot machine.
12 (b) Allow a person who has not attained 21 years of
13 age access to the designated slot machine gaming area of a
14 facility of a slot machine licensee.

15 (c) Allow a person who has not attained 21 years of
16 age to be employed in any position allowing or requiring
17 access to the designated slot machine gaming area of a
18 facility of a slot machine licensee.
19 (2) No person licensed under this chapter, or any
20 agent or employee of a licensee under this chapter, shall
21 intentionally allow a person who has not attained 21 years of
22 age to play or operate a slot machine or have access to the
23 designated slot machine area of a facility of a slot machine
24 licensee.
25 (3) The eligible facility shall post clear and
26 conspicuous signage within the designated slot machine gaming
27 areas that states the following:
28 THE PLAYING OF SLOT MACHINES BY PERSONS
29 UNDER THE AGE OF 21 IS AGAINST FLORIDA LAW
30 (SECTION 551.112, FLORIDA STATUTES).
31 PROOF OF AGE MAY BE REQUIRED AT ANYTIME

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 A PERSON IS WITHIN THIS AREA.
2 551.113 Designated slot machine gaming areas.--
3 (1) A slot machine licensee may make available for
4 play slot machines within its designated slot machine gaming
5 areas.
6 (2) A slot machine licensee shall not allow any
7 automated teller machine or similar device designed to provide
8 credit or dispense cash to be located on the property of the
9 facilities of the slot machine licensee.
10 (3) A slot machine licensee shall not make any loan or
11 provide credit or advance cash to enable a person to play a
12 slot machine.
13 (4) The slot machine operator shall display
14 pari-mutuel races or games within the designated slot machine
15 gaming areas and offer within the designated slot machine
16 gaming areas the ability for patrons to engage in pari-mutuel
17 wagering on live and simulcast races conducted or offered to

18 patrons of the eligible facility.
19 (5) No complimentary alcoholic beverages shall be
20 served to patrons within the designated slot machine gaming
21 areas.
22 (6) The slot machine operator shall offer training to
23 employees on responsible gaming and shall work with the
24 compulsive gambling treatment program within the Mental Health
25 Program Office of the Department of Children and Family
26 Services to recognize problem gaming situations and to
27 implement responsible gaming programs and practices.
28 (7) The division shall require the posting of signs in
29 the designated slot machine gaming areas warning of the risks
30 and dangers of gambling, showing the odds of winning, and
31 informing patrons of the toll-free telephone number available

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 to provide information and referral services regarding
2 compulsive or problem gambling.
3 (8) The division shall establish standards of approval
4 for the physical layout and construction of any facility or
5 building devoted to slot machine operations. The standards
6 shall require that the slot machine gaming area be connected
7 to and contiguous within the operation of the live gaming
8 facility. It is the intent of the Legislature that each
9 facility:
10 (a) Possess superior consumer amenities and
11 conveniences to encourage and attract the patronage of
12 tourists and other visitors from across the region, state, and
13 nation.
14 (b) Have adequate motor vehicle parking facilities to
15 satisfy patron requirements.
16 (c) Have a physical layout and location that
17 facilitates access to the pari-mutuel portion of the facility.
18 551.114 Days and hours of operation.--Slot machine
19 gaming areas may be open 365 days a year. The slot machine

20 gaming areas may be open for a maximum of 16 hours per day.
21 551.116 Penalties.--The division may revoke or suspend
22 any license issued under this chapter upon the willful
23 violation by the licensee of any provision of this chapter or
24 of any rule adopted under this chapter. In lieu of suspending
25 or revoking a license, the division may impose a civil penalty
26 against the licensee for a violation of this chapter or any
27 rule adopted by the division. Except as otherwise provided in
28 this chapter, the penalty so imposed may not exceed $1,000 for
29 each count or separate offense. All penalties imposed and
30 collected must be deposited into the Pari-mutuel Wagering
31 Trust Fund in the department.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 551.117 Compulsive gambling program.--The division may
2 contract for provision of services related to the prevention
3 and treatment of compulsive and addictive gambling. The terms
4 of any contract for the provision of such services shall
5 include accountability standards that must be met by any
6 private provider. The failure of any private provider to meet
7 any material terms of the contract, including the
8 accountability standards, shall constitute a breach of
9 contract or grounds for nonrenewal. The division may consult
10 with the Department of the Lottery in the development of the
11 program and the development and analysis of any procurement
12 for contractual services for its compulsive or addictive
13 gambling prevention and treatment program. The compulsive or
14 addictive gambling prevention and treatment program shall be
15 funded from the annual nonrefundable regulatory fee provided
16 for in this section. The licensee must pay to the division an
17 annual nonrefundable regulatory fee of $100 per slot machine,
18 on July 1, of each year, which shall be deposited into the
19 Pari-mutuel Wagering Trust Fund.
20 551.118 Catering license.--A slot machine retailer is
21 entitled to a caterer's license pursuant to s. 565.02 on days
22 in which the pari-mutuel facility is open to the public for

23 slot machine game play as authorized by this chapter.
24 551.119 Rulemaking.--
25 (1) The division may adopt rules pursuant to ss.
26 120.536(1) and 120.54 to implement the provisions of this
27 chapter.
28 (2) In order to expedite the licensing requirements of
29 this chapter, the division may adopt emergency rules pursuant
30 to s. 120.54(4). The Legislature finds that such emergency
31 rules are necessary for the preservation of the rights and

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 welfare of the people in order to provide additional funds to
2 the benefit of the public. Therefore, in adopting such
3 emergency rules, the division need not make the findings
4 required by s. 120.54(4)(a).
5 551.120 Conduct of referendum election for slot
6 machines.--
7 (1) Any person who possesses the qualifications
8 prescribed by s. 23, Art. X of the State Constitution may
9 apply to the division for a license to conduct slot machine
10 operations under this chapter. Applications for a license to
11 conduct slot machine operations shall be subject to the
12 provisions of this chapter. Such license does not authorize
13 any operation of slot machines until approved by the majority
14 of electors participating in a referendum election in the
15 county in which the applicant proposes to conduct slot machine
16 activities.
17 (2) Each referendum held under the provisions of this
18 section shall be held in accordance with the provisions of
19 chapters 97-106, except as otherwise provided in this chapter.
20 A referendum may be held for more than one licensee for slot
21 machine operation in a given county if the written
22 applications for each such licensee under s. 551.121 are filed
23 simultaneously or are otherwise filed within the times
24 specified by said provision to allow the conduct of a single

25 referendum. The expense of such referendum shall be borne by
26 the licensee or licensees requesting the referendum. For
27 purposes of this section, the expense of conducting a
28 referendum is the incremental expense in excess of routine
29 operating expenses that are incurred by the governing body,
30 the supervisor of elections, and other essential governmental
31 entities in conducting the election. If the referendum is

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 being held at the request of more than one licensee, each
2 applicant shall be responsible for an equal share of the
3 expense.
4 551.121 Elections for ratification of slot machine
5 licenses.--
6 (1) The holder of any license to conduct slot machine
7 operations may have the question of whether that slot machine
8 license will be ratified or rejected submitted to the electors
9 of the county designated in s. 23, Art. X of the State
10 Constitution. Such question shall be submitted to the electors
11 for approval or rejection at a special, primary, or general
12 election. The licensee shall present a written application to
13 the governing body of the county that requests a referendum
14 election in that county pursuant to s. 551.120 and this
15 section, accompanied by a certified copy of the license
16 granted by the division. Within 30 days after receipt of the
17 application and license, the governing body shall order a
18 special referendum election. The election shall be scheduled
19 for no sooner than 21 days nor more than 90 days from the date
20 on which it is ordered. Provided, the referendum election will
21 be held in conjunction with the primary election if the
22 application is received within not more than 90 nor less than
23 60 days of such election or in conjunction with the general
24 election if the application is received not more than 90 nor
25 less than 60 days prior to that election. The governing body
26 shall give notice of the referendum election by publishing
27 notice once each week for 2 consecutive weeks in one or more

28 newspapers of general circulation in the county.
29 (2)(a) Once the slot machine license has been issued,
30 the licensee shall have a period of 2 years in which to
31 request a referendum election pursuant to this section or such

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 license shall become void and shall be cancelled. If the
2 majority of the electors voting on the question of
3 ratification or rejection of the slot machine licenses vote
4 for such ratification, such license shall become effective
5 immediately, and the holder of the license may conduct slot
6 machine operations upon complying with the other provision of
7 this chapter. If the majority of electors voting on the
8 question of ratification or rejection of any slot machine
9 licenses ratify the license, such license shall become
10 effective, and the licensee shall pay to the division within
11 10 days the license fee set out in this chapter.
12 (b) If the majority of electors voting on the question
13 of ratification or rejection of any slot machine licenses
14 reject the ratification of the license, such license shall
15 become void. The governing board of the county shall
16 immediately certify the results of the election to the
17 division.
18 Section 3. (1) Sixty-four full-time equivalent
19 positions are authorized and the sums of $4,792,259 in
20 recurring and $4,036,486 in nonrecurring funds are hereby
21 appropriated from the Pari-mutuel Wagering Trust Fund in the
22 Department of Business and Professional Regulation for the
23 purpose of carrying out all regulatory activities provided
24 herein. The Executive Office of the Governor shall place
25 these funds and positions in reserve until such time as the
26 Department of Business and Professional Regulation submits an
27 expenditure plan for approval to the Executive Office of the
28 Governor, and the chair and vice chair of the Legislative
29 Budget Commission in accordance with the provisions of section

30 216.177, Florida Statutes.

31

1 (2) The sums of $2,634,349 in recurring and $1,814,916
2 in nonrecurring funds are hereby appropriated from the
3 Pari-mutuel Wagering Trust Fund in the Department of Business
4 and Professional Regulation for transfer to the Department of
5 Law Enforcement for the purpose of investigations,
6 intelligence gathering, background investigations, and any
7 other responsibilities as provided for herein. Fifty-seven
8 full-time equivalent positions are authorized and the sums of
9 $2,634,349 in recurring and $1,814,916 in nonrecurring funds
10 are hereby appropriated from the Operating Trust Fund in the
11 Department of Law Enforcement for the purpose of
12 investigations, intelligence gathering, background
13 investigations, an any other responsibilities as provided for
14 herein. The Executive Office of the Governor shall place
15 these funds and positions in reserve until such time as the
16 Department of Law Enforcement submits an expenditure plan for
17 approval to the Executive Office of the Governor and the chair
18 and vice chair of the Legislative Budget Commission in
19 accordance with the provisions of section 216.177, Florida
20 Statutes.
21 (3) The sums of $608,118 in recurring and $24,498 in
22 nonrecurring funds are hereby appropriated from the
23 Pari-mutuel Wagering Trust Fund in the Department of Business
24 and Professional Regulation for transfer to the Office of the
25 State Attorney, 17th Judicial Circuit, for the purpose of
26 prosecution of offenses associated with gaming operations.
27 Ten full-time equivalent positions are authorized and the sums
28 of $608,118 in recurring and $24,498 in nonrecurring funds are
29 hereby appropriated from the Grants and Donations Trust Fund
30 in the Office of the State Attorney, 17th Judicial Circuit,
31 for the purpose of prosecution of offenses associated with

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 gaming operations. The Executive Office of the Governor shall
2 place these funds and positions in reserve until such time as
3 the Office of the State Attorney, 17th Judicial Circuit,
4 submits an expenditure plan for approval to the Executive
5 Office of the Governor and the chair and vice chair of the
6 Legislative Budget Commission in accordance with the
7 provisions of section 216.177, Florida Statutes.
8 (4) The sum of $1 million is hereby appropriated from
9 the Pari-mutuel Wagering Trust Fund from revenues received
10 pursuant to section 551.117, Florida Statutes, in the
11 Department of Business and Professional Regulation for
12 contract services related to the prevention and treatment of
13 compulsive and addictive gambling.
14 Section 4. Except as otherwise expressly provided in
15 this act, this act shall take effect upon becoming a law.
16
17 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
18 CS/CS Senate Bill 1174
19
20 The initial, one-time licensing fee for slot facilities is
increased from $1 million to $4 million to pay for the
21 regulatory costs of the Department of Business and
Professional Regulation (DBPR), Florida Department of Law
22 Enforcement (FDLE), and the 17th Circuit State Attorney's
Office.
23
DBPR is required to contract for a compulsive gambling
24 prevention and treatment program. A fee of $100 per slot
machine is assessed to fund the program.
25
Appropriations and new positions are provided for DBPR, FDLE,
26 and the 17th Circuit State Attorney's Office to meet the
workload requirements of this bill. The funds must be held in
27 reserve and released on the recommendation of the Governor and
the approval of the Legislative Budget Commission pursuant to
28 s. 216.177, Florida Statutes. Funds are also appropriated for
the compulsive gambling prevention and treatment program.
29
A condition of licensure as a slot facility is changed from a
30 requirement that the facility conduct as many live races or
games as in 2002 or 2003 to a requirement that the facility
31 conduct a full schedule of live races or games, as defined in
550.002(11).

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

TAB 6

Florida Senate - 2005 SENATOR AMENDMENT
Bill No. HB 1901, 2nd Eng.
Barcode 873066

CHAMBER ACTION

Senate House

1 1/AD/2R
05/06/2005 08:16 PM
2
3
4

5
6
7
8
9
10

---

11 Senators Jones, Geller, and Posey moved the following
12 amendment:
13
14 **Senate Amendment (with title amendment)**
15 Delete everything after the enacting clause
16
17 and insert:
18 Section 1. Effective July 1, 2005, subsection (6) of
19 section 550.2415, Florida Statutes, is amended to read:
20 550.2415 Racing of animals under certain conditions
21 prohibited; penalties; exceptions.--
22 (6)(a) It is the intent of the Legislature that
23 animals that participate in races in this state on which
24 pari-mutuel wagering is conducted and animals that are bred
25 and trained in this state for racing be treated humanely, both
26 on and off racetracks, throughout the lives of the animals.
27 (b) The division shall, by rule, establish the
28 procedures for euthanizing greyhounds. However, a greyhound
29 may not be put to death by any means other than by lethal
30 injection of the drug sodium pentobarbital. A greyhound may
31 not be removed from this state for the purpose of being

Florida Senate - 2005 SENATOR AMENDMENT
Bill No. HB 1901, 2nd Eng.
Barcode 873066

1 destroyed.
2 (c) It is a violation of this chapter for an
3 occupational licensee to train a greyhound using live or dead
4 animals. A greyhound may not be taken from this state for the
5 purpose of being trained through the use of live or dead
6 animals.
7 (d) A conviction of cruelty to animals pursuant to s.
8 828.12 involving a racing animal constitutes a violation of
9 this chapter.
10 (e) The division shall maintain accurate records and
11 statistics regarding injuries incurred by greyhounds that race
12 in this state. The division shall adopt rules requiring the
13 reporting of injuries incurred by greyhounds while racing in
14 this state, including schooling races. Such reports must
15 include:
16 1. The greyhound's registered name and right and left
17 ear tattoo numbers.
18 2. The name, business address, and telephone number of
19 the greyhound owner, trainer, and kennel operator.
20 3. The color, weight, and sex of the greyhound.
21 4. The specific type of injury, the cause of the
22 injury, the estimated recovery time, and the location of the
23 injury on the greyhound.
24 5. Where the injury occurred, whether on a racing
25 track or in another area.
26 6. If the injury occurred while the greyhound was
27 racing, the racetrack where the injury occurred; the distance,
28 grade, race, and post position when the injury occurred; and
29 the weather conditions, time, temperature, and track condition
30 at the time of the injury.
31 7. A certification by the racetrack veterinarian that

1 the form is correct.
2 (f) The division shall maintain accurate records and
3 statistics regarding the disposition of greyhounds that
4 participate in racing in this state. The division shall adopt
5 rules requiring the reporting of the disposition of greyhounds
6 that race in this state, including schooling races. As used in
7 the reporting requirement, the term "disposition" means death,
8 transfer to another jurisdiction, retirement, adoption, sale,
9 or donation for medical research or another purpose. Such
10 reports must include:

11 1. The greyhound's registered name and right and left
12 ear tattoo numbers; the name, business address, and telephone
13 number of the greyhound owner, trainer, and kennel operator;
14 and the name and address of the race track where the greyhound
15 last raced prior to disposition.
16 2. If the greyhound was transferred to another track,
17 the name and address of the track that received the greyhound
18 and the name, business address, telephone number, and driver's
19 license number and state of issuance of the person who
20 received the greyhound on behalf of that track.
21 3. If the greyhound was retired for breeding, the name
22 and address of the facility that received the greyhound and
23 the name, business address, telephone number, and driver's
24 license number and state of issuance of the person who
25 received the greyhound on behalf of that facility.
26 4. If the greyhound was adopted or placed for
27 adoption, the name and address of the person that received the
28 greyhound and, if applicable, the name, business address,
29 telephone number, and driver's license number and state of
30 issuance of the person who received the greyhound on behalf of
31 the adoption facility.

1 5. If the greyhound was euthanized, the name, address,
2 professional title, professional affiliation of the person
3 performing the euthanasia, method of euthanasia, and reason
4 the greyhound was euthanized rather than adopted.
5 6. If the greyhound was sold or donated, the name of
6 the person to whom the greyhound was sold or donated, and if
7 donated, the name, business address, telephone number, and
8 driver's license number and state of issuance of the person
9 who received the greyhound on behalf of the donee.
10 7. If the disposition of the greyhound does not fit
11 into any of the above categories, the name of the person to
12 whom the greyhound was transferred, and the name, business
13 address, telephone number, and driver's license number and
14 state of issuance of the person who received the greyhound.
15 8. Certification by the owner, trainer, and kennel
16 operator that the disposition forms are correct.
17 (g) The division shall maintain injury and disposition
18 records for 7 years.
19 (h) In addition to other penalties imposed by law, a
20 person who knowingly makes a false statement on an injury or

21 disposition form commits a misdemeanor of the first degree,
22 punishable as provided in s. 775.082 or s. 775.083. A person
23 who knowingly makes a false statement on an injury or
24 disposition form on a second or subsequent occasion commits a
25 felony of the third degree, punishable as provided in s.
26 775.082, s. 775.083, or s. 775.084.
27 Section 2. Chapter 551, Florida Statutes, consisting
28 of sections 551.101, 551.102, 551.103, 551.104, 551.105,
29 551.106, 551.107, 551.108, 551.109, 551.110, 551.111, 551.112,
30 551.113, 551.114, 551.116, 551.117, 551.118, 551.119, 551.120,
31 and 551.121, is created to read:

1 CHAPTER 551
2 SLOT MACHINES
3 551.101 Slot machine gaming authorized.--Any existing,
4 licensed pari-mutuel facility located in Miami-Dade County or
5 Broward County at the time of adoption of s. 23, Art. X of the
6 State Constitution which has conducted live racing or games
7 during calendar years 2002 and 2003 may possess slot machines
8 and conduct slot machine gaming at the location where the
9 pari-mutuel permitholder is authorized to conduct pari-mutuel
10 wagering activities pursuant to such permitholder's valid
11 pari-mutuel permit provided a majority of voters in a
12 countywide referendum have approved the possession of slot
13 machines at such facility in the respective county.
14 Notwithstanding any other provision of law, it is not a crime
15 for a person to participate in slot machine gaming at a
16 pari-mutuel facility licensed to possess and conduct slot
17 machine gaming or to participate in slot machine gaming
18 described in this chapter.
19 551.102 Definitions.--As used in this chapter, the
20 term:
21 (1) "Central control computer" means a central site
22 computer controlled and accessible by the division to which
23 all slot machines at a gaming facility communicate for the
24 purposes of auditing capacity; real-time information retrieval
25 of the details of any financial event that occurs in the
26 operation of a slot machine, including, but not limited to,
27 coin in, coin out, ticket in, ticket out, jackpots, machine
28 door openings and power failure; daily collection of taxes,
29 and remote machine activation and disabling of slot machines.
30 (2) "Designated slot machine gaming area" means the

31 areas of an eligible facility, which may include any addition,

1 alteration, or new structure located on the premises described
2 in the pari-mutuel permit issued by the division for the
3 conduct of pari-mutuel wagering, in which slot machine gaming
4 may be conducted in accordance with the provisions of this
5 chapter.
6 (3) "Distributor" means any person that sells, leases,
7 or offers, or otherwise provides, distributes, or services,
8 any slot machine or associated equipment for use or play of
9 slot machines in this state. A manufacturer may be a
10 distributor within the state.
11 (4) "Division" means the Division of Pari-mutuel
12 Wagering of the Department of Business and Professional
13 Regulation.
14 (5) "Eligible facility" means any existing licensed
15 pari-mutuel facility located in Miami-Dade County or Broward
16 County at the time of adoption of s. 23, Art. X of the State
17 Constitution which has conducted live racing or games during
18 calendar years 2002 and 2003 and has been approved by a
19 majority of voters in a countywide referendum to have slot
20 machines at such facility in the respective county.
21 (6) "Independent testing laboratory" means a
22 laboratory of national reputation which is demonstrably
23 competent and qualified to scientifically test and evaluate
24 slot machines for compliance with this chapter and to
25 otherwise perform the functions assigned to it in this
26 chapter. An independent testing laboratory shall not be owned
27 or controlled by a licensee. The use of an independent testing
28 laboratory for any purpose related to the conduct of slot
29 machine gaming by a licensee under this chapter shall be made
30 from a list of one or more laboratories approved by the
31 division.

1 (7) "Manufacturer" means any person who manufactures,
2 builds, rebuilds, fabricates, assembles, produces, programs,
3 designs, or otherwise makes modifications to any slot machine

4 or associated equipment for use or play of slot machines in
5 this state for gaming purposes. A manufacturer may be a
6 distributor within the state.
7 (8) "Progressive system" means a computerized system
8 linking slot machines in one or more licensed facilities
9 within this state and offering one or more common progressive
10 payouts based on the amounts wagered.
11 (9) "Slot machine" means any mechanical or electrical
12 contrivance, terminal, machine, or other device that, upon
13 insertion of a coin, bill, ticket, token, or similar object or
14 upon payment of any consideration whatsoever, including the
15 use of any electronic payment system except a credit card or
16 debit card, is available to play or operate, the play or
17 operation of which, whether by reason of skill or application
18 of the element of chance or both, may deliver or entitle the
19 person or persons playing or operating the contrivance,
20 terminal, machine, or other device to receive cash, billets,
21 tickets, tokens, or electronic credits to be exchanged for
22 cash or to receive merchandise or anything of value
23 whatsoever, whether the payoff is made automatically from the
24 machine or manually. A slot machine:
25 (a) May use spinning reels or video displays or both.
26 (b) May or may not dispense coins, tickets, or tokens
27 to winning patrons.
28 (c) May use an electronic credit system for receiving
29 wagers and making payouts.
30 (d) May use a progressive system.
31

1 The term includes associated equipment necessary to conduct
2 the operation of the contrivance, terminal, machine, or other
3 device. A slot machine is not a "coin-operated amusement
4 machine" as defined in s. 212.02(24), and slot machines are
5 not subject to the tax imposed by s. 212.05(1)(h).
6 (10) "Slot machine license" means a license issued by
7 the division authorizing an slot machine licensee to place and
8 operate slot machines as required by the provisions of this
9 chapter and the rules.
10 (11) "Slot machine licensee" means a pari-mutuel
11 permitholder who holds a license issued by the division
12 pursuant to this chapter which authorizes such person to
13 possess a slot machine within facilities specified in s. 23,

14 Art. X of the State Constitution and allows slot machine
15 gaming.
16 (12) "Slot machine operator" means a person employed
17 or contracted by the owner of an eligible facility to conduct
18 slot machine gaming at that eligible facility.
19 (13) "Slot machine owner" means a person who holds a
20 material interest in the slot machines.
21 (14) "Slot machine revenues" means the total of all
22 cash and property received by the slot machine licensee from
23 slot machine gaming operations less the amount of cash, cash
24 equivalents, credits, and prizes paid to winners of slot
25 machine gaming.
26 551.103 Powers and duties.--
27 (1) The division shall adopt, pursuant to the
28 provisions of ss. 120.536(1) and 120.54, all rules necessary
29 to implement, administer, and regulate slot machine gaming as
30 authorized in this chapter. Such rules shall include:
31 (a) Procedures for applying for a license and renewal

1 of a license.
2 (b) Procedures for establishing technical requirements
3 in addition to the qualifications that are necessary to
4 receive a slot machine license or slot machine occupational
5 license.
6 (c) Procedures relating to slot machine revenues,
7 including verifying and accounting for such revenues,
8 auditing, and collecting taxes and fees consistent with this
9 chapter.
10 (d) Procedures for regulating, managing, and auditing
11 the operation, financial data, and program information
12 relating to slot machines through the central control computer
13 that shall allow the division and the Florida Department of
14 Law Enforcement to audit the operation, financial data, and
15 program information of a slot machine licensee, as required by
16 the division or the Florida Department of Law Enforcement and
17 shall provide the division and the Florida Department of Law
18 Enforcement with the ability to monitor on a real-time basis
19 at any time wagering patterns, payouts, tax collection, and
20 compliance with any rules adopted by the division for the
21 regulation and control of slot machines operated under this
22 section. Such continuous and complete access on a real-time
23 basis at any time shall include the ability to immediately

24 suspend play on particular slot machines if monitoring of the
25 computer operating system indicates possible tampering or
26 manipulation of those slot machines or the entire operation if
27 the tampering or manipulation is of the computer operating
28 system itself.
29 (e) Procedures for requiring each licensee at his or
30 her own cost and expense to supply the division with a bond
31 having the penal sum not to exceed $2 million payable to the

1 Governor and his or her successors in office for the
2 licensee's first year of slot machine operations to cover
3 incidental tax collections. Any bond shall be issued by a
4 surety or sureties to be approved by the division and the
5 Chief Financial Officer, conditioned to faithfully make the
6 payments to the Chief Financial Officer in his or her capacity
7 as treasurer of the division. The licensee shall be required
8 to keep its books and records and make reports as provided in
9 this chapter and to conduct its slot machine operations in
10 conformity with this chapter and all other provisions of law.
11 The division may review the bond for adequacy and require
12 adjustments each fiscal year. Such bond shall be separate and
13 distinct from the bond required in s. 550.125.
14 (f) Procedures for requiring licensees to maintain
15 specified records and submit any data, information, record, or
16 report, including financial and income records, required by
17 this chapter or determined by the division to be necessary to
18 the proper implementation and enforcement of this chapter.
19 (g) Procedures for requiring that the payout
20 percentage of a slot machine shall be no less than 85 percent
21 per facility.
22 (2) The division shall conduct such investigations as
23 the division determines necessary to fulfill its
24 responsibilities under the provisions of this chapter.
25 (3) The division, the Department of Law Enforcement,
26 and local law enforcement agencies shall have concurrent
27 jurisdiction to investigate criminal violations of this
28 chapter and may investigate any other criminal violation of
29 law occurring on the facilities of a slot machine licensee,
30 and such investigations may be conducted in conjunction with
31 the appropriate state attorney. The division and its employees

1 and agents shall have such other law enforcement powers as
2 specified in ss. 943.04 and 943.10.
3 (4)(a) The division, the Department of Law
4 Enforcement, and local law enforcement agencies shall have
5 unrestricted access to the slot machine licensee facility at
6 all times and shall require of each slot machine licensee
7 strict compliance with the laws of this state relating to the
8 transaction of such business. The division, the Department of
9 Law Enforcement, and local law enforcement agencies:
10 1. May inspect and examine premises where slot
11 machines are offered for play.
12 2. May inspect slot machines and related equipment and
13 supplies.
14 (b) In addition, the division:
15 1. May collect taxes, assessments, fees, and
16 penalties.
17 2. May deny, revoke, suspend, or place conditions on
18 the license of a person who violates any provision of this
19 chapter or rule adopted pursuant thereto.
20 (5) The division shall revoke or suspend the license
21 of any person who is no longer qualified or who is found,
22 after receiving a license, to have been unqualified at the
23 time of application for the license.
24 (6) Nothing in this section shall be construed to:
25 (a) Prohibit the Department of Law Enforcement or any
26 law enforcement authority whose jurisdiction includes a slot
27 machine licensee facility from conducting criminal
28 investigations occurring on the facilities of the slot machine
29 licensee;
30 (b) Restrict access to the slot machine licensee
31 facility by the Department of Law Enforcement or any local law

1 enforcement authority whose jurisdiction includes the slot
2 machine licensee facility; or
3 (c) Restrict access to information and records
4 necessary to the investigation of criminal activity that is
5 contained within the slot machine licensee facility by the
6 Department of Law Enforcement or local law enforcement

7 authorities.
8 551.104 License to conduct slot machine gaming.--
9 (1) Upon application and a finding by the division
10 after investigation that the application is complete and the
11 applicant is qualified and payment of the initial license fee,
12 the division shall issue a license to conduct slot machine
13 gaming in the designated slot machine gaming area of the slot
14 machine licensee's facility. Once licensed, slot machine
15 gaming may be conducted subject to the requirements of this
16 chapter and rules adopted pursuant thereto.
17 (2) An application may be approved by the division
18 only after the voters of the county where the applicant's
19 facility is located have authorized by referendum slot
20 machines within pari-mutuel facilities in that county as
21 specified in s. 23, Art. X of the State Constitution.
22 (3) A slot machine license may be issued only to a
23 licensed pari-mutuel permitholder, and slot machine gaming may
24 be conducted only at the same facility at which the
25 permitholder is authorized under its valid pari-mutuel
26 wagering permit to conduct pari-mutuel wagering activities.
27 (4) As a condition of licensure and to maintain
28 continued authority for the conduct of slot machine gaming,
29 the slot machine licensee shall:
30 (a) Continue to be in compliance with this chapter.
31 (b) Continue to be in compliance with chapter 550,

1 where applicable, and maintain the pari-mutuel permit and
2 license in good standing pursuant to the provisions of chapter
3 550. Notwithstanding any contrary provision of law and in
4 order to expedite the operation of slot machines at eligible
5 facilities, any eligible facility shall be entitled within 60
6 days after the effective date of this act to amend its
7 2005-2006 license issued by the Division of Pari-mutuel
8 Wagering and shall be granted the requested changes in its
9 authorized performances pursuant to such amendment. The
10 Division of Pari-mutuel Wagering shall issue a new license to
11 the eligible facility to effectuate an amendment.
12 (c) Conduct no less than the greater number of live
13 races or games which were conducted at that pari-mutuel
14 facility in calendar year 2002 or calendar year 2003.
15 However, a permitholder's failure to conduct such number of
16 live races or games in any year shall be reduced by the number

17 of such races or games which cannot be conducted due to the
18 direct result of fire, war, or other disaster or event beyond
19 the ability of the permitholder to control.
20 (d)1. Upon approval of any changes relating to the
21 pari-mutuel permit by the division, be responsible for
22 providing appropriate current and accurate documentation on a
23 timely basis to the division in order to continue the slot
24 machine license in good standing.
25 2. Changes in ownership or interest of a slot machine
26 gaming license of 5 percent or more of the stock or other
27 evidence of ownership or equity in the slot machine license or
28 any parent corporation or other business entity that in any
29 way owns or controls the slot machine license shall be
30 approved by the division prior to such change, unless the
31 owner is an existing holder of that license who was previously

1 approved by the division. Changes in ownership or interest of
2 a slot machine license of less than 5 percent shall be
3 reported to the division within 20 days after the change. The
4 division may then conduct an investigation to ensure that the
5 license is properly updated to show the change in ownership or
6 interest. No reporting is required if the person is holding
7 five percent or less equity or securities of a corporate owner
8 of the slot machine licensee which has its securities
9 registered pursuant to s. 12 of the security exchange act of
10 1934, 15. U.S.C. ss. 78a-78kk, and if such corporation or
11 entity files with the United States Securities and Exchange
12 Commission the reports required by s. 13 of that act or if the
13 securities of the corporation or entity are regularly traded
14 on an established securities market in the United States.
15 (e) Allow unrestricted access and right of inspection
16 by the division to facilities of a slot machine licensee in
17 which any activity relative to the conduct of slot machine
18 gaming is conducted.
19 (f) Submit a security plan, including a slot machine
20 floor plan, location of security cameras, and the listing of
21 security equipment that is capable of observing and
22 electronically recording activities being conducted in the
23 designated slot machine gaming area.
24 (g) The slot machine licensee shall create and file
25 with the division a written policy for:
26 1. Creating opportunities to purchase from vendors in

27 this state;
28 2. Creating opportunities to purchase from minority
29 vendors;
30 3. Creating opportunities for employment of residents
31 of this state;

1 4. Creating opportunities for employment of
2 minorities; and
3 5. Ensuring that opportunities for employment are
4 offered on an equal non-discriminatory basis.
5
6 The slot machine licensee shall use the internet-based job
7 listing system of the Agency for Workforce Innovation in
8 advertising employment opportunities.
9 (5) A slot machine license is not transferable.
10 (6) A slot machine licensee shall keep and maintain
11 permanent daily records of its slot machine operation and
12 shall maintain such records for a period of not less than 5
13 years. These records shall include all financial transactions
14 and contain sufficient detail to determine compliance with the
15 requirements of this section. All records shall be available
16 for audit and inspection by the division, the Department of
17 Law Enforcement, or other law enforcement agencies during the
18 licensee's regular business hours. The information required in
19 such records shall be determined by division rule.
20 (7) A slot machine licensee shall file with the
21 division a report containing the required records of such slot
22 machine operation. A slot machine licensee shall file such
23 report monthly. The required reports shall be submitted on
24 forms prescribed by the division and shall be due at the same
25 time as the monthly pari-mutuel reports are due to the
26 Division of Pari-mutuel Wagering, and the reports shall be
27 deemed public records once filed.
28 (8) A slot machine licensee shall file with the
29 division an audit of the receipt and distribution of all slot
30 machine revenues provided by an independent certified public
31 accountant verifying compliance with all statutes and

Barcode 873066

1 regulations imposed by this chapter and the rules promulgated
2 hereunder. The audit shall include verification of compliance
3 with all statutes and regulations regarding all required
4 records of slot machine operations. Such audit shall be filed
5 within 60 days after the completion of the permitholder's
6 pari-mutuel meet.
7 (9) The division may share any information with the
8 Department of Law Enforcement or any other law enforcement
9 agency having jurisdiction over slot machine gaming or
10 pari-mutuel activities. Any law enforcement agency having
11 jurisdiction over slot machine gaming or pari-mutuel
12 activities may share any information obtained or developed by
13 it with the division.
14 551.105 Slot machine license renewal.--
15 (1) Slot machine licenses shall be renewed annually.
16 The application for renewal shall contain all revisions to the
17 information submitted in the prior year's application which is
18 necessary to maintain such information as both accurate and
19 current.
20 (2) The applicant for renewal shall attest that any
21 information changes do not affect the applicant's
22 qualifications for license renewal.
23 (3) Upon determination by the division that the
24 application for renewal is complete and qualifications have
25 been met, including payment of the renewal fee, the slot
26 machine license shall be renewed annually.
27 551.106 License fee; tax rate.--
28 (1) Upon approval of the application for a slot
29 machine license, the licensee must pay to the division a
30 license fee of $4 million. The license fee shall be paid
31 annually upon renewal of the slot machine license and shall be

Barcode 873066

1 deposited into the Pari-mutuel Wagering Trust Fund in the
2 Department of Business and Professional Regulation for the
3 regulation of slot machine gaming under this chapter. These
4 payments shall be accounted for separately for taxes or fees
5 paid pursuant to the provisions of ch. 550.
6 (b) Prior to January 1, 2006, the division shall
7 evaluate the license fee and shall make recommendations to the
8 President of the Senate and the Speaker of the House of
9 Representatives. The recommendations shall focus on the

10 optimum level of slot machine license fees or a combination of
11 fees in order to properly support the slot machine regulatory
12 program.
13 (2) TAX ON SLOT MACHINE REVENUES.
14 (a) Within each fiscal year the tax rate on slot
15 machine revenues on each facility shall be:
16 1. Thirty percent on revenue of $150 million or less;
17 2. Thirty-five percent on revenue greater than $150
18 million, but less than or equal to $300 million; and
19 3. Forty percent on all revenue greater than $300
20 million.
21 (b) The tax shall be collected on a daily basis and
22 deposited into the Pari-Mutuel Wagering Trust Fund in the
23 Department of Business and Professional Regulation for
24 immediate transfer to the Educational Enhancement Trust Fund
25 in the Department of Education. Any interest earnings on the
26 tax revenues shall also be transferred to the Educational
27 Enhancement Trust Fund.
28 (c) The division shall notify the eligible facility
29 concerning the appropriate tax rate to apply to the slot
30 machine revenues.
31 (3) PAYMENT PROCEDURES.--Tax payments shall be

1 remitted daily, as determined by rule of the division. The
2 slot machine licensee shall file a report under oath by the
3 5th day of each calendar month for all taxes remitted during
4 the preceding calendar month which shall show all slot machine
5 activities for the preceding calendar month and such other
6 information as may be required by the division.
7 (4) FAILURE TO PAY TAX; PENALTIES.--A slot machine
8 licensee who fails to make tax payments as required under this
9 section is subject to an administrative penalty of up to
10 $1,000 for each day the tax payment is not remitted. All
11 administrative penalties imposed and collected shall be
12 deposited into the Pari Mutuel Wagering Trust Fund in the
13 Department of Business and Professional Regulation. If any
14 slot machine licensee fails to pay penalties imposed by order
15 of the division under this subsection, the division may
16 suspend, revoke, or fail to renew the license of the slot
17 machine licensee.
18 (5) FAILURE TO PAY TAX; GROUNDS TO SUSPEND, REVOKE, OR
19 FAIL TO RENEW THE LICENSE.--In addition to the penalties

20 imposed under subsection (4), any willful or wanton failure by
21 a slot machine licensee to make payments of the tax
22 constitutes sufficient grounds for the division to suspend,
23 revoke, or fail to renew the license of the slot machine
24 licensee.
25 (6) SUBMISSION OF FUNDS.--The division may require
26 slot machine licensees to remit taxes, fees, fines, and
27 assessments by electronic funds transfer.
28 551.107 Occupational license required; application;
29 fee.--
30 (1) The individuals and entities that are licensed
31 under this section require heightened state scrutiny,

1 including the submission by the individual licensees or
2 persons associated with the entities described in this chapter
3 of fingerprints for a criminal records check.
4 (2)(a) The following licenses shall be issued to
5 persons or entities having access to the designated slot
6 machine gaming area or to persons who, by virtue of the
7 position they hold, might be granted access to these areas or
8 to any other person or entity in one of the following
9 categories:
10 1. General occupational licenses for general
11 employees, food service, maintenance, and other similar
12 service and support employees having access to the designated
13 slot machine gaming area. Service and support employees with a
14 current pari-mutuel occupational license issued pursuant to
15 chapter 550 and a current background check are not required to
16 submit to an additional background check for a slot machine
17 occupational license as long as the pari-mutuel occupational
18 license remains in good standing.
19 2. Professional occupational licenses for any person,
20 proprietorship, partnership, corporation, or other entity that
21 is authorized by a slot machine licensee to manage, oversee,
22 or otherwise control daily operations as a slot machine
23 manager, floor supervisor, security personnel, or any other
24 similar position of oversight of gaming operations.
25 3. Business occupational licenses for any slot machine
26 management company or slot machine business associated with
27 slot machine gaming or a person who manufactures, distributes,
28 or sells slot machines, slot machine paraphernalia, or other
29 associated equipment to slot machine licensees or any person

30 not an employee of the slot machine licensee who provides
31 maintenance, repair, or upgrades or otherwise services a slot

1 machine or other slot machine equipment.
2 (b) Slot machine occupational licenses are not
3 transferable.
4 (3) A slot machine licensee shall not employ or
5 otherwise allow a person to work at a slot machine facility
6 unless such person holds a valid occupational license. A slot
7 machine licensee shall not contract or otherwise do business
8 with a business required to hold a slot machine occupational
9 license unless the business holds such a license. A slot
10 machine licensee shall not employ or otherwise allow a person
11 to work in a supervisory or management professional level at a
12 slot machine facility unless such person holds a valid
13 occupational license.
14 (4)(a) A person seeking a slot machine occupational
15 license, or renewal thereof, shall make application on forms
16 prescribed by the division and include payment of the
17 appropriate application fee. Initial and renewal applications
18 for slot machine occupational licenses shall contain all the
19 information the division, by rule, may determine is required
20 to ensure eligibility.
21 (b) The division shall establish, by rule, a schedule
22 for the annual renewal of slot machine occupational licenses.
23 (c) Pursuant to rules adopted by the division, any
24 person may apply for and, if qualified, be issued an
25 occupational license valid for a period of 3 years upon
26 payment of the full occupational license fee for each of the 3
27 years for which the license is issued. The occupational
28 license shall be valid during its specified term at any slot
29 machine facility where slot machine gaming is authorized to be
30 conducted.
31 (d) The slot machine occupational license fee for

1 initial application and annual renewal shall be determined by
2 rule of the division but shall not exceed $50 for a general or

3 professional occupational license for an employee of the slot
4 machine licensee or $1,000 for a business occupational license
5 for nonemployees of the licensee providing goods or services
6 to the slot machine licensee. License fees for general
7 occupational licensees shall be paid for by the slot machine
8 licensee. Failure to pay the required fee shall be grounds for
9 disciplinary action by the division against the slot machine
10 licensee but shall not be considered a violation of this
11 chapter or rules of the division by the general occupational
12 licensee or a prohibition against the initial issuance or the
13 renewal of the general occupational license.
14 (5) If the state gaming commission or other similar
15 regulatory authority of another state or jurisdiction extends
16 to the division reciprocal courtesy to maintain disciplinary
17 control, the division may:
18 (a) Deny an application for or revoke, suspend, or
19 place conditions or restrictions on a license of a person or
20 entity who has been refused a license by any other state
21 gaming commission or similar authority; or
22 (b) Deny an application for or suspend or place
23 conditions on a license of any person or entity who is under
24 suspension or has unpaid fines in another jurisdiction.
25 (6)(a) The division may deny, suspend, revoke, or
26 declare ineligible any occupational license if the applicant
27 for or holder thereof has violated the provisions of this
28 chapter or the rules of the division governing the conduct of
29 persons connected with slot machine gaming. In addition, the
30 division may deny, suspend, revoke, or declare ineligible any
31 occupational license if the applicant for such license has

1 been convicted in this state, in any other state, or under the
2 laws of the United States of a capital felony, a felony, or an
3 offense in any other state which would be a felony under the
4 laws of this state involving arson; trafficking in, conspiracy
5 to traffic in, smuggling, importing, conspiracy to smuggle or
6 import, or delivery, sale, or distribution of a controlled
7 substance; or a crime involving a lack of good moral
8 character, or has had a slot machine gaming license revoked by
9 this state or any other jurisdiction for an offense related to
10 slot machine gaming.
11 (b) The division may deny, declare ineligible, or
12 revoke any occupational license if the applicant for such

13 license or the licensee has been convicted of a felony or
14 misdemeanor in this state, in any other state, or under the
15 laws of the United States, if such felony or misdemeanor is
16 related to gambling or bookmaking as contemplated in s.
17 849.25.
18 (7) Fingerprints for all slot machine occupational
19 license applications shall be taken in a manner approved by
20 the division and shall be submitted to the Department of Law
21 Enforcement and the Federal Bureau of Investigation for a
22 level II criminal records check upon initial application and
23 every 5 years thereafter. All persons as specified in s.
24 550.1815(1)(a), or employed by or working within a licensed
25 premise, excluding division employees and law enforcement
26 officers assigned by their employing agencies to work within
27 the premises as part of their official duties, are required to
28 not be convicted of any disqualifying criminal offenses as
29 established by division rule. To facilitate the required
30 review of criminal history information, each person listed in
31 this subsection is required to submit fingerprints to the

1 division. The division shall forward the fingerprints to the
2 Department of Law Enforcement for state processing. The
3 Department of Law Enforcement shall forward the fingerprints
4 to the Federal Bureau of Investigation for national
5 processing.
6 (a) Fingerprints shall be taken in a manner approved
7 by the division and shall be submitted electronically to the
8 Department of Law Enforcement and the Federal Bureau of
9 Investigation for a criminal records check upon initial
10 taking, or as required thereafter by rule of the division, and
11 every 5 years thereafter. Licensees are required to provide
12 necessary equipment approved by the Department of Law
13 Enforcement to facilitate such electronic submission. The
14 division may by rule require annual criminal history record
15 checks of all persons required to submit to the
16 fingerprint-based criminal records check. The division
17 requirements under this subsection shall be instituted in
18 consultation with the Department of Law Enforcement.
19 (b) The cost of processing fingerprints and conducting
20 a records check shall be borne by the licensee or the person
21 being checked. The Department of Law Enforcement may invoice
22 the division for the fingerprints submitted each month.

23 (c) Beginning February 1, 2006, all fingerprints
24 submitted to the Department of Law Enforcement and required by
25 this section shall be retained by the Department of Law
26 Enforcement in a manner provided by rule of the Department of
27 Law Enforcement and entered into the statewide automated
28 fingerprint identification system as authorized by s.
29 943.05(2)(b). Such fingerprints shall thereafter be available
30 for all purposes and uses authorized for arrest fingerprint
31 cards entered into the statewide automated fingerprint

1 identification system pursuant to s. 943.051.
2 (d) Beginning February 1, 2006, the Department of Law
3 Enforcement shall search all arrest fingerprints received
4 under s. 943.051 against the fingerprints retained in the
5 statewide automated fingerprint identification system under
6 paragraph (c). Any arrest record that is identified with the
7 retained fingerprints of a person subject to the criminal
8 history screening requirements of this section shall be
9 reported to the division. Each racetrack or fronton is
10 required to participate in this search process by payment of
11 an annual fee to the division which shall forward the payment
12 to the Department of Law Enforcement. The division shall
13 inform the Department of Law Enforcement of any change in the
14 license status of licensees whose fingerprints are retained
15 under subparagraph (c). The amount of the annual fee to be
16 imposed upon each racetrack or fronton for performing these
17 searches and the procedures for the retention of licensee
18 fingerprints and the dissemination of search results shall be
19 established by rule of the Department of Law Enforcement. The
20 fee shall be borne by the person fingerprinted or the
21 licensee.
22 (e) Every 5 years following issuance of a license or
23 upon conducting a criminal history check as required herein,
24 each person who is so licensed or who was so checked must meet
25 the screening requirements as established by the division
26 rule, at which time the division shall request the Department
27 of Law Enforcement to forward the fingerprints to the Federal
28 Bureau of Investigation for a criminal records check. If, for
29 any reason following initial licensure or criminal history
30 check, the fingerprints of a person who is licensed or who was
31 checked are not retained by the Department of Law Enforcement

1 as provided in this section, the person must file a complete
2 set of fingerprints with the division. Upon submission of
3 fingerprints for this purpose, the division shall request the
4 Department of Law Enforcement to forward the fingerprints to
5 the Federal Bureau of Investigation for a criminal records
6 check, and the fingerprints shall be retained by the
7 Department of Law Enforcement as authorized herein. The cost
8 of the state and national criminal history check required
9 herein shall be borne by the licensee or the person
10 fingerprinted. Under penalty of perjury, each person who is
11 licensed or who is checked as required by this section must
12 agree to inform the division within 48 hours if he or she is
13 convicted of any disqualifying offense while he or she is so
14 licensed.
15 (8) All moneys collected pursuant to this section
16 shall be deposited into the Pari-mutuel Wagering Trust Fund.
17 551.108 Prohibited relationships.--
18 (1) A person employed by or performing any function on
19 behalf of the division shall not:
20 (a) Be an officer, director, owner, or employee of any
21 person or entity licensed by the division.
22 (b) Have or hold any interest, direct or indirect, in
23 or engage in any commerce or business relationship with any
24 person licensed by the division.
25 (2) A manufacturer or distributor of slot machines
26 shall not enter into any contract with a slot machine licensee
27 which provides for any revenue sharing of any kind or nature
28 which is, directly or indirectly, calculated on the basis of a
29 percentage of slot machine revenues. Any maneuver, shift, or
30 device whereby this provision is violated shall be a violation
31 of this chapter and shall render any such agreement void.

1 (3) A manufacturer or distributor of slot machines or
2 any equipment necessary for the operation of slot machines or
3 an officer, director, or employee of any such manufacturer or
4 distributor shall not have any ownership or financial interest
5 in a slot machine license or in any business owned by the slot

6 machine licensee.
7 (4) No licensee or any entity conducting business on
8 or within a licensed slot operation shall employ any employee
9 of a law enforcement or regulatory agency that has
10 jurisdiction over the licensed premises in an off-duty or
11 secondary employment capacity for work within any enclosure or
12 area containing a slot machine or in any restricted area that
13 supports slot machine operations that requires an occupational
14 license to enter. If approved by the employee's primary
15 employing agency, off-duty or secondary employment not
16 prohibited by this section may be permitted.
17 551.109 Prohibited acts.--
18 (1) Except as otherwise provided by law and in
19 addition to any other penalty, any person who intentionally
20 makes or causes to be made or aids, assists, or procures
21 another to make a false statement in any report, disclosure,
22 application, or any other document required under this chapter
23 or any rule adopted under this chapter is subject to an
24 administrative fine or civil penalty of up to $10,000.
25 (2) Except as otherwise provided by law and in
26 addition to any other penalty, any person who possesses a slot
27 machine without the license required by this chapter or who
28 possesses a slot machine at any location other than at the
29 slot machine licensee facility is subject to an administrative
30 fine or civil penalty of up to $10,000.
31 (3) Any person who intentionally excludes, or takes

1 any action in an attempt to exclude, anything or its value
2 from the deposit, counting, collection, or computation of
3 revenues from slot machine activity or any person who by trick
4 or sleight of hand performance, or by a fraud or fraudulent
5 scheme, or device, for himself or herself or for another, wins
6 or attempts to win money or property or a combination thereof
7 or reduces a losing wager or attempts to reduce a losing wager
8 in connection with slot machine gaming commits a felony of the
9 third degree, punishable as provided in s. 775.082, s.
10 775.083, or. 775.084.
11 (4) Any person who, with intent to manipulate the
12 outcome, payoff, or operation of a slot machine by physical
13 tampering, or by use of any object, instrument, or device,
14 whether mechanical, electrical, magnetic, or involving other
15 means, manipulates the outcome, payoff, or operation of a slot

16 machine commits a felony of the third degree, punishable as
17 provided in s. 775.082, s. 775.083, or s. 775.084.
18 (5) Theft of any slot machine proceeds or of property
19 belonging to the slot machine operator or eligible facility by
20 an employee of the operator or facility or by an employee of a
21 person, firm, or entity that has contracted to provide
22 services to the establishment constitutes a felony of the
23 third degree, punishable as provided in s. 775.082 or s.
24 775.083.
25 (6)(a) Any law enforcement officer or slot machine
26 operator who has probable cause to believe that a violation of
27 subsections (3),(4), or (5) has been committed by a person and
28 that the officer or operator can recover the lost proceeds
29 from such activity by taking the person into custody may, for
30 the purpose of attempting to effect such recovery or for
31 prosecution, take the person into custody on the premises and

1 detain the person in a reasonable manner and for a reasonable
2 period of time. If the operator takes the person into custody,
3 a law enforcement officer shall be called to the scene
4 immediately. The taking into custody and detention by a law
5 enforcement officer or slot machine operator, if done in
6 compliance with this subsection, does not render such law
7 enforcement officer or slot machine operator criminally or
8 civilly liable for false arrest, false imprisonment, or
9 unlawful detention.
10 (b) Any law enforcement officer may arrest, either on
11 or off the premises and without warrant, any person if there
12 is probable cause to believe that person has violated
13 subsections (3),(4), or (5).
14 (c) Any person who resists the reasonable effort of a
15 law enforcement officer or slot machine operator to recover
16 the lost slot machine proceeds that the law enforcement
17 officer or slot machine operator had probable cause to believe
18 had been stolen from the eligible facility, and who is
19 subsequently found to be guilty of violating subsections
20 (3),(4), or (5), commits a misdemeanor of the first degree,
21 punishable as provided in s. 775.082 or s. 775.083, unless
22 such person did not know or did not have reason to know that
23 the person seeking to recover the lost proceeds was a law
24 enforcement officer or slot machine operator. For purposes of
25 this section, the charge of theft and the charge of resisting

26 apprehension may be tried concurrently.
27 (7) All penalties imposed and collected must be
28 deposited into the Pari-mutuel Wagering Trust Fund in the
29 department.
30 551.110 Legal devices.--Notwithstanding any provision
31 of law to the contrary, no slot machine manufactured, sold,

1 distributed, possessed, or operated according to the
2 provisions of this chapter shall be considered unlawful.
3 551.111 Exclusions of certain persons.--
4 (1) In addition to the power to exclude certain
5 persons from any facility of a slot machine licensee in this
6 state, the division may exclude any person from any facility
7 of a slot machine licensee in this state for conduct that
8 would constitute, if the person were a licensee, a violation
9 of this chapter or the rules of the division. The division may
10 exclude from any facility of a slot machine licensee any
11 person who has been ejected from a facility of a slot machine
12 licensee in this state or who has been excluded from any
13 facility of a slot machine licensee or gaming facility in
14 another state by the governmental department, agency,
15 commission, or authority exercising regulatory jurisdiction
16 over the gaming in such other state.
17 (2) This section shall not be construed to abrogate
18 the common law right of a slot machine licensee to exclude a
19 patron absolutely in this state.
20 (3) The division may authorize any person who has been
21 ejected or excluded from a facility of a slot machine licensee
22 in this state or another state to attend a facility of a slot
23 machine licensee in this state upon a finding that the
24 attendance of such person at a facility of a slot machine
25 licensee would not be adverse to the public interest or to the
26 integrity of the industry; however, this section shall not be
27 construed to abrogate the common law right of a slot machine
28 licensee to exclude a patron absolutely in this state.
29 551.112 Minors prohibited from playing slot
30 machines.--
31 (1) A slot machine licensee or agent or employee of a

1 slot machine licensee shall not:
2 (a) Allow a person who has not attained 21 years of
3 age to play any slot machine.
4 (b) Allow a person who has not attained 21 years of
5 age access to the designated slot machine gaming area of a
6 facility of a slot machine licensee.
7 (c) Allow a person who has not attained 21 years of
8 age to be employed in any position allowing or requiring
9 access to the designated slot machine gaming area of a
10 facility of a slot machine licensee.
11 (2) No person licensed under this chapter, or any
12 agent or employee of a licensee under this chapter, shall
13 intentionally allow a person who has not attained 21 years of
14 age to play or operate a slot machine or have access to the
15 designated slot machine area of a facility of a slot machine
16 licensee.
17 (3) The eligible facility shall post clear and
18 conspicuous signage within the designated slot machine gaming
19 areas that states the following:
20 THE PLAYING OF SLOT MACHINES BY PERSONS
21 UNDER THE AGE OF 21 IS AGAINST FLORIDA LAW
22 (SECTION 551.112, FLORIDA STATUTES).
23 PROOF OF AGE MAY BE REQUIRED AT ANYTIME
24 A PERSON IS WITHIN THIS AREA.
25 551.113 Designated slot machine gaming areas.--
26 (1) A slot machine licensee may make available for
27 play slot machines within its designated slot machine gaming
28 areas.
29 (2) A slot machine licensee shall not allow any
30 automated teller machine or similar device designed to provide
31 credit or dispense cash to be located on the property of the

1 facilities of the slot machine licensee.
2 (3) A slot machine licensee shall not make any loan or
3 provide credit or advance cash to enable a person to play a
4 slot machine.
5 (4) The slot machine licensee shall display
6 pari-mutuel races or games within the designated slot machine
7 gaming areas and offer within the designated slot machine
8 gaming areas the ability for patrons to engage in pari-mutuel

9 wagering on live, intertrack, and simulcast races conducted or
10 offered to patrons of the eligible facility.
11 (5) No complimentary alcoholic beverages shall be
12 served to patrons within the designated slot machine gaming
13 areas.
14 (6) The slot machine licensee shall offer training to
15 employees on responsible gaming and shall work with the
16 compulsive or addictive gambling prevention program to
17 recognize problem gaming situations and to implement
18 responsible gaming programs and practices.
19 (7) Each slot machine approved for use in this state
20 shall be protected against manipulation or tampering to affect
21 the random probabilities of winning plays, and the centralized
22 computer management system shall enable the division or the
23 Department of Law Enforcement to suspend play upon suspicion
24 of any manipulation or tampering. When play has been suspended
25 on any slot machine, the division or the Department of Law
26 Enforcement may examine any slot machine to determine whether
27 the machine has been tampered with or manipulated and whether
28 the machine should be returned to operation.
29 (8) No outcome of play or continuation of play may be
30 manipulated, through programming or otherwise, to display a
31 result that appears to be a near win, gives the impression

1 that the player is getting close to a win, or in any way gives
2 a false impression that the chance to win is improved by
3 another play; however, this subsection does not apply to
4 general promotional enticements such as graphic displays and
5 sound effects that do not falsely imply that the chance of
6 winning improves by continued play.
7 (9) The division shall require the posting of signs in
8 the designated slot machine gaming areas warning of the risks
9 and dangers of gambling, showing the odds of winning, and
10 informing patrons of the toll-free telephone number available
11 to provide information and referral services regarding
12 compulsive or problem gambling.
13 (10) The division shall establish standards of
14 approval for the physical layout and construction of any
15 facility or building devoted to slot machine operations. The
16 standards shall require that the slot machine gaming area be
17 connected to and contiguous within the operation of the live
18 gaming facility. It is the intent of the Legislature that

19 each facility:
20 (a) Possess superior consumer amenities and
21 conveniences to encourage and attract the patronage of
22 tourists and other visitors from across the region, state, and
23 nation.
24 (b) Have adequate motor vehicle parking facilities to
25 satisfy patron requirements.
26 (c) Have a physical layout and location that
27 facilitates access to the pari-mutuel portion of the facility.
28 (11) The permitholder shall provide adequate office
29 space at no cost to the division and the Department of Law
30 Enforcement for the oversight of slot machines operations. The
31 division shall adopt rules setting the criteria for adequate

1 space, configuration, and location and needed electronic and
2 technological requirements for office space required by this
3 subsection.
4 551.114 Days and hours of operation.--Slot machine
5 gaming areas may be open 365 days a year. The slot machine
6 gaming areas may be open for a maximum of 16 hours per day.
7 551.116 Penalties.--The division may revoke or suspend
8 any license issued under this chapter upon the willful
9 violation by the licensee of any provision of this chapter or
10 of any rule adopted under this chapter. In lieu of suspending
11 or revoking a license, the division may impose a civil penalty
12 against the licensee for a violation of this chapter or any
13 rule adopted by the division. Except as otherwise provided in
14 this chapter, the penalty so imposed may not exceed $1,000 for
15 each count or separate offense. All penalties imposed and
16 collected must be deposited into the Pari-mutuel Wagering
17 Trust Fund in the department.
18 551.117 Compulsive or addictive gambling prevention
19 program.--The division may, subject to competitive bidding,
20 contract for provision of services related to the prevention
21 of compulsive and addictive gambling. The terms of any
22 contract for the provision of such services shall include
23 accountability standards that must be met by any private
24 provider. The failure of any private provider to meet any
25 material terms of the contract, including the accountability
26 standards, shall constitute a breach of contract or grounds
27 for nonrenewal. The division may consult with the Department
28 of the Lottery in the development of the program and the

29 development and analysis of any procurement for contractual
30 services for the compulsive or addictive gambling prevention
31 program. The compulsive or addictive gambling prevention

1 program shall be funded from the annual nonrefundable
2 regulatory fee provided for in s. 551.106.
3 551.118 Catering license.--A slot machine licensee is
4 entitled to a caterer's license pursuant to s. 565.02 on days
5 in which the pari-mutuel facility is open to the public for
6 slot machine game play as authorized by this chapter.
7 551.119 Rulemaking.--
8 (1) The division may adopt rules pursuant to ss.
9 120.536(1) and 120.54 to implement the provisions of this
10 chapter.
11 (2) In order to expedite the licensing requirements of
12 this chapter, the division may adopt emergency rules pursuant
13 to s. 120.54. The Legislature finds that such emergency
14 rulemaking power is necessary for the preservation of the
15 rights and welfare of the people in order to provide
16 additional funds to benefit the public. The Legislature
17 further finds that the unique nature of legalized gambling
18 requires, from time to time, that the division respond as
19 quickly as is practicable to changes in the marketplace and
20 changes in technology that may affect legalized gambling
21 conducted at pari-mutuel facilities in this state. Therefore,
22 in adopting such emergency rules, the division need not make
23 the findings required by s. 120.54(4)(a).
24 551.120 Conduct of referendum election for slot
25 machines.--
26 (1) Any person who possesses the qualifications
27 prescribed by s. 23, Art. X, State Constitution may, apply to
28 the division for a license to conduct slot machine operations
29 under this chapter. Applications for a license to conduct slot
30 machine operations shall be subject to the provisions of this
31 chapter. Such license does not authorize any operation of slot

1 machines until approved by the majority of electors

2 participating in a referendum election in the county approving
3 the conduct of slot machine activities.
4 (2) Each referendum held under the provisions of this
5 section shall be held in accordance with the provisions of
6 chapter 97-106, except as otherwise provided in this chapter.
7 The expense of such referendum shall be borne equally by all
8 eligible facilities. For purposes of this section, the
9 expense of conducting a referendum is the incremental expense
10 in excess of routine operating expenses that are incurred by
11 the governing body, the supervisor of elections, and other
12 essential governmental entities in conducting the election.
13 551.121 Elections for ratification of slot machine
14 licenses.--
15 (1) The question as to whether slot machine operations
16 shall be approved or rejected pursuant to s. 23, Art. X, State
17 Constitution shall be submitted to the electors for approval
18 or rejection at a special, primary, or general election. Any
19 eligible facility may present a written application to the
20 governing body of the county that requests a referendum
21 election in that county pursuant to s. 551.120 and this
22 section. Within 30 days of receipt of the application the
23 governing body shall order a special referendum election. Set
24 election shall be scheduled for no sooner than 21 days nor
25 more than 90 days from the date on which it is ordered.
26 Provided, the referendum election will be held in conjunction
27 with the primary election if the application is received
28 within not more than 90 nor less than 60 days of such election
29 or in conjunction with the general election if the application
30 is received not more than 90 nor less than 60 days prior to
31 that election. The governing body shall give notice of the

1 referendum election by publishing notice once each week for 2
2 consecutive weeks in one or more newspapers of general
3 circulation in the county.
4 (2)(a) If the majority of the electors voting on the
5 questions of ratification or rejection of the slot machine
6 operations vote for such ratification, slot machine operations
7 shall become effective immediately, and the eligible facility
8 thereof may conduct slot machine operations upon complying
9 with the other provisions of this chapter. If the majority of
10 electors voting on the question of ratification or rejection
11 of any slot machine operations ratify the slot machine

12 operations, such eligible facility shall be eligible for
13 licensing, and the licensee shall pay to the division within
14 10 days the license fee set out in this chapter.
15 (b) If the majority of electors voting on the question
16 of ratification or rejection of any slot machine operations
17 reject the ratification of the slot machine operations, such
18 eligible facility shall not be entitled to conduct slot
19 machine operations. The governing board of the county shall
20 immediately certify the results of the election to the
21 division.
22 Section 3. Office of Program Policy Analysis and
23 Government Accountability; Program Evaluation.--
24 (a) Before January 1, 2008, and annually thereafter,
25 the Office of Program Policy Analysis and Government
26 Accountability shall conduct a performance audit of the
27 division, and slot machine licensees relating to the
28 provisions of this chapter. The audit shall assess the
29 implementation and outcomes of activities under this chapter.
30 At a minimum, the audit shall address:
31 1. Performance of the slot machine licensees in

1 operating slot machine gaming and complying with the rules
2 under this chapter.
3 2. Economic activity generated through slot machine
4 operations by the slot machine licensees.
5 3. The expenditure of slot machine taxes and whether
6 these expenditures supplemented or supplanted public eduction
7 dollars.
8 (b) A report of each audit's findings and
9 recommendations shall be submitted to the Governor, the
10 President of the Senate, and the Speaker of the House of
11 Representatives.
12
13 Section 4. Section 849.15, Florida Statutes, is
14 amended to read:
15 849.15 Manufacture, sale, possession, etc., of
16 coin-operated devices prohibited.--
17 (1) It is unlawful:
18 (a)~~(1)~~ To manufacture, own, store, keep, possess,
19 sell, rent, lease, let on shares, lend or give away,
20 transport, or expose for sale or lease, or to offer to sell,
21 rent, lease, let on shares, lend or give away, or permit the

22 operation of, or for any person to permit to be placed,
23 maintained, or used or kept in any room, space, or building
24 owned, leased or occupied by the person or under the person's
25 management or control, any slot machine or device or any part
26 thereof; or
27 (b) ~~(2)~~ To make or to permit to be made with any person
28 any agreement with reference to any slot machine or device,
29 pursuant to which the user thereof, as a result of any element
30 of chance or other outcome unpredictable to him or her, may
31 become entitled to receive any money, credit, allowance, or

1 thing of value or additional chance or right to use such
2 machine or device, or to receive any check, slug, token or
3 memorandum entitling the holder to receive any money, credit,
4 allowance or thing of value.
5 (2) Pursuant to section 2 of that certain chapter of
6 the Congress of the United States entitled "An act to prohibit
7 transportation of gaming devices in interstate and foreign
8 commerce", approved January 2, 1951, being c. 1194, 64 Stat.
9 1134, and also designated as 15 U.S.C. 1171-1177, the State of
10 Florida, acting by and through its duly elected and qualified
11 members of its Legislature, does hereby in this section, and
12 in accordance with and in compliance with the provisions of
13 section 2 of such chapter of Congress, declare and proclaim
14 that any county of the State of Florida, within which slot
15 machine gaming is authorized pursuant to chapter 551 is exempt
16 from the provisions of section 2 of that certain chapter of
17 the Congress of the United States entitled "An act to prohibit
18 transportation of gaming devices in interstate and foreign
19 commerce", designated U.S.C. 1171-1177, approved January 2,
20 1951. All shipments of gaming devices, including slot
21 machines, into any county of this state within which slot
22 machine gaming is authorized pursuant to chapter 551, the
23 registering, recording, and labeling of which have been duly
24 done by the manufacturer or distributor thereof in accordance
25 with sections 3 and 4 of that certain chapter of the Congress
26 of the United States entitled, "An act to prohibit
27 transportation of gaming devices in interstate and foreign
28 commerce", approved January 2, 1951, being c. 1194, 64 Stat.
29 1134, and also designated as 15 U.S.C. 1171-1177, shall be
30 deemed legal shipments thereof into any such county provided
31 the destination of such shipments is to a eligible facility as

1 defined s. 551.102.
2 Section 5. Subsections (1) and (2) of section 895.02,
3 Florida Statutes, are amended to read:
4 895.02 Definitions.--As used in ss. 895.01-895.08, the
5 term:
6 (1) "Racketeering activity" means to commit, to
7 attempt to commit, to conspire to commit, or to solicit,
8 coerce, or intimidate another person to commit:
9 (a) Any crime which is chargeable by indictment or
10 information under the following provisions of the Florida
11 Statutes:
12 1. Section 210.18, relating to evasion of payment of
13 cigarette taxes.
14 2. Section 403.727(3)(b), relating to environmental
15 control.
16 3. Section 409.920 or s. 409.9201, relating to
17 Medicaid fraud.
18 4. Section 414.39, relating to public assistance
19 fraud.
20 5. Section 440.105 or s. 440.106, relating to workers'
21 compensation.
22 6. Section 465.0161, relating to distribution of
23 medicinal drugs without a permit as an Internet pharmacy.
24 7. Sections 499.0051, 499.0052, 499.00535, 499.00545,
25 and 499.0691, relating to crimes involving contraband and
26 adulterated drugs.
27 8. Part IV of chapter 501, relating to telemarketing.
28 9. Chapter 517, relating to sale of securities and
29 investor protection.
30 10. Section 550.235, s. 550.3551, or s. 550.3605,
31 relating to dogracing and horseracing.

1 11. Chapter 550, relating to jai alai frontons.
2 12. Section 551.109, relating to slot machine gaming.
3 13.~~12.~~ Chapter 552, relating to the manufacture,
4 distribution, and use of explosives.

5 14.~~13.~~ Chapter 560, relating to money transmitters, if
6 the violation is punishable as a felony.
7 15.~~14.~~ Chapter 562, relating to beverage law
8 enforcement.
9 16.~~15.~~ Section 624.401, relating to transacting
10 insurance without a certificate of authority, s.
11 624.437(4)(c)1., relating to operating an unauthorized
12 multiple-employer welfare arrangement, or s. 626.902(1)(b),
13 relating to representing or aiding an unauthorized insurer.
14 17.~~16.~~ Section 655.50, relating to reports of currency
15 transactions, when such violation is punishable as a felony.
16 18.~~17.~~ Chapter 687, relating to interest and usurious
17 practices.
18 19.~~18.~~ Section 721.08, s. 721.09, or s. 721.13,
19 relating to real estate timeshare plans.
20 20.~~19.~~ Chapter 782, relating to homicide.
21 21.~~20.~~ Chapter 784, relating to assault and battery.
22 22.~~21.~~ Chapter 787, relating to kidnapping.
23 23.~~22.~~ Chapter 790, relating to weapons and firearms.
24 24.~~23.~~ Section 796.03, s. 796.035, s. 796.04, s.
25 796.045, s. 796.05, or s. 796.07, relating to prostitution and
26 sex trafficking.
27 25.~~24.~~ Chapter 806, relating to arson.
28 26.~~25.~~ Section 810.02(2)(c), relating to specified
29 burglary of a dwelling or structure.
30 27.~~26.~~ Chapter 812, relating to theft, robbery, and
31 related crimes.

1 28.~~27.~~ Chapter 815, relating to computer-related
2 crimes.
3 29.~~28.~~ Chapter 817, relating to fraudulent practices,
4 false pretenses, fraud generally, and credit card crimes.
5 30.~~29.~~ Chapter 825, relating to abuse, neglect, or
6 exploitation of an elderly person or disabled adult.
7 31.~~30.~~ Section 827.071, relating to commercial sexual
8 exploitation of children.
9 32.~~31.~~ Chapter 831, relating to forgery and
10 counterfeiting.
11 33.~~32.~~ Chapter 832, relating to issuance of worthless
12 checks and drafts.
13 34.~~33.~~ Section 836.05, relating to extortion.
14 35.~~34.~~ Chapter 837, relating to perjury.

15 36.~~35.~~ Chapter 838, relating to bribery and misuse of
16 public office.
17 37.~~36.~~ Chapter 843, relating to obstruction of
18 justice.
19 38.~~37.~~ Section 847.011, s. 847.012, s. 847.013, s.
20 847.06, or s. 847.07, relating to obscene literature and
21 profanity.
22 39.~~38.~~ Section 849.09, s. 849.14, s. 849.15, s.
23 849.23, or s. 849.25, relating to gambling.
24 40.~~39.~~ Chapter 874, relating to criminal street gangs.
25 41.~~40.~~ Chapter 893, relating to drug abuse prevention
26 and control.
27 42.~~41.~~ Chapter 896, relating to offenses related to
28 financial transactions.
29 43.~~42.~~ Sections 914.22 and 914.23, relating to
30 tampering with a witness, victim, or informant, and
31 retaliation against a witness, victim, or informant.

1 44.~~43.~~ Sections 918.12 and 918.13, relating to
2 tampering with jurors and evidence.
3 (b) Any conduct defined as "racketeering activity"
4 under 18 U.S.C.. s. 1961(1).
5 (2) "Unlawful debt" means any money or other thing of
6 value constituting principal or interest of a debt that is
7 legally unenforceable in this state in whole or in part
8 because the debt was incurred or contracted:
9 (a) In violation of any one of the following
10 provisions of law:
11 1. Section 550.235, s. 550.3551, or s. 550.3605,
12 relating to dogracing and horseracing.
13 2. Chapter 550, relating to jai alai frontons.
14 3. Section 551.109, relating to slot machine gaming.
15 4.~~3.~~ Chapter 687, relating to interest and usury.
16 5.~~4.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23,
17 or s. 849.25, relating to gambling.
18 (b) In gambling activity in violation of federal law
19 or in the business of lending money at a rate usurious under
20 state or federal law.
21 Section 6. The Legislature has exclusive authority
22 over the conduct of all wagering occurring at a slot machine
23 facility in this state. Only the division and other authorized
24 state agencies shall administer chapter 551, Florida Statutes,

25 and regulate the slot machine gaming industry, including
26 operation of slot machine facilities, games, slot machines,
27 and centralized computer management systems authorized in
28 chapter 551 and the rules adopted by the division.
29 Section 7. Any tribal-state compact relating to slot
30 machine or other class III gaming activities which is entered
31 into by an Indian tribe in this state and the Governor

1 pursuant to the Indian Gaming Regulatory Act, 25 U.S.C.. ss.
2 2701 et seq., must be conditioned upon ratification by the
3 Legislature.
4 Section 8. (1) Fifty-four full-time equivalent
5 positions are authorized and the sums of $3,798,199 in
6 recurring and $3,951,431 in nonrecurring funds are hereby
7 appropriated from the Pari-mutuel Wagering Trust Fund in the
8 Department of Business and Professional Regulation for the
9 purpose of carrying out all regulatory activities provided
10 herein. The Executive Office of the Governor shall place
11 these funds and positions in reserve until such time as the
12 Department of Business and Professional Regulation submits an
13 expenditure plan for approval to the Executive Office of the
14 Governor, and the chair and vice chair of the Legislative
15 Budget Commission in accordance with the provisions of section
16 216.177, Florida Statutes.
17 (2) The sums of $2,634,349 in recurring and $1,814,916
18 in nonrecurring funds are hereby appropriated from the
19 Pari-mutuel Wagering Trust Fund in the Department of Business
20 and Professional Regulation for transfer to the Department of
21 Law Enforcement for the purpose of investigations,
22 intelligence gathering, background investigations, and any
23 other responsibilities as provided for herein. Fifty-seven
24 full-time equivalent positions are authorized and the sums of
25 $2,634,349 in recurring and $1,814,916 in nonrecurring funds
26 are hereby appropriated from the Operating Trust Fund in the
27 Department of Law Enforcement for the purpose of
28 investigations, intelligence gathering, background
29 investigations, an any other responsibilities as provided for
30 herein. The Executive Office of the Governor shall place
31 these funds and positions in reserve until such time as the

1 Department of Law Enforcement submits an expenditure plan for
2 approval to the Executive Office of the Governor and the chair
3 and vice chair of the Legislative Budget Commission in
4 accordance with the provisions of section 216.177, Florida
5 Statutes.
6 (4) The sum of $1 million is hereby appropriated from
7 the Pari-mutuel Wagering Trust Fund from revenues received
8 pursuant to section 551.117, Florida Statutes, in the
9 Department of Business and Professional Regulation for
10 contract services related to the prevention of compulsive and
11 addictive gambling.
12 Section 9. Except as otherwise expressly provided in
13 this act, this act shall take effect upon becoming a law.
14
15
16 ========== T I T L E A M E N D M E N T ==========
17 And the title is amended as follows:
18 Delete everything before the enacting clause
19
20 and insert:
21 A bill to be entitled
22 An act relating to pari-mutuel wagering;
23 amending s. 550.2415, F.S.; requiring the
24 Division of Pari-mutuel Wagering in the
25 Department of Business and Professional
26 Regulation to maintain certain records
27 regarding injuries and the disposition of
28 greyhounds that race in this state; providing
29 guidelines and requirements for injury and
30 disposition report forms; providing for the
31 adoption of rules; providing penalties;

1 creating ch. 551, F.S.; implementing s. 23,
2 Art. X of the State Constitution; authorizing
3 slot machines and slot machine gaming within
4 certain pari-mutuel facilities located in
5 Miami-Dade and Broward Counties upon approval
6 by a local referendum; providing definitions;
7 providing powers and duties of the Division of

8 Pari-mutuel Wagering in the Department of
9 Business and Professional Regulation;
10 clarifying the authority of the Department of
11 Law Enforcement and local law enforcement
12 agencies; providing for licensure to conduct
13 slot machine gaming; providing for slot machine
14 licensure renewal; providing for a license fee,
15 and tax rate; providing for payment procedures;
16 providing penalties; requiring occupational
17 licenses and application fees; providing
18 penalties; prohibiting certain business
19 relationships; prohibiting certain acts and
20 providing penalties; providing an exception to
21 prohibitions relating to slot machines;
22 providing for the exclusion of certain persons
23 from facilities; prohibiting minors under 21
24 years of age from playing slot machines;
25 designating slot machine gaming areas;
26 prohibiting automated teller machines on the
27 property of a slot machine licensee; providing
28 for days and hours of operation; providing
29 penalties; providing a compulsive or addictive
30 gambling prevention program; providing for a
31 fee; providing for a caterer's license;

1 providing for rulemaking; providing for the
2 conduct of a referendum election for slot
3 machines; providing for elections for
4 ratification of slot machine licensing;
5 providing for program evaluations; amending s.
6 849.15, F.S.; providing for transportation of
7 certain gaming devices in accordance with
8 federal law; amending s. 895.02, F.S.;
9 providing that specified violations related to
10 slot machine gaming constitute racketeering
11 activity; providing that certain debt incurred
12 in violation of specified provisions relating
13 to slot machine gaming constitutes unlawful
14 debt; providing for preemption; providing
15 ratification of tribal-state compacts by the
16 Legislature; authorizing additional positions
17 and providing appropriations; providing

18 effective dates.
19
20
21
22
23
24
25
26
27
28
29
30
31

Florida Senate - 2005 SENATOR AMENDMENT

Bill No. HB 1901, 2nd Eng.

Barcode 224858

CHAMBER ACTION

Senate House

1a/AD/2R

05/06/2005 08:15 PM

Senator Posey moved the following **amendment to amendment** (873066):

Senate Amendment

On page 17, lines 16-20, delete those lines

and insert:

1. Thirty-five percent on revenue of $125 million or less;

2. Forty percent on revenue greater than $125 million, but less than or equal to $250 million;

3. Forty-five percent on revenue greater than $250 million, but less than or equal to $500 million; and

4. Fifty-five percent on all revenue greater than $500 million.

TAB 7

Direct Shipping of Wine

September 2, 2005

Status Update

The issue of direct-to-consumer wine sales has been the subject of much debate and litigation in several states. In Florida, the direct shipping of wine by out-of-state wineries to Florida consumers is illegal and punishable as a third degree felony. In contrast to its treatment of out-of-state wineries, Florida allows in-state Farm Wineries to ship their product directly to consumers.

Granholm v. Heald

A recently decided U. S. Supreme Court case, *Granholm v. Heald*, 125 S.Ct. 1885 (May 16, 2005), has called into question the validity of Florida's prohibition against out-of-state direct shipping of wine. In its decision, the Court attempted to balance two parts of the U. S. Constitution: the Commerce Clause which requires unrestricted trade between the states and the 21st Amendment which gives regulatory power to the states over all alcoholic beverage sales within that state's borders.

The Court struck down laws in Michigan and New York, similar to Florida law, allowing in-state wineries to make deliveries to consumers, but prohibiting out-of-state wineries from making such deliveries. The Court ruled that either all sales of alcohol must be face-to-face transactions, or a permit system must be developed to allow for wine deliveries from out-of-state. The Court's decision addresses only wine producers. The Court specifically distinguished other products and the opinion does not specifically open the door for out-of-state retailers to ship direct. The issues of nexus and state jurisdiction were not specifically addressed by the Court.

Three key holdings in the ruling:

- States cannot allow in-state wine producers to make direct sales not available to out-of-state wine producers;
- States cannot require residency of wine producers in order to compete on equal terms; and
- States cannot require reciprocal shipping privileges for wine producers from other states.

The Three Tier System of alcohol beverage distribution utilized by Florida and many other states was held to be "unquestionably legitimate" as long as state laws satisfy the key holdings of *Granholm.* The Court made a clear distinction between laws regarding direct sales by wine producers as distinguished from the state's regulation within its borders of the resale of alcohol beverages.

Bainbridge v. Turner

At a status conference held by the court on May 25, 2005, the State conceded that based upon the *Granholm* decision the two statutes in question in *Bainbridge v. Turner*, Case No. 8:99-CV-2681-T-27TBM, ss. 561.54(1)-(2) and 561.545(1), F.S., were unconstitutional.

Subsequently, an August 5, 2005 Order issued by U. S. District Court Judge James Whittemore in Tampa, found the two statutes in question in Bainbridge violated the Commerce Clause to the extent that they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

> "Florida's direct shipment scheme, codified in ss. 561.54 and 561.545, Florida Statutes, does precisely what was determined to be unconstitutional in *Granholm*. Florida's direct shipment statutes prohibit out-of-state vendors and producers from delivering wine directly to Florida residents whereas in-state producers are not so prohibited. Florida's statutory scheme requires out-of-state wine to pass through a wholesaler and retailer, whereas wine produced in Florida is not required to pass through a wholesaler and distributor [sic]. Florida's statutory scheme thereby discriminates against out-of-state wine producers to the advantage of in-state wine producers in violation of the Commerce Clause and is therefore unconstitutional under *Granholm*."

While the Order enjoined the State from enforcing the two statutes in question, it remains unclear whether direct wine shipments are allowed under the statutory scheme remaining in place, e.g. the three-tier distribution system. Initial statements from the Department of Business and Professional Regulation[1] indicate that direct to consumer shipments will remain unlawful.

The Order does not address the constitutionality of these statutes with regard to other alcoholic beverages such as beer and spirits.

[1] Ruling muddies legality of wine shipping, the *Miami Herald*, August 10, 2005.

TAB 8

PRESENTATION BY RICHARD M. BLAU, CHAIRMAN, AMERICAN BAR ASSOCIATION'S COMMITTEE ON BEVERAGE ALCOHOL PRACTICE, ON THE HISTORY OF THE THREE-TIER SYSTEM OF ALCOHOL BEVERAGE DISTRIBUTION AND AN OVERVIEW OF THE ISSUES ARISING FROM THE RECENT SUPREME COURT DECISION ON DIRECT SHIPPING.

Brief Biography of Richard M. Blau

Mr. Blau is Chairman of the American Bar Association's Committee on Beverage Alcohol Practice.

Mr. Blau received his B.A. from Brandeis University, and his J.D. from the Georgetown University Law Center, where he served as the Associate Editor for Topics of the *Georgetown Law Journal*. An elected member of The American Law Institute, Mr. Blau also is a member of The Florida Bar, The Bar Association of the District of Columbia, the American Bar Association, and the Federal Bar Association. Mr. Blau is an industry member of the National Conference of State Liquor Administrators (NCSLA), and lectures on Twenty First Amendment issues at the NCSLA's annual meetings. He also has addressed annual meetings of the National Alcohol Beverage Control Association (NABCA) and the National Liquor Law Enforcement Association (NLLEA).

A shareholder with the Florida-based law firm of GrayRobinson P.A., Mr. Blau heads the firm's Alcohol Beverage and Food Department, focusing on the rules and regulations that govern the marketing, sale and consumption of distilled spirits, wine, beer and other licensed beverages. Before joining GrayRobinson, Mr. Blau was a partner at Holland & Knight LLP, where he created the firm's original Alcohol Beverage Law practice. Mr. Blau devotes a substantial portion of his professional efforts to trade regulation, litigation, and dispute resolution involving the hospitality industry. He has industry-specific experience in the areas of administrative practice and regulatory compliance, advertising and promotional law, importation matters, and supplier/distribution relations.

TAB 9

WRITTEN COMMENTS FROM RICHARD M. BLAU, CHAIRMAN, ABA COMMITTEE ON BEVERAGE ALCOHOL PRACTICE, WILL BE SUBMITTED PRIOR TO THE COMMITTEE MEETING.

TAB 10

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 03–1116, 03–1120 and 03–1274

JENNIFER M. GRANHOLM, GOVERNOR OF MICHIGAN, ET AL., PETITIONERS
03–1116 *v.*
ELEANOR HEALD ET AL.

MICHIGAN BEER & WINE WHOLESALERS ASSOCIATION, PETITIONER
03–1120 *v.*
ELEANOR HEALD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUANITA SWEDENBURG, ET AL., PETITIONERS
03–1274 *v.*
EDWARD D. KELLY, CHAIRMAN, NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL, STATE LIQUOR AUTHORITY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May 16, 2005]

JUSTICE KENNEDY delivered the opinion of the Court.

These consolidated cases present challenges to state laws regulating the sale of wine from out-of-state wineries to consumers in Michigan and New York. The details and

mechanics of the two regulatory schemes differ, but the object and effect of the laws are the same: to allow in-state wineries to sell wine directly to consumers in that State but to prohibit out-of-state wineries from doing so, or, at the least, to make direct sales impractical from an economic standpoint. It is evident that the object and design of the Michigan and New York statutes is to grant in-state wineries a competitive advantage over wineries located beyond the States' borders.

We hold that the laws in both States discriminate against interstate commerce in violation of the Commerce Clause, Art. I, §8, cl. 3, and that the discrimination is neither authorized nor permitted by the Twenty-first Amendment. Accordingly, we affirm the judgment of the Court of Appeals for the Sixth Circuit, which invalidated the Michigan laws; and we reverse the judgment of the Court of Appeals for the Second Circuit, which upheld the New York laws.

I

Like many other States, Michigan and New York regulate the sale and importation of alcoholic beverages, including wine, through a three-tier distribution system. Separate licenses are required for producers, wholesalers, and retailers. See FTC, Possible Anticompetitive Barriers to E-Commerce: Wine 5–7 (July 2003) (hereinafter FTC Report), available at http://www.ftc.gov/os/2003/07/winereport2.pdf (all Internet materials as visited May 11, 2005, and available in Clerk of Court's case file). The three-tier scheme is preserved by a complex set of overlapping state and federal regulations. For example, both state and federal laws limit vertical integration between tiers. *Id.*, at 5; 27 U. S. C. §205; see, *e.g.*, *Bainbridge* v. *Turner*, 311 F. 3d 1104, 1106 (CA11 2002). We have held previously that States can mandate a three-tier distribution scheme in the exercise of their authority under the

Twenty-first Amendment. *North Dakota* v. *United States,* 495 U. S. 423, 432 (1990); *id.*, at 447 (SCALIA, J., concurring in judgment). As relevant to today's cases, though, the three-tier system is, in broad terms and with refinements to be discussed, mandated by Michigan and New York only for sales from out-of-state wineries. In-state wineries, by contrast, can obtain a license for direct sales to consumers. The differential treatment between in-state and out-of-state wineries constitutes explicit discrimination against interstate commerce.

This discrimination substantially limits the direct sale of wine to consumers, an otherwise emerging and significant business. FTC Report 7. From 1994 to 1999, consumer spending on direct wine shipments doubled, reaching $500 million per year, or three percent of all wine sales. *Id.*, at 5. The expansion has been influenced by several related trends. First, the number of small wineries in the United States has significantly increased. By some estimates there are over 3,000 wineries in the country, WineAmerica, The National Association of American Wineries, Wine Facts 2004, http://www.americanwineries.org/newsroom/winefacts04.htm, more than three times the number 30 years ago, FTC Report 6. At the same time, the wholesale market has consolidated. Between 1984 and 2002, the number of licensed wholesalers dropped from 1,600 to 600. Riekhof & Sykuta, Regulating Wine by Mail, 27 Regulation, No. 3, pp. 30, 31 (Fall 2004), available at http://www.cato.org/pubs/regulation/regv27n3/v27n3-3.pdf. The increasing winery-to-wholesaler ratio means that many small wineries do not produce enough wine or have sufficient consumer demand for their wine to make it economical for wholesalers to carry their products. FTC Report 6. This has led many small wineries to rely on direct shipping to reach new markets. Technological improvements, in particular the ability of wineries to sell wine over the Internet, have helped make direct shipments an attractive sales channel.

Approximately 26 States allow some direct shipping of wine, with various restrictions. Thirteen of these States have reciprocity laws, which allow direct shipment from wineries outside the State, provided the State of origin affords similar nondiscriminatory treatment. *Id.*, at 7–8. In many parts of the country, however, state laws that prohibit or severely restrict direct shipments deprive consumers of access to the direct market. According to the Federal Trade Commission (FTC), "[s]tate bans on interstate direct shipping represent the single largest regulatory barrier to expanded e-commerce in wine." *Id.*, at 3.

The wine producers in the cases before us are small wineries that rely on direct consumer sales as an important part of their businesses. Domaine Alfred, one of the plaintiffs in the Michigan suit, is a small winery located in San Luis Obispo, California. It produces 3,000 cases of wine per year. Domaine Alfred has received requests for its wine from Michigan consumers but cannot fill the orders because of the State's direct-shipment ban. Even if the winery could find a Michigan wholesaler to distribute its wine, the wholesaler's markup would render shipment through the three-tier system economically infeasible.

Similarly, Juanita Swedenburg and David Lucas, two of the plaintiffs in the New York suit, operate small wineries in Virginia (the Swedenburg Estate Vineyard) and California (the Lucas Winery). Some of their customers are tourists, from other States, who purchase wine while visiting the wineries. If these customers wish to obtain Swedenburg or Lucas wines after they return home, they will be unable to do so if they reside in a State with restrictive direct-shipment laws. For example, Swedenburg and Lucas are unable to fill orders from New York, the Nation's second-largest wine market, because of the limits that State imposes on direct wine shipments.

A

We first address the background of the suit challenging the Michigan direct-shipment law. Most alcoholic beverages in Michigan are distributed through the State's three-tier system. Producers or distillers of alcoholic beverages, whether located in state or out of state, generally may sell only to licensed in-state wholesalers. Mich. Comp. Laws Ann. §§436.1109(1), 436.1305, 436.1403, 436.1607(1) (West 2000); Mich. Admin. Code Rules 436.1705 (1990), 436.1719 (2000). Wholesalers, in turn, may sell only to in-state retailers. Mich. Comp. Laws Ann. §§436.1113(7), 436.1607(1) (West 2001). Licensed retailers are the final link in the chain, selling alcoholic beverages to consumers at retail locations and, subject to certain restrictions, through home delivery. §§436.1111(5), 436.1203(2)–(4).

Under Michigan law, wine producers, as a general matter, must distribute their wine through wholesalers. There is, however, an exception for Michigan's approximately 40 in-state wineries, which are eligible for "wine maker" licenses that allow direct shipment to in-state consumers. §436.1113(9) (West 2001); §§436.1537(2)–(3) (West Supp. 2004); Mich. Admin. Code Rule 436.1011(7)(b) (2003). The cost of the license varies with the size of the winery. For a small winery, the license is $25. Mich. Comp. Laws Ann. §436.1525(1)(d) (West Supp. 2004). Out-of-state wineries can apply for a $300 "outside seller of wine" license, but this license only allows them to sell to in-state wholesalers. §§436.1109(9) (West 2001), 436.1525(1)(e) (West Supp. 2004); Mich. Admin. Code Rule 436.1719(5) (2000).

Some Michigan residents brought suit against various state officials in the United States District Court for the Eastern District of Michigan. Domaine Alfred, the San Luis Obispo winery, joined in the suit. The plaintiffs contended that Michigan's direct-shipment laws discriminated

against interstate commerce in violation of the Commerce Clause. The trade association Michigan Beer & Wine Wholesalers intervened as a defendant. Both the State and the wholesalers argued that the ban on direct shipment from out-of-state wineries is a valid exercise of Michigan's power under §2 of the Twenty-first Amendment.

On cross-motions for summary judgment the District Court sustained the Michigan scheme. The Court of Appeals for the Sixth Circuit reversed. *Heald* v. *Engler,* 342 F. 3d 517 (2003). Relying on *Bacchus Imports, Ltd.* v. *Dias,* 468 U. S. 263 (1984), the court rejected the argument that the Twenty-first Amendment immunizes all state liquor laws from the strictures of the Commerce Clause, 342 F. 3d, at 524, and held the Michigan scheme was unconstitutional because the defendants failed to demonstrate the State could not meet its proffered policy objectives through nondiscriminatory means, *id.*, at 527.

B

New York's licensing scheme is somewhat different. It channels most wine sales through the three-tier system, but it too makes exceptions for in-state wineries. As in Michigan, the result is to allow local wineries to make direct sales to consumers in New York on terms not available to out-of-state wineries. Wineries that produce wine only from New York grapes can apply for a license that allows direct shipment to in-state consumers. N. Y. Alco. Bev. Cont. Law Ann. §76–a(3) (West Supp. 2005) (hereinafter N. Y. ABC Law). These licensees are authorized to deliver the wines of other wineries as well, §76–a(6)(a), but only if the wine is made from grapes "at least seventy-five percent the volume of which were grown in New York state," §3(20–a). An out-of-state winery may ship directly to New York consumers only if it becomes a licensed New York winery, which requires the establishment of "a branch factory, office or storeroom within the state of New York." §3(37).

Juanita Swedenburg and David Lucas, joined by three of their New York customers, brought suit in the Southern District of New York against the officials responsible for administering New York's Alcoholic Beverage Control Law seeking, *inter alia*, a declaration that the State's limitations on the direct shipment of out-of-state wine violate the Commerce Clause. New York liquor wholesalers and representatives of New York liquor retailers intervened in support of the State.

The District Court granted summary judgment to the plaintiffs. 232 F. Supp. 2d 135 (2002). The court first determined that, under established Commerce Clause principles, the New York direct-shipment scheme discriminates against out-of-state wineries. *Id.*, at 146–147. The court then rejected the State's Twenty-first Amendment argument, finding that the "[d]efendants have not shown that New York's ban on the direct shipment of out-of-state wine, and particularly the in-state exceptions to the ban, implicate the State's core concerns under the Twenty-first Amendment." *Id.*, at 148.

The Court of Appeals for the Second Circuit reversed. 358 F. 3d 223 (2004). The court "recognize[d] that the physical presence requirement could create substantial dormant Commerce Clause problems if this licensing scheme regulated a commodity other than alcohol." *Id.*, at 238. The court nevertheless sustained the New York statutory scheme because, in the court's view, "New York's desire to ensure accountability through presence is aimed at the regulatory interests directly tied to the importation and transportation of alcohol for use in New York," *ibid.* As such, the New York direct shipment laws were "within the ambit of the powers granted to states by the Twenty-first Amendment." *Id.*, at 239.

C

We consolidated these cases and granted certiorari on

the following question: "'Does a State's regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of §2 of the Twenty-first Amendment?'" 541 U. S. 1062 (2004).

For ease of exposition, we refer to the respondents from the Michigan challenge (Nos. 03–1116 and 03–1120) and the petitioners in the New York challenge (No. 03–1274) collectively as the wineries. We refer to their opposing parties—Michigan, New York, and the wholesalers and retailers—simply as the States.

II

A

Time and again this Court has held that, in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Oregon Waste Systems, Inc.* v. *Department of Environmental Quality of Ore.,* 511 U. S. 93, 99 (1994). See also *New Energy Co. of Ind.* v. *Limbach,* 486 U. S. 269, 274 (1988). This rule is essential to the foundations of the Union. The mere fact of nonresidence should not foreclose a producer in one State from access to markets in other States. *H. P. Hood & Sons, Inc.* v. *Du Mond,* 336 U. S. 525, 539 (1949). States may not enact laws that burden out-of-state producers or shippers simply to give a competitive advantage to in-state businesses. This mandate "reflect[s] a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." *Hughes* v. *Oklahoma,* 441 U. S. 322, 325–326 (1979).

The rule prohibiting state discrimination against interstate commerce follows also from the principle that States should not be compelled to negotiate with each other regarding favored or disfavored status for their own citizens. States do not need, and may not attempt, to negotiate with other States regarding their mutual economic interests. Cf. U. S. Const., Art. I, §10, cl. 3. Rivalries among the States are thus kept to a minimum, and a proliferation of trade zones is prevented. See *C & A Carbone, Inc.* v. *Clarkstown,* 511 U. S. 383, 390 (1994) (citing The Federalist No. 22, pp. 143–145 (C. Rossiter ed. 1961) (A. Hamilton); Madison, Vices of the Political System of the United States, in 2 Writings of James Madison 362–363 (G. Hunt ed. 1901)).

Laws of the type at issue in the instant cases contradict these principles. They deprive citizens of their right to have access to the markets of other States on equal terms. The perceived necessity for reciprocal sale privileges risks generating the trade rivalries and animosities, the alliances and exclusivity, that the Constitution and, in particular, the Commerce Clause were designed to avoid. State laws that protect local wineries have led to the enactment of statutes under which some States condition the right of out-of-state wineries to make direct wine sales to in-state consumers on a reciprocal right in the shipping State. California, for example, passed a reciprocity law in 1986, retreating from the State's previous regime that allowed unfettered direct shipments from out-of-state wineries. Riekhof & Sykuta, 27 Regulation, No. 3, at 30. Prior to 1986, all but three States prohibited direct-shipments of wine. The obvious aim of the California statute was to open the interstate direct-shipping market for the State's many wineries. *Ibid.* The current patchwork of laws—with some States banning direct shipments altogether, others doing so only for out-of-state wines, and still others requiring reciprocity—is essentially the prod-

uct of an ongoing, low-level trade war. Allowing States to discriminate against out-of-state wine "invite[s] a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause." *Dean Milk Co.* v. *Madison,* 340 U. S. 349, 356 (1951). See also *Baldwin* v. *G. A. F. Seelig, Inc.,* 294 U. S. 511, 521–523 (1935).

B

The discriminatory character of the Michigan system is obvious. Michigan allows in-state wineries to ship directly to consumers, subject only to a licensing requirement. Out-of-state wineries, whether licensed or not, face a complete ban on direct shipment. The differential treatment requires all out-of-state wine, but not all in-state wine, to pass through an in-state wholesaler and retailer before reaching consumers. These two extra layers of overhead increase the cost of out-of-state wines to Michigan consumers. The cost differential, and in some cases the inability to secure a wholesaler for small shipments, can effectively bar small wineries from the Michigan market.

The New York regulatory scheme differs from Michigan's in that it does not ban direct shipments altogether. Out-of-state wineries are instead required to establish a distribution operation in New York in order to gain the privilege of direct shipment. N. Y. ABC Law §§3(37), 96. This, though, is just an indirect way of subjecting out-of-state wineries, but not local ones, to the three-tier system. New York and those allied with its interests defend the scheme by arguing that an out-of-state winery has the same access to the State's consumers as in-state wineries: All wine must be sold through a licensee fully accountable to New York; it just so happens that in order to become a licensee, a winery must have a physical presence in the State. There is some confusion over the precise steps out-of-state wineries must take to gain access to the New York

market, in part because no winery has run the State's regulatory gauntlet. New York's argument, in any event, is unconvincing.

The New York scheme grants in-state wineries access to the State's consumers on preferential terms. The suggestion of a limited exception for direct shipment from out-of-state wineries does nothing to eliminate the discriminatory nature of New York's regulations. In-state producers, with the applicable licenses, can ship directly to consumers from their wineries. §§76–a(3), 76(4) (West Supp. 2005), and §77(2) (West 2000). Out-of-state wineries must open a branch office and warehouse in New York, additional steps that drive up the cost of their wine. §§3(37), 96 (West Supp. 2005). See also App. in No. 03–1274, pp. 159–160 (Affidavit of Thomas G. McKeon, General Counsel to the New York State Liquor Authority). For most wineries, the expense of establishing a bricks-and-mortar distribution operation in 1 State, let alone all 50, is prohibitive. It comes as no surprise that not a single out-of-state winery has availed itself of New York's direct-shipping privilege. We have "viewed with particular suspicion state statutes requiring business operations to be performed in the home State that could more efficiently be performed elsewhere." *Pike* v. *Bruce Church, Inc.,* 397 U. S. 137, 145 (1970). New York's in-state presence requirement runs contrary to our admonition that States cannot require an out-of-state firm "to become a resident in order to compete on equal terms." *Halliburton Oil Well Cementing Co.* v. *Reily,* 373 U. S. 64, 72 (1963). See also *Ward* v. *Maryland,* 12 Wall. 418 (1871).

In addition to its restrictive in-state presence requirement, New York discriminates against out-of-state wineries in other ways. Out-of-state wineries that establish the requisite branch office and warehouse in New York are still ineligible for a "farm winery" license, the license that provides the most direct means of shipping to New York

consumers. N. Y. ABC Law §76–a(5) ("No licensed farm winery shall manufacture or sell any wine not produced exclusively from grapes or other fruits or agricultural products grown or produced in New York state"). Out-of-state wineries may apply only for a commercial winery license. See §§3(37), 76. Unlike farm wineries, however, commercial wineries must obtain a separate certificate from the state liquor authority authorizing direct shipments to consumers, §77(2) (West 2000); and, of course, for out-of-state wineries there is the additional requirement of maintaining a distribution operation in New York. New York law also allows in-state wineries without direct-shipping licenses to distribute their wine through other wineries that have the applicable licenses. §76(5) (West Supp. 2005). This is another privilege not afforded out-of-state wineries.

We have no difficulty concluding that New York, like Michigan, discriminates against interstate commerce through its direct-shipping laws.

III

State laws that discriminate against interstate commerce face "a virtually *per se* rule of invalidity." *Philadelphia* v. *New Jersey,* 437 U. S. 617, 624 (1978). The Michigan and New York laws by their own terms violate this proscription. The two States, however, contend their statutes are saved by §2 of the Twenty-first Amendment, which provides:

> "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

The States' position is inconsistent with our precedents and with the Twenty-first Amendment's history. Section 2 does not allow States to regulate the direct shipment of

wine on terms that discriminate in favor of in-state producers.

A

Before 1919, the temperance movement fought to curb the sale of alcoholic beverages one State at a time. The movement made progress, and many States passed laws restricting or prohibiting the sale of alcohol. This Court upheld state laws banning the production and sale of alcoholic beverages, *Mugler* v. *Kansas,* 123 U. S. 623 (1887), but was less solicitous of laws aimed at imports. In a series of cases before ratification of the Eighteenth Amendment the Court, relying on the Commerce Clause, invalidated a number of state liquor regulations.

These cases advanced two distinct principles. First, the Court held that the Commerce Clause prevented States from discriminating against imported liquor. *Scott* v. *Donald,* 165 U. S. 58 (1897); *Walling* v. *Michigan,* 116 U. S. 446 (1886); *Tiernan* v. *Rinker,* 102 U. S. 123 (1880). In *Walling*, for example, the Court invalidated a Michigan tax that discriminated against liquor imports by exempting sales of local products. The Court held that States were not free to pass laws burdening only out-of-state products:

> "A discriminating tax imposed by a State operating to the disadvantage of the products of other States when introduced into the first mentioned State, is, in effect, a regulation in restraint of commerce among the States, and as such is a usurpation of the power conferred by the Constitution upon the Congress of the United States." 116 U. S., at 455.

Second, the Court held that the Commerce Clause prevented States from passing facially neutral laws that placed an impermissible burden on interstate commerce. *Rhodes* v. *Iowa,* 170 U. S. 412 (1898); *Vance* v. *W. A. Van-*

dercook Co., 170 U. S. 438 (1898); *Leisy* v. *Hardin,* 135 U. S. 100 (1890); *Bowman* v. *Chicago & Northwestern R. Co.,* 125 U. S. 465 (1888). For example, in *Bowman* v. *Chicago & Northwestern R. Co.,* 125 U. S. 465 (1888), the Court struck down an Iowa statute that required all liquor importers to have a permit. *Bowman* and its progeny rested in part on the since-rejected original-package doctrine. Under this doctrine goods shipped in interstate commerce were immune from state regulation while in their original package. As the Court explained in *Vance,*

> "the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any state regulation to the contrary notwithstanding; that is to say, that the goods received by Interstate Commerce remain under the shelter of the Interstate Commerce clause of the Constitution, until by a sale in the original package they have been commingled with the general mass of property in the state." 170 U. S., at 444–445.

Bowman reserved the question whether a State could ban the sale of imported liquor altogether. 125 U. S., at 499–500. Iowa responded to *Bowman* by doing just that but was thwarted once again. In *Leisy, supra,* the Court held that Iowa could not ban the sale of imported liquor in its original package.

Leisy left the States in a bind. They could ban the production of domestic liquor, *Mugler, supra,* but these laws were ineffective because out-of-state liquor was immune from any state regulation as long as it remained in its original package, *Leisy, supra.* To resolve the matter, Congress passed the Wilson Act (so named for Senator Wilson of Iowa), which empowered the States to regulate imported liquor on the same terms as domestic liquor:

> "That all fermented, distilled, or other intoxicating liq-

> uors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." Ch. 728, 26 Stat. 313 (codified at 27 U. S. C. §121).

By its own terms, the Wilson Act did not allow States to discriminate against out-of-state liquor; rather, it allowed States to regulate imported liquor only "to the same extent and in the same manner" as domestic liquor.

The Court confirmed this interpretation in *Scott, supra.* *Scott* involved a constitutional challenge to South Carolina's dispensary law, 1895 S. C. Acts p. 721, which required that all liquor sales be channeled through the state liquor commissioner. 165 U. S., at 92. The statute discriminated against out-of-state manufacturers in two primary ways. First, §15 required the commissioner to "purchase his supplies from the brewers and distillers in this State when their product reaches the standard required by this Act: Provided, Such supplies can be purchased as cheaply from such brewers and distillers in this State as elsewhere." 1895 S. C. Acts p. 732. Second, §23 of the statute limited the State's markup on locally produced wines to a 10-percent profit but provided "no such limitation of charge in the case of imported wines." 165 U. S., at 93. Based on these discriminatory provisions, the Court rejected the argument that the South Carolina dispensary law was authorized by the Wilson Act. *Id.,* at 100. It explained that the Wilson Act was "not intended to confer upon any State the power to discriminate injuri-

ously against the products of other States in articles whose manufacture and use are not forbidden, and which are therefore the subjects of legitimate commerce." *Ibid.* To the contrary, the Court said, the Wilson Act mandated "equality or uniformity of treatment under state laws," *ibid.,* and did not allow South Carolina to provide "an unjust preference" to its products "as against similar products of the other States," *id.,* at 101. The dissent also understood the validity of the dispensary law to turn in large part on §§15 and 23, but argued that even if these provisions were discriminatory the correct remedy was to sever them from the rest of the Act. *Id.,* at 104–106 (opinion of Brown, J.).

Although the Wilson Act increased the States' authority to police liquor imports, it did not solve all their problems. In *Vance* and *Rhodes*—two cases decided soon after *Scott*—the Court made clear that the Wilson Act did not authorize States to prohibit direct shipments for personal use. In *Vance*, the Court characterized *Scott* as embodying two distinct holdings: First, the South Carolina dispensary law "amount[ed] to an unjust discrimination against liquors, the products of other States." 170 U. S., at 442. This aspect of the *Scott* holding, which confirmed the Wilson Act's nondiscrimination principle, was based "on particular provisions of the law by which the discrimination was brought about." 170 U. S., at 442. Second, "in so far as the law then in question forbade the sending . . . of intoxicating liquors for the use of the person to whom it was shipped, the statute was repugnant to [the Commerce Clause]." *Ibid.* (citing *Scott,* 165 U. S. 58). See also 170 U. S., at 443 (distinguishing between the provisions at issue in *Scott* "which were held to operate a discrimination" and those which barred direct shipment for personal use).

This second holding, that consumers had the right to receive alcoholic beverages shipped in interstate commerce

for personal use, was only implicit in *Scott*. 165 U. S., at 78, 99–100. The Court expanded on this point, however, not only in *Vance* but again in *Rhodes*. *Rhodes* construed the Wilson Act narrowly to avoid interference with this right. The Act, the Court said, authorized States to regulate only the resale of imported liquor, not direct shipment to consumers for personal use. 170 U. S., at 421. Without a clear indication from Congress that it intended to allow States to ban such shipments, the *Rhodes* Court read the words "upon arrival" in the Wilson Act as authorizing "the power of the State to attach to an interstate commerce shipment," only after its arrival at the point of destination and delivery there to the consignee." *Id.*, at 426. See also *id.,* at 424; *Bridenbaugh* v. *Freeman-Wilson*, 227 F. 3d 848, 852 (CA7 2000). The Court interpreted the Wilson Act to overturn *Leisy* but leave *Bowman* intact. *Rhodes, supra,* at 423–424. The right to regulate did not attach until the liquor was in the hands of the customer. As a result, the mail-order liquor trade continued to thrive. Rogers, Interstate Commerce in Intoxicating Liquors Before the Webb-Kenyon Act, 4 Va. L. Rev. 353, 364–365 (1917).

After considering a series of bills in response to the Court's reading of the Wilson Act, Congress responded to the direct-shipment loophole in 1913 by enacting the Webb-Kenyon Act, 37 Stat. 699, 27 U. S. C. §122. See Rogers, *supra*, at 363–370. The Act, entitled "An Act Divesting intoxicating liquors of their interstate character in certain cases," provides:

> "That the shipment or transportation . . . of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State . . . into any other State . . . which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, pos-

> sessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State . . . is hereby prohibited." 37 Stat., at 699–700.

The constitutionality of the Webb-Kenyon Act itself was in doubt. *Vance* and *Rhodes* implied that any law authorizing the States to regulate direct shipments for personal use would be an unlawful delegation of Congress' Commerce Clause powers. Indeed, President Taft, acting on the advice of Attorney General Wickersham, vetoed the Act for this specific reason. S. Rep. No. 103, 63 Cong., 1st Sess., 3–6 (1913); 30 Op. Atty. Gen. 88 (1913). Congress overrode the veto and in *Clark Distilling Co.* v. *Western Maryland R. Co.,* 242 U. S. 311 (1917), a divided Court upheld the Webb-Kenyon Act against a constitutional challenge.

The Court construed the Act to close the direct-shipment gap left open by the Wilson Act. States were now empowered to forbid shipments of alcohol to consumers for personal use, provided that the States treated in-state and out-of-state liquor on the same terms. *Id.,* at 321–322 (noting that the West Virginia law at issue in *Clark Distilling* "forbade the shipment into or transportation of liquor in the State whether from inside or out"). The Court understood that the Webb-Kenyon Act "was enacted simply to extend that which was done by the Wilson Act." *Id.*, at 324. The Act's purpose "was to prevent the immunity characteristic of interstate commerce from being used to permit the receipt of liquor through such commerce in States contrary to their laws, and thus in effect afford a means by subterfuge and indirection to set such laws at naught." *Ibid.* The Court thus recognized that the Act was an attempt to eliminate the regulatory advantage, *i.e.* its immunity characteristic, afforded imported liquor under *Bowman* and *Rhodes*.

Michigan and New York now argue the Webb-Kenyon Act went even further and removed any barrier to discriminatory state liquor regulations. We do not agree. First, this reading of the Webb-Kenyon Act conflicts with that given the statute in *Clark Distilling*. *Clark Distilling* recognized that the Webb-Kenyon Act extended the Wilson Act to allow the States to intercept liquor shipments before those shipments reached the consignee. The States' contention that the Webb-Kenyon Act also reversed the Wilson Act's prohibition on discriminatory treatment of out-of-state liquors cannot be reconciled with *Clark Distilling's* description of the Webb-Kenyon Act's purpose—"simply to extend that which was done by the Wilson Act." 242 U. S., at 324. See also *McCormick & Co.* v. *Brown,* 286 U. S. 131, 140–141 (1932).

The statute's text does not compel a different result. The Webb-Kenyon Act readily can be construed as forbidding "shipment or transportation" only where it runs afoul of the State's generally applicable laws governing receipt, possession, sale, or use. Cf. *id.,* at 141 (noting that the Act authorized enforcement of "valid" state laws). At the very least, the Webb-Kenyon Act expresses no clear congressional intent to depart from the principle, unexceptional at the time the Act was passed and still applicable today, *Hillside Dairy Inc.* v. *Lyons,* 539 U. S. 59, 66 (2003), that discrimination against out-of-state goods is disfavored. Cf. *Western & Southern Life Ins. Co.* v. *State Bd. of Equalization of Cal.,* 451 U. S. 648, 652–653 (1981) (holding that the McCarran-Ferguson Act, 15 U. S. C. §1011 *et seq.*, removed all dormant Commerce Clause scrutiny of state insurance laws; 15 U. S. C. §1011 provides: "Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States").

Last, and most importantly, the Webb-Kenyon Act did not purport to repeal the Wilson Act, which expressly precludes States from discriminating. If Congress' aim in passing the Webb-Kenyon Act was to authorize States to discriminate against out-of-state goods then its first step would have been to repeal the Wilson Act. It did not do so. There is no inconsistency between the Wilson Act and the Webb-Kenyon Act sufficient to warrant an inference that the latter repealed the former. See *Washington* v. *Miller,* 235 U. S. 422, 428 (1914) (noting that implied repeals are disfavored). Indeed, this Court has twice noted that the Wilson Act remains in effect today. *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.,* 377 U. S. 324, 333, n. 11 (1964); *Department of Revenue* v. *James B. Beam Distilling Co.,* 377 U. S. 341, 345, n. 7 (1964). See 27 U. S. C. §121.

The Wilson Act reaffirmed, and the Webb-Kenyon Act did not displace, the Court's line of Commerce Clause cases striking down state laws that discriminated against liquor produced out of state. The rule of *Tiernan*, *Walling*, and *Scott* remained in effect: States were required to regulate domestic and imported liquor on equal terms. "[T]he intent of . . . the Webb-Kenyon Act . . . was to take from intoxicating liquor the protection of the interstate commerce laws in so far as necessary to deny them an advantage over the intoxicating liquors produced in the state into which they were brought, yet, [the Act does not] show an intent or purpose to so abdicate control over interstate commerce as to permit discrimination against the intoxicating liquor brought into one state from another." *Pacific Fruit & Produce Co.* v. *Martin,* 16 F. Supp. 34, 39–40 (WD Wash. 1936). See also Friedman, Constitutional Law: State Regulation of Importation of Intoxicating Liquor Under Twenty-first Amendment, 21 Cornell L. Q. 504, 509 (1936) ("The cases under the Webb-Kenyon Act uphold state prohibition and regulation in the exercise of the police power yet they clearly forbid laws which

discriminate arbitrarily and unreasonably against liquor produced outside of the state" (footnote omitted)).

B

The ratification of the Eighteenth Amendment in 1919 provided a brief respite from the legal battles over the validity of state liquor regulations. With the ratification of the Twenty-first Amendment 14 years later, however, nationwide Prohibition came to an end. Section 1 of the Twenty-first Amendment repealed the Eighteenth Amendment. Section 2 of the Twenty-first Amendment is at issue here.

Michigan and New York say the provision grants to the States the authority to discriminate against out-of-state goods. The history we have recited does not support this position. To the contrary, it provides strong support for the view that §2 restored to the States the powers they had under the Wilson and Webb-Kenyon Acts. "The wording of §2 of the Twenty-first Amendment closely follows the Webb-Kenyon and Wilson Acts, expressing the framers' clear intention of constitutionalizing the Commerce Clause framework established under those statutes." *Craig* v. *Boren,* 429 U. S. 190, 205–206 (1976) (footnote omitted).

The aim of the Twenty-first Amendment was to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use. The Amendment did not give States the authority to pass nonuniform laws in order to discriminate against out-of-state goods, a privilege they had not enjoyed at any earlier time.

Some of the cases decided soon after ratification of the Twenty-first Amendment did not take account of this history and were inconsistent with this view. In *State Bd. of Equalization of Cal.* v. *Young's Market Co.*, 299 U. S. 59, 62 (1936), for example, the Court rejected the argument that the Amendment did not authorize discrimination:

> "The plaintiffs ask us to limit this broad command [of §2]. They request us to construe the Amendment as saying, in effect: The State may prohibit the importation of intoxicating liquors provided it prohibits the manufacture and sale within its borders; but if it permits such manufacture and sale, it must let imported liquors compete with the domestic on equal terms. To say that, would involve not a construction of the Amendment, but a rewriting of it."

The Court reaffirmed the States' broad powers under §2 in a series of cases, see *Mahoney* v. *Joseph Triner Corp.*, 304 U. S. 401 (1938); *Indianapolis Brewing Co.* v. *Liquor Control Comm'n*, 305 U. S. 391 (1939); *Ziffrin, Inc.* v. *Reeves*, 308 U. S. 132 (1939); *Joseph S. Finch & Co.* v. *McKittrick*, 305 U. S. 395 (1939), and unsurprisingly many States used the authority bestowed on them by the Court to expand trade barriers. T. Green, Liquor Trade Barriers: Obstructions to Interstate Commerce in Wine, Beer, and Distilled Spirits 4, and App. I (1940) (stating in the wake of *Young's Market* that "[r]ivalries and reprisals have thus flared up").

It is unclear whether the broad language in *Young's Market* was necessary to the result because the Court also stated that "the case [did] not present a question of discrimination prohibited by the commerce clause." 299 U. S., at 62. The Court also declined, contrary to the approach we take today, to consider the history underlying the Twenty-first Amendment. *Id.*, at 63–64. This reluctance did not, however, reflect a consensus that such evidence was irrelevant or that prior history was unsupportive of the principle that the Amendment did not authorize discrimination against out-of-state liquors. There was ample opinion to the contrary. See, *e.g.*, *Young's Market Co.* v. *State Bd. of Equalization of Cal.*, 12 F. Supp. 140 (SD Cal. 1935), rev'd, 299 U. S. 59 (1936); *Pacific Fruit*

& Produce Co. v. *Martin, supra,* at 39; *Joseph Triner Corp.* v. *Arundel,* 11 F. Supp. 145, 146–147 (Minn. 1935); Friedman, *supra,* at 511–512; Note, Recent Cases, Twenty-first Amendment—Commerce Clause, 85 U. Pa. L. Rev. 322, 323 (1937); W. Hamilton, Price and Price Policies 426 (1938); Note, Legislation, Liquor Control, 38 Colum. L. Rev. 644, 658 (1938); Wiser & Arledge, Does the Repeal Empower a State to Erect Tariff Barriers and Disregard the Equal Protection Clause in Legislating on Intoxicating Liquors in Interstate Commerce? 7 Geo. Wash. L. Rev. 402, 407–409 (1939); de Ganahl, The Scope of Federal Power Over Alcoholic Beverages Since the Twenty-first Amendment, 8 Geo. Wash. L. Rev. 819, 822–828 (1940); Note, 55 Yale L. J. 815, 819–820 (1946).

Our more recent cases, furthermore, confirm that the Twenty-first Amendment does not supersede other provisions of the Constitution and, in particular, does not displace the rule that States may not give a discriminatory preference to their own producers.

C

The modern §2 cases fall into three categories.

First, the Court has held that state laws that violate other provisions of the Constitution are not saved by the Twenty-first Amendment. The Court has applied this rule in the context of the First Amendment, *44 Liquormart, Inc.* v. *Rhode Island,* 517 U. S. 484 (1996); the Establishment Clause, *Larkin* v. *Grendel's Den, Inc.,* 459 U. S. 116 (1982); the Equal Protection Clause, *Craig, supra,* at 204–209; the Due Process Clause, *Wisconsin* v. *Constantineau,* 400 U. S. 433 (1971); and the Import-Export Clause, *Department of Revenue* v. *James B. Beam Distilling Co.,* 377 U. S. 341 (1964).

Second, the Court has held that §2 does not abrogate Congress' Commerce Clause powers with regard to liquor. *Capital Cities Cable, Inc.* v. *Crisp,* 467 U. S. 691 (1984);

California Retail Liquor Dealers Assn. v. *Midcal Aluminum, Inc.,* 445 U. S. 97 (1980). The argument that "the Twenty-first Amendment has somehow operated to 'repeal' the Commerce Clause" for alcoholic beverages has been rejected. *Hostetter,* 377 U. S., at 331–332. Though the Court's language in *Hostetter* may have come uncommonly close to hyperbole in describing this argument as "an absurd oversimplification," "patently bizarre," and "demonstrably incorrect," *ibid.*, the basic point was sound.

Finally, and most relevant to the issue at hand, the Court has held that state regulation of alcohol is limited by the nondiscrimination principle of the Commerce Clause. *Bacchus,* 468 U. S., at 276; *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority,* 476 U. S. 573 (1986); *Healy* v. *Beer Institute,* 491 U. S. 324 (1989). "When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry." *Brown-Forman, supra,* at 579.

Bacchus provides a particularly telling example of this proposition. At issue was an excise tax enacted by Hawaii that exempted certain alcoholic beverages produced in that State. The Court rejected the argument that Hawaii's discrimination against out-of-state liquor was authorized by the Twenty-first Amendment. 468 U. S., at 274–276. "The central purpose of the [Amendment] was not to empower States to favor local liquor industries by erecting barriers to competition." *Id.*, at 276. Despite attempts to distinguish it in the instant cases, *Bacchus* forecloses any contention that §2 of the Twenty-first Amendment immunizes discriminatory direct-shipment laws from Commerce Clause scrutiny. See also *Brown-Forman, supra,* at 576 (invalidating a New York price affirmation statute that required producers to limit the price of liquor based on the lowest price they offered out of state);

Healy, 491 U. S., at 328 (invalidating a similar Connecticut statute); *id.*, at 344 (SCALIA, J., concurring in part and concurring in judgment) ("The Connecticut statute's invalidity is fully established by its facial discrimination against interstate commerce . . . . This is so despite the fact that the law regulates the sale of alcoholic beverages, since its discriminatory character eliminates the immunity afforded by the Twenty-first Amendment").

Recognizing that *Bacchus* is fatal to their position, the States suggest it should be overruled or limited to its facts. As the foregoing analysis makes clear, we decline their invitation. Furthermore, *Bacchus* does not stand alone in recognizing that the Twenty-first Amendment did not give the States complete freedom to regulate where other constitutional principles are at stake. A retreat from *Bacchus* would also undermine *Brown-Forman* and *Healy*. These cases invalidated state liquor regulations under the Commerce Clause. Indeed, *Healy* explicitly relied on the discriminatory character of the Connecticut price affirmation statute. 491 U. S., at 340–341. *Brown-Forman* and *Healy* lend significant support to the conclusion that the Twenty-first Amendment does not immunize all laws from Commerce Clause challenge.

The States argue that any decision invalidating their direct-shipment laws would call into question the constitutionality of the three-tier system. This does not follow from our holding. "The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." *Midcal, supra*, at 110. A State which chooses to ban the sale and consumption of alcohol altogether could bar its importation; and, as our history shows, it would have to do so to make its laws effective. States may also assume direct control of liquor distribution through state-run outlets or funnel sales through the three-tier system. We have previously recog-

nized that the three-tier system itself is "unquestionably legitimate." *North Dakota* v. *United States,* 495 U. S., at 432. See also *id.*, at 447 (SCALIA, J., concurring in judgment) ("The Twenty-first Amendment . . . empowers North Dakota to require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler"). State policies are protected under the Twenty-first Amendment when they treat liquor produced out of state the same as its domestic equivalent. The instant cases, in contrast, involve straightforward attempts to discriminate in favor of local producers. The discrimination is contrary to the Commerce Clause and is not saved by the Twenty-first Amendment.

IV

Our determination that the Michigan and New York direct-shipment laws are not authorized by the Twenty-first Amendment does not end the inquiry. We still must consider whether either State regime "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *New Energy Co. of Ind.*, 486 U. S., at 278. The States offer two primary justifications for restricting direct shipments from out-of-state wineries: keeping alcohol out of the hands of minors and facilitating tax collection. We consider each in turn.

The States, aided by several *amici,* claim that allowing direct shipment from out-of-state wineries undermines their ability to police underage drinking. Minors, the States argue, have easy access to credit cards and the Internet and are likely to take advantage of direct wine shipments as a means of obtaining alcohol illegally.

The States provide little evidence that the purchase of wine over the Internet by minors is a problem. Indeed, there is some evidence to the contrary. A recent study by the staff of the FTC found that the 26 States currently allowing direct shipments report no problems with minors'

increased access to wine. FTC Report 34. This is not surprising for several reasons. First, minors are less likely to consume wine, as opposed to beer, wine coolers, and hard liquor. *Id.,* at 12. Second, minors who decide to disobey the law have more direct means of doing so. Third, direct shipping is an imperfect avenue of obtaining alcohol for minors who, in the words of the past president of the National Conference of State Liquor Administrators, "'want instant gratification.'" *Id.,* at 33, and n. 137 (explaining why minors rarely buy alcohol via the mail or the Internet). Without concrete evidence that direct shipping of wine is likely to increase alcohol consumption by minors, we are left with the States' unsupported assertions. Under our precedents, which require the "clearest showing" to justify discriminatory state regulation, *C & A Carbone, Inc.,* 511 U. S., at 393, this is not enough.

Even were we to credit the States' largely unsupported claim that direct shipping of wine increases the risk of underage drinking, this would not justify regulations limiting only out-of-state direct shipments. As the wineries point out, minors are just as likely to order wine from in-state producers as from out-of-state ones. Michigan, for example, already allows its licensed retailers (over 7,000 of them) to deliver alcohol directly to consumers. Michigan counters that it has greater regulatory control over in-state producers than over out-of-state wineries. This does not justify Michigan's discriminatory ban on direct shipping. Out-of-state wineries face the loss of state and federal licenses if they fail to comply with state law. This provides strong incentives not to sell alcohol to minors. In addition, the States can take less restrictive steps to minimize the risk that minors will order wine by mail. For example, the Model Direct Shipping Bill developed by the National Conference of State Legislatures requires an adult signature on delivery and a label so instructing on each package.

The States' tax-collection justification is also insufficient. Increased direct shipping, whether originating in state or out of state, brings with it the potential for tax evasion. With regard to Michigan, however, the tax-collection argument is a diversion. That is because Michigan, unlike many other States, does not rely on wholesalers to collect taxes on wines imported from out-of-state. Instead, Michigan collects taxes directly from out-of-state wineries on all wine shipped to in-state wholesalers. Mich. Admin. Code Rule 436.1725(2) (1989) ("Each outside seller of wine shall submit . . . a wine tax report of all wine sold, delivered, or imported into this state during the preceding calendar month"). If licensing and self-reporting provide adequate safeguards for wine distributed through the three-tier system, there is no reason to believe they will not suffice for direct shipments.

New York and its supporting parties also advance a tax-collection justification for the State's direct-shipment laws. While their concerns are not wholly illusory, their regulatory objectives can be achieved without discriminating against interstate commerce. In particular, New York could protect itself against lost tax revenue by requiring a permit as a condition of direct shipping. This is the approach taken by New York for in-state wineries. The State offers no reason to believe the system would prove ineffective for out-of-state wineries. Licensees could be required to submit regular sales reports and to remit taxes. Indeed, various States use this approach for taxing direct interstate wine shipments, *e.g.*, N. H. Rev. Stat. Ann. §178.27 (Lexis Supp. 2004), and report no problems with tax collection. See FTC Report 38–40. This is also the procedure sanctioned by the National Conference of State Legislatures in their Model Direct Shipping Bill. See, *e.g.*, S. C. Code Ann. §61–4–747(C) (West Supp. 2004).

Michigan and New York benefit, furthermore, from provisions of federal law that supply incentives for winer-

ies to comply with state regulations. The Tax and Trade Bureau (formerly the Bureau of Alcohol, Tobacco, and Firearms) has authority to revoke a winery's federal license if it violates state law. BATF Industry Circular 96–3 (1997). Without a federal license, a winery cannot operate in any State. See 27 U. S. C. §204. In addition the Twenty-first Amendment Enforcement Act gives state attorneys general the power to sue wineries in federal court to enjoin violations of state law. §122a(b).

These federal remedies, when combined with state licensing regimes, adequately protect States from lost tax revenue. The States have not shown that tax evasion from out-of-state wineries poses such a unique threat that it justifies their discriminatory regimes.

Michigan and New York offer a handful of other rationales, such as facilitating orderly market conditions, protecting public health and safety, and ensuring regulatory accountability. These objectives can also be achieved through the alternative of an evenhanded licensing requirement. FTC Report 40–41. Finally, it should be noted that improvements in technology have eased the burden of monitoring out-of-state wineries. Background checks can be done electronically. Financial records and sales data can be mailed, faxed, or submitted via e-mail.

In summary, the States provide little concrete evidence for the sweeping assertion that they cannot police direct shipments by out-of-state wineries. Our Commerce Clause cases demand more than mere speculation to support discrimination against out-of-state goods. The "burden is on the State to show that 'the *discrimination* is demonstrably justified,'" *Chemical Waste Management, Inc.* v. *Hunt,* 504 U. S. 334, 344 (1992) (emphasis in original). The Court has upheld state regulations that discriminate against interstate commerce only after finding, based on concrete record evidence, that a State's nondiscriminatory alternatives will prove unworkable. See, *e.g.,*

Maine v. *Taylor,* 477 U. S. 131, 141–144 (1986). Michigan and New York have not satisfied this exacting standard.

V

States have broad power to regulate liquor under §2 of the Twenty-first Amendment. This power, however, does not allow States to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers. If a State chooses to allow direct shipment of wine, it must do so on evenhanded terms. Without demonstrating the need for discrimination, New York and Michigan have enacted regulations that disadvantage out-of-state wine producers. Under our Commerce Clause jurisprudence, these regulations cannot stand.

We affirm the judgment of the Court of Appeals for the Sixth Circuit; and we reverse the judgment of the Court of Appeals for the Second Circuit and remand the case for further proceedings consistent with our opinion.

It is so ordered.

TAB 11

SUPREME COURT OF THE UNITED STATES

Nos. 03–1116, 03–1120 and 03–1274

JENNIFER M. GRANHOLM, GOVERNOR OF MICHIGAN, ET AL., PETITIONERS

03–1116 *v.*

ELEANOR HEALD ET AL.

MICHIGAN BEER & WINE WHOLESALERS ASSOCIATION, PETITIONER

03–1120 *v.*

ELEANOR HEALD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUANITA SWEDENBURG, ET AL., PETITIONERS

03–1274 *v.*

EDWARD D. KELLY, CHAIRMAN, NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL, STATE LIQUOR AUTHORITY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May 16, 2005]

JUSTICE THOMAS, with whom THE CHIEF JUSTICE, JUSTICE STEVENS, and JUSTICE O'CONNOR join, dissenting.

A century ago, this Court repeatedly invalidated, as inconsistent with the negative Commerce Clause, state liquor legislation that prevented out-of-state businesses from shipping liquor directly to a State's residents. The

Webb-Kenyon Act and the Twenty-first Amendment cut off this intrusive review, as their text and history make clear and as this Court's early cases on the Twenty-first Amendment recognized. The Court today seizes back this power, based primarily on a historical argument that this Court decisively rejected long ago in *State Bd. of Equalization of Cal.* v. *Young's Market Co.,* 299 U. S. 59, 64 (1936). Because I would follow *Young's Market* and the language of both the statute that Congress enacted and the Amendment that the Nation ratified, rather than the Court's questionable reading of history and the "negative implications" of the Commerce Clause, I respectfully dissent.

I

The Court devotes much attention to the Twenty-first Amendment, yet little to the terms of the Webb-Kenyon Act. This is a mistake, because that Act's language displaces any negative Commerce Clause barrier to state regulation of liquor sales to in-state consumers.

A

The Webb-Kenyon Act immunizes from negative Commerce Clause review the state liquor laws that the Court holds are unconstitutional. The Act "prohibit[s]" any "shipment or transportation" of alcoholic beverages "into any State" when those beverages are "intended, by any person interested therein, to be received, possessed, sold, or in any manner used . . . in violation of any law of such State."[1] State laws that regulate liquor imports in the

---

[1] The Webb-Kenyon Act provides:

"The shipment or transportation, in any manner or by any means whatsoever, of any spiritous, vinous, malted, fermented, or other intoxicating liquor of any kind from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the

manner described by the Act are exempt from judicial scrutiny under the negative Commerce Clause, as this Court has long held. See *McCormick & Co.* v. *Brown,* 286 U. S. 131, 139–140 (1932); *Clark Distilling Co.* v. *Western Maryland R. Co.,* 242 U. S. 311, 324 (1917); *Seaboard Air Line R. Co.* v. *North Carolina,* 245 U. S. 298, 303–304 (1917). The Webb-Kenyon Act's language, in other words, "prevent[s] the immunity characteristic of interstate commerce from being used to permit the receipt of liquor through such commerce in States contrary to their laws." *Clark Distilling, supra,* at 324.

The Michigan and New York direct-shipment laws are within the Webb-Kenyon Act's terms and therefore do not run afoul of the negative Commerce Clause. Those laws restrict out-of-state wineries from shipping and selling wine directly to Michigan and New York consumers. *Ante,* at 5–6. Any winery that ships wine directly to a Michigan or New York consumer in violation of those state-law restrictions is a "person interested therein" "intend[ing]" to "s[ell]" wine "in violation of" Michigan and New York law, and thus comes within the terms of the Webb-Kenyon Act.

This construction of the Webb-Kenyon Act is no innovation. The Court adopted this reading of the Act in *McCormick & Co.* v. *Brown, supra,* and Congress approved it shortly thereafter in 1935 when it reenacted the Act without alteration, 49 Stat. 877; see, *e.g., Keene Corp.* v. *United States,* 508 U. S. 200, 212–213 (1993) (applying presumption that reenacted statute incorporates settled

---

United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spiritous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is prohibited." 27 U. S. C. §122.

judicial construction). *McCormick* considered a state law that prohibited out-of-state manufacturers (as well as in-state manufacturers) from shipping liquor to a licensed in-state dealer without first obtaining a wholesaler permit. The Court held that by shipping liquor into the State without a license, the out-of-state manufacturer "[fell] directly within the terms of" the Webb-Kenyon Act, thus violating it. 286 U. S., at 143; see also *Rainier Brewing Co.* v. *Great Northern Pacific S. S. Co.,* 259 U. S. 150, 152–153 (1922) (holding that under the Webb-Kenyon Act, beer importers must "carry" beer into the State "in the manner allowed by the laws of that State"). While the law at issue in *McCormick* did not discriminate against out-of-state products, the construction of the Webb-Kenyon Act it adopted applies equally to state laws that so discriminate. If an out-of-state manufacturer shipping liquor to an in-state distributor without a license "s[ells]" liquor "in violation of any law of such State" within the meaning of Webb-Kenyon, as *McCormick* held, an out-of-state winery directly shipping wine to consumers in violation of even a discriminatory state law does so as well. The Michigan and New York laws are indistinguishable in relevant part from the state law upheld in *McCormick*.[2]

The Court answers that the Webb-Kenyon Act's text "readily can be construed as forbidding 'shipment or transportation' only where it runs afoul of the States' generally applicable laws governing receipt, possession, sale, or use." *Ante*, at 19. What the Court means by "gen-

---

[2]The Court notes that *McCormick* held that the Webb-Kenyon Act only authorized "valid" laws, the suggestion being that *McCormick*'s holding applies only to nondiscriminatory (and hence "valid" laws). *Ante*, at 19. The Court takes this word out of context. By "valid" laws, *McCormick* meant laws not pre-empted by the National Prohibition Act, rather than laws that treated in-state and out-of-state products equally. See 286 U. S., at 143–144 (finding the legislation "valid" because the National Prohibition Act did not pre-empt it).

erally applicable" laws is unclear, for the Court concedes that the Webb-Kenyon Act allows States to pass laws discriminating against out-of-state wholesalers. See *ante*, at 21, 25–26. By "generally applicable [state] laws," therefore, the Court apparently means all state laws except for those that "discriminate" against out-of-state liquor products. See *ante*, at 19–20, 25–26.

The Court leaves unexplained how this ad hoc exception follows from the Act's text. The Act's language leaves no room for this exception. The Act does not condition a State's ability to regulate the receipt, possession, and use of liquor free from negative Commerce Clause immunity on the character of the state law. It does not mention "discrimination," much less discrimination against out-of-state liquor products. Instead, it prohibits the interstate shipment of liquor into a State "in violation of any law of such State." 27 U. S. C. §122. "[A]ny law of such State" means any law, including a "discriminatory" one.

The Court's distinction between discrimination against manufacturers and discrimination against wholesalers is equally unjustified. There is no warrant in the Act's text for treating regulated entities differently depending on their place in the distribution chain: The Act applies in undifferentiated fashion to "any person interested therein." A wine manufacturer shipping wine directly to a consumer is an interested party, just as an out-of-state liquor wholesaler is.[3]

---

[3] The Court also states that the "Webb-Kenyon Act expresses no clear congressional intent to depart from the principle . . . that discrimination against out-of-state goods is disfavored." *Ante*, at 19. That is not correct. It is settled that the Webb-Kenyon Act explicitly abrogates negative Commerce Clause review of state laws that fall within its terms. See *supra*, at 3. There is no reason to require another clear statement for each sort of law to which it might apply. The only question is whether, fairly read, the Webb-Kenyon Act covers Michigan's and New York's direct-shipment laws. As I have explained, it does.

The contrast between the language of the Webb-Kenyon Act and its predecessor, the Wilson Act, casts still more doubt on the Court's reading. The Wilson Act provided that liquor shipped into a State was "subject to the operation and effect of the laws of such State . . . to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory." §121. Even if this language does not authorize States to discriminate against out-of-state liquor products, see *ante*, at 15, the Webb-Kenyon Act has no comparable language addressing discrimination. The contrast is telling. It shows that the Webb-Kenyon Act encompasses laws that discriminate against both out-of-state wholesalers and out-of-state manufacturers.

In support of its conclusion that the Webb-Kenyon Act did not authorize States to discriminate, the Court relies heavily on *Clark Distilling Co.* v. *Western Maryland R. Co.*, 242 U. S. 311 (1917). *Ante*, at 18–19. Its reliance is misplaced. *Clark Distilling* held that the Webb-Kenyon Act authorized a nondiscriminatory state law, 242 U. S., at 321–322, and so had no direct occasion to pass on whether the Act also authorized discriminatory laws. Nothing in it implicitly decided that unsettled question in the manner the Court suggests.

To the extent that it is relevant, *Clark Distilling* supports the view that the Webb-Kenyon Act authorized States to discriminate. Contrary to the Court's suggestion, *Clark Distilling* did not say (on pages 321, 322 or elsewhere) that the Webb-Kenyon Act "empowered [States] to forbid shipments of alcohol to consumers for personal use, provided that [they] treated in-state and out-of-state liquor on the same terms." *Ante*, at 18. Instead, *Clark Distilling* construed the Webb-Kenyon Act to "extend that which was done by the Wilson Act" in that its "purpose was to prevent the immunity characteristic of interstate commerce from being used to permit the receipt

of liquor through such commerce in States contrary to their laws." 242 U. S., at 324. The Court takes this passage only to refer to "nondiscriminatory" state laws, *ante*, at 18, but this is not correct. The passage the Court cites implies that the Webb-Kenyon Act also abrogated the nondiscrimination principle of the negative Commerce Clause, since that principle flows from the "immunity characteristic of interstate commerce," no less than any other negative Commerce Clause doctrine. In other words, *Clark Distilling* recognized that the Webb-Kenyon Act took "the protection of interstate commerce away from *all receipt and possession of liquor prohibited by state law*." 242 U. S., at 325 (emphasis added). *Clark Distilling* thus confirms what the text of the Webb-Kenyon Act makes clear: The Webb-Kenyon Act "extended" the Wilson Act by completely immunizing all state laws regulating liquor imports from negative Commerce Clause restraints.[4]

B

Straying from the Webb-Kenyon Act's text, the Court speculates that Congress intended the Act merely to overrule a discrete line of this Court's negative Commerce Clause cases invalidating "nondiscriminatory" state liquor regulation laws, including *Vance* v. *W. A. Vandercook Co.,* 170 U. S. 438 (1898), and *Rhodes* v. *Iowa,* 170 U. S. 412 (1898). *Ante*, at 15–21. According to the majority, *ante*, at

[4]The Court also opines that, quite apart from the Webb-Kenyon Act, the Wilson Act "expressly precludes States from discriminating." *Ante*, at 19. It does not. The Wilson Act "precludes" States from nothing. Instead, it authorizes them to regulate liquor free of negative Commerce Clause restraints by "subject[ing]" imported liquor "to the operation" of state law, taking state law as it finds it. 27 U. S. C. §121. Even if, as the Court suggests, the Wilson Act does not authorize States to discriminate, *ante*, at 15, the Webb-Kenyon Act extends that authorization to cover discriminatory state laws. The only question here is the scope of the broader, more inclusive Webb-Kenyon Act. The Court's argument therefore adds nothing to the analysis.

20–21, the Webb-Kenyon Act left untouched this Court's cases preventing States from regulating liquor in "discriminatory" fashion. See, *e.g., Scott* v. *Donald,* 165 U. S. 58 (1897) *(Scott); Walling* v. *Michigan,* 116 U. S. 446 (1886); and *Tiernan* v. *Rinker,* 102 U. S. 123 (1880). The plain language of the Webb-Kenyon Act makes the Court's guesswork about Congress' intent unnecessary. But even taken on its own terms, the majority's historical argument is unpersuasive. History reveals that the Webb-Kenyon Act overturned not only *Vance* and *Rhodes*, but also *Scott* and therefore its "nondiscrimination" principle.

The origins of the Webb-Kenyon Act are in this Court's decision in *Leisy* v. *Hardin,* 135 U. S. 100 (1890). *Leisy* held that States were prohibited from regulating the resale of alcohol imported from outside the State so long as the liquor stayed in its "original packag[e]." *Id.*, at 124–125. This rule made it more difficult for States to prohibit the in-state consumption of liquor. Even if a State banned the domestic production of liquor altogether, *Leisy* left it powerless to stop the flow of liquor from outside its borders.

Congress reacted swiftly by enacting the Wilson Act in August of 1890. The Wilson Act authorized States to regulate liquor "upon arrival in such State" whether "in original packages or otherwise," 27 U. S. C. §121, and therefore subjected imports to state jurisdiction "upon arrival within the jurisdiction of the State." *Rhodes, supra*, at 433 (Gray, J., dissenting). The Wilson Act accordingly abrogated *Leisy* and similar decisions by subjecting liquor imports to the operation of state law once the liquor came within a State's geographic borders.

Rather than holding that the Wilson Act meant what it said, three decisions of this Court construed the Act to be a virtual nullity. The first was *Scott, supra.* South Carolina had decided to regulate traffic in liquor by monopolizing the sale and distribution of liquor. All liquor, whether

produced in or out of the State, could be sold to consumers in the State only by the state commissioner of alcohol. *Id.*, at 66–68, n. 1, 92. The law thus prohibited out-of-state manufacturers and wholesalers, as well as their in-state counterparts, from shipping liquor directly to consumers.

The appellee, Donald, was a citizen of South Carolina who had ordered liquor directly from out-of-state shippers for his own personal use, rather than through the state monopoly system as South Carolina law required. *Id.*, at 59; see also *Scott* v. *Donald,* 165 U. S. 107, 108–109 (1897) *(Donald).* South Carolina officials seized the liquor he ordered after it had crossed South Carolina lines, but before he had received it. Donald sued the officials for damages, as well as an injunction allowing him to import liquor directly from out-of-state shippers for his own personal use. *Scott, supra,* at 69–70; *Donald, supra,* at 109–110.

The Court held that South Carolina's ban on the direct shipment of liquor unconstitutionally interfered with the right of out-of-state entities to ship liquor directly to consumers for their personal use, entitling Donald to damages and injunctive relief. *Scott, supra,* at 78, 99–100; *Donald, supra,* at 114; see also *Vance, supra,* at 452 (describing the "ruling" of *Scott* to be that a State could not "forbid the shipment into the State from other States of intoxicating liquors for the use of a resident"). The Court reasoned that the ban on importation, "in effect, discriminate[d] between interstate and domestic commerce in commodities to make and use which are admitted to be lawful." *Scott,* 165 U. S., at 100. The Court reserved the question whether a state monopoly system that allowed consumers to import liquor directly was constitutional; for the Court, it "suffic[ed]" that South Carolina's ban on imports "discriminate[d] against the bringing of such articles in, and importing them from other States." *Id.*, at 101. The Court's excuse for holding that the Wilson Act did not save the State's ban on importation was the same as the

Court's excuse today: that the Wilson Act did not authorize "discriminatory" state legislation. *Ibid.* On this basis, the Court affirmed Donald's damages award. *Ibid.*

In response to *Scott*, Senator Tillman of South Carolina quickly introduced the first version of what became the Webb-Kenyon Act. His bill explicitly attempted to reverse the *Scott* decision. The Senate Report on the bill noted that "[t]he effect of [*Scott* was] to throw down all the barriers erected by the State law, in which she is protected by the Wilson bill, and allow the untrammeled importation of liquor into the State upon the simple claim that it is for private use." S. Rep. No. 151, 55th Cong., 1st Sess., 5 (1897). The Report also addressed *Scott*'s holding that South Carolina's ban on importation was "discriminatory" and adopted the *Scott* dissenter's view that the ban on importation effected "no discrimination against citizens of other States." S. Rep. No. 151, at 5. The bill accordingly would have amended the Wilson Act to grant States "absolute control of . . . liquors or liquids within their borders, by whomsoever produced and for whatever use imported." 30 Cong. Rec. 2612 (1897). The bill passed in the Senate without debate. It failed in the House, perhaps because the House Judiciary Committee added an amendment that barred discrimination against the products of other States, leaving *Scott* intact. H. R. Rep. No. 667, 55th Cong., 2d Sess., 1 (1898).

Meanwhile, the Court continued to narrow the reach of the Wilson Act. In *Rhodes* and *Vance*, the Court even more broadly stripped States of their control over liquor regulation. *Rhodes* did so by holding that the phrase "upon arrival in such State" in the Wilson Act meant that state law could regulate imports only after their delivery to a consignee within the State. 170 U. S., at 421 (internal quotation marks omitted). This meant that States could regulate imported liquor, even when in its original package, but only after it had been delivered to the eventual

consignee. *Rhodes*, in other words, read the Wilson Act to overturn *Leisy,* but not *Bowman* v. *Chicago & Northwestern R. Co.,* 125 U. S. 465 (1888), which had recognized a constitutional right to import liquor in its original package free from state regulation until it reached its consignee. *Rhodes, supra,* at 423. Like *Leisy*, then, *Rhodes* seriously hampered the ability of States to intercept liquor at their borders.

Vance involved the constitutionality of a law very similar to the law struck down in *Scott*. After its loss in *Scott*, South Carolina amended its ban on importation. Rather than flatly banning imports unless they went through the state monopoly system, the new law allowed out-of-state wholesalers and manufacturers to ship liquor directly to consumers, but only if the consumer showed that the liquor passed a state-administered test of its purity. *Vance*, 170 U. S., at 454–455.

Vance had two distinct holdings. First, the Court struck down this condition on the direct importation of liquor as an impermissible burden on "the constitutional right of the non-resident to ship into the State and of the resident in the State to receive for his own use." *Id.*, at 455. The Court derived the right to direct importation primarily from the "ruling" of *Scott* that a State could not "forbid the shipment into the State from other States of intoxicating liquors for the use of a resident." 170 U. S., at 452.

Second, the Court held that, apart from its ban on direct shipments of liquor to consumers, South Carolina's monopoly over liquor distribution was otherwise constitutional. *Id.*, at 450–452. It rejected the argument that this monopoly system was unconstitutionally discriminatory. In particular, the Court reasoned that the monopoly system was not discriminatory because *Scott* had held (a holding that *Rhodes* had fortified) that South Carolina consumers had a constitutional right to import liquor for their own personal use, even if a State otherwise monopo-

lized the sale and distribution of liquor.[5] A monopoly system, the Court implied, was nondiscriminatory under the rule of *Scott* only if it also allowed consumers to import liquor from out-of-state shippers for their own personal use. Three Justices in *Vance* dissented from that holding, on the ground that such a state monopoly system constituted unconstitutional discrimination under, among other cases, *Scott* and *Walling* v. *Michigan,* 116 U. S. 446 (1886). 170 U. S., at 462–468 (opinion of Shiras, J., joined by Fuller, C. J., and McKenna, J.).

Rhodes and *Vance* swept more broadly than *Scott*. *Rhodes* held that States lacked power to regulate imported liquor before it reached the consignee, regardless of whether the liquor was intended for the consignee's personal use, see *supra*, at 10; it did not, as the Court implies, simply repeat *Scott*'s holding that consumers had a right to import liquor for their own personal use. *Ante*, at 17. *Rhodes*' holding, for example, made it easier for bootleggers to circumvent state prohibitions on the resale of imported liquor, because it enabled them to order large quantities of liquor directly from out-of-state interests. For its part, *Vance* held that the right to import for personal use recognized in *Scott* applied even if the State conditioned the right to import directly on compliance with regulatory conditions (*e.g.,* a state-administered purity test). Those broader holdings, consequently, spurred more vigorous congressional attempts to return control of liquor

---

[5] See *Vance* v. *W. A. Vandercook Co.*, 170 U. S. 438, 451–452 (1898) ("But the weight of [the argument that the state monopoly system is discriminatory] is overcome when it is considered that the Interstate Commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress [*i.e.*, the Wilson Act] which allows state authority to attach to the original package before sale but only after delivery. *Scott* v. *Donald, supra; Rhodes* v. *Iowa*").

regulation to the States. See R. Hamm, Shaping the Eighteenth Amendment 206–212 (1995) (hereinafter Hamm); Rogers, Interstate Commerce in Intoxicating Liquors Before the Webb-Kenyon Act, 4 Va. L. Rev. 353, 364–365 (1917). The legislative debate in subsequent years accordingly focused on their effect. That may be what misleads the majority into believing that the Webb-Kenyon Act took aim only at *Rhodes* and *Vance*.

Yet early versions of the Webb-Kenyon Act, not to mention the Act itself, also overturned *Scott*'s holding that banning the direct shipment of liquor for personal use was unconstitutionally discriminatory. Like Senator Tillman's initial bill, other early versions of the Webb-Kenyon Act took aim at *Scott*, *Rhodes*, and *Vance*. They made clear that out-of-state liquor was subject to state law immediately upon entering the State's territorial boundaries, even if intended for personal use. See Hamm 206, 208.

The version that eventually became the Webb-Kenyon Act was likewise designed to overturn the holdings of all three cases, and thus to reverse *Scott*'s "nondiscrimination" principle. The House Report says that the bill was "intended to withdraw the protecting hand of interstate commerce from intoxicating liquors transported into a State or Territory and intended to be used therein in violation of the law of such State or Territory." H. R. Rep. No. 1461, 62d Cong., 3d Sess., 1 (1913). Thus, the bill targeted *Scott*'s notion (as applied by *Vance*) that imports destined for personal use were exempt from state regulation. There was no mention of an exception for "discriminatory" state laws, though such an amendment to an earlier version of the Webb-Kenyon Act had been proposed before, see *supra*, at 10; the idea was that imports were subject to state law once within a State's geographic borders, regardless of the law's character. In fact, proponents of the final version of the bill defeated proposed amendments that would have restrained States from restricting

imports destined for personal use, and thereby would have left *Scott* intact. Hamm 215; 49 Cong. Rec. 2921 (1913); see also H. R. Rep. No. 2337, 58th Cong., 2d Sess., 2–3 (1904) (prior unenacted version drawing exception for shipments for in-state personal use).

In contrast to those unenacted amendments, the Webb-Kenyon Act reversed *Scott, Rhodes*, and *Vance* by forbidding the importation of liquor "intended to be received, possessed, sold or in any manner used . . . in violation of any law of such state"—regardless of the nature of the state law or the imported liquor's intended use. See *Seaboard Air Line R. Co.,* 245 U. S., at 304 (noting that the Webb-Kenyon Act allowed States to regulate "irrespective of any personal right in a consignee there to have and consume liquor"). That is why, just four years after its enactment, this Court described the Webb-Kenyon Act as removing "the protection of interstate commerce away from *all receipt and possession of liquor prohibited by state law*." *Clark Distilling*, 242 U. S., at 325 (emphasis added).

The foregoing historical account belies the majority's claim that the Webb-Kenyon Act left *Scott* untouched. The Court reasons that the Webb-Kenyon Act overturned only those decisions that "'in effect afford[ed] a means by subterfuge and indirection to set [state liquor laws] at naught,'" *ante*, at 18 (quoting *Clark Distilling*, *supra*, at 324), a description the Court takes to cover *Rhodes* and *Vance*, but not *Scott*. However, *Scott*'s holding, by precluding state monopoly systems from prohibiting direct shipments of liquor to consumers, "set [state liquor laws] at naught" just as *Rhodes* and *Vance* did. The Court concedes that the Webb-Kenyon Act "close[d] the direct-shipment gap" and that *Scott* recognized a constitutional right for consumers to import liquor directly for their own personal use. *Ante*, at 16, 18. These concessions cannot be squared with Court's simultaneous suggestion, *ante*, at 18–21, that the Webb-Kenyon Act left *Scott* untouched.

The only way to overturn *Scott*'s direct-shipment holding was to abrogate its premise that South Carolina's monopoly system was unconstitutionally discriminatory, as Senator Tillman recognized from the start. See *supra*, at 9–10. Reversing *Scott*'s holding that a State could not ban direct shipments of liquor to consumers was a core concern of the Webb-Kenyon Act.

Repudiating *Scott*'s nondiscrimination holding was also essential to ensuring the constitutionality of state liquor licensing schemes and state monopolies on the sale and distribution of liquor. This is so because the constitutionality of these state systems remained in some doubt even after *Vance*. As explained, *Vance* upheld South Carolina's monopoly system (stripped of its ban on direct shipments) as "nondiscriminatory" only because that system had preserved the constitutional right established in *Scott* and *Rhodes* to send and receive direct shipments of liquor free of state interference. *Supra*, at 11–12. The Court admits that the Webb-Kenyon Act abolished that right. *Ante*, at 18. Had the Webb-Kenyon Act done so without also allowing the States to discriminate, *Vance*'s reasoning implied that the Court was likely to strike down state monopoly systems, and therefore probably licensing schemes as well, as unduly "discriminatory." See 170 U. S., at 451 (equating a state monopoly scheme with a private licensing scheme). The only way to stave off that holding, and so to preserve States' ability to regulate liquor traffic, was to overturn *Scott*'s "nondiscrimination" reasoning. Faced with a Judiciary that had narrowly construed the Wilson Act, see *supra*, at 8–12, Congress drafted the Webb-Kenyon Act to authorize *all* state regulation of importation, whether or not "discriminatory." Just as *Rhodes* read the Wilson Act to repudiate *Leisy* but not *Bowman*, see *supra*, at 10, the majority reads the Webb-Kenyon Act to repudiate *Rhodes* but not *Scott*, committing an analogous error. I would not so construe the Webb-Kenyon Act.

C

The majority disagrees with this historical account primarily by disputing my reading of *Scott*. It reads *Scott* to have held two things: first, that certain discriminatory provisions of South Carolina's monopoly system were not authorized by the Wilson Act, and therefore were unconstitutional; and second, that Donald had a constitutional right to import liquor directly from out-of-state shippers. *Ante*, at 15–17. This recharacterization of *Scott* (together with its mischaracterization of *Rhodes*' holding, see *supra*, at 10) is the basis for the Court's contention that the Webb-Kenyon Act only overruled *Scott*'s second holding, leaving the first untouched. *Ante*, at 18–21.

The Court misreads *Scott*. *Scott* had only one holding: that the state monopoly system unconstitutionally discriminated against Donald by allowing him to purchase liquor from in-state stores, but not directly from out-of-state interests. The issue of direct importation was squarely at issue in *Scott*, not simply "implicit." *Ante*, at 17. This was the only basis, after all, for affirming Donald's damages award for interference with his ability to import goods directly from outside the State. *Scott*'s reasoning that the South Carolina law was unconstitutionally discriminatory was the basis for affirming that award, not a separate and distinct holding.

While South Carolina law also allowed the state alcohol administrator to discriminate against out-of-state liquor when purchasing liquor for sale through the monopoly system, *ante*, at 15, any constitutional defect with those portions of the law would have been at most grounds for allowing Donald to purchase out-of-state liquor through the state monopoly system, as the dissent argued (and as the majority strains to characterize *Scott* 's actual holding, *ante*, at 16). See 165 U. S., at 104–106 (Brown, J., dissenting). But *Scott* rejected that view and held that the broader discrimination effected by the law was grounds for

allowing Donald to import liquor directly himself, bypassing the monopoly system entirely. *Scott*'s holding therefore rested on a conclusion that a ban on direct importation was "discrimination" under the negative Commerce Clause. That conclusion was natural for Justice Shiras, the author of *Scott*, whose view apparently was that all state monopoly systems, even ones that seem nondiscriminatory to our modern eyes, were unconstitutionally discriminatory. See *Vance*, *supra*, at 465, 467 (Shiras, J., dissenting) (citing the nondiscrimination cases *Walling* v. *Michigan,* 116 U. S. 446 (1886), and *Minnesota* v. *Barber,* 136 U. S. 313 (1890)). The Court's narrower understanding of "discrimination" is anachronistic.

Vance confirms this reading of *Scott*. *Vance* correctly characterized *Scott* as establishing a right for consumers to receive shipments of liquor directly from out-of-state sources. 170 U. S., at 452. It also characterized *Scott*'s reasoning as resting on the discriminatory character of the state law. 170 U. S., at 449. These two descriptions, taken together, suggest that the discriminatory character of the law was the basis for *Scott*'s holding that Donald had a constitutional right to receive liquor directly, instead of a separate holding. Moreover, *Vance* also implied that a monopoly system that did not allow consumers to receive liquor directly was unconstitutionally discriminatory. See *supra*, at 11–12. That suggestion supports the idea that *Scott* considered a ban on such direct shipments to be discriminatory.

Brennen v. *Southern Express Co.*, 106 S. C. 102, 90 S. E. 402 (1916), likewise bolsters that *Scott* considered South Carolina's ban on direct importation to be unconstitutionally discriminatory, quite apart from the provisions that authorized the state administrator of alcohol to prefer local products over out-of-state ones. See *ante*, at 15 (describing discriminatory provisions). In *Brennen*, the court considered the constitutionality of a state monopoly sys-

tem that channeled all liquor through state dispensaries by banning direct shipments, but that allowed a consumer to import directly one gallon of liquor per month for his own personal use. 106 S. C., at 107–108, 90 S. E., at 403. Though out-of-state liquor had equal access to the state run liquor dispensaries, see generally 2 S. C. Crim. Code §§794–878 (1912) (providing for otherwise nondiscriminatory state-run monopoly system), the court held that this system unconstitutionally discriminated against out-of-state liquor because it allowed consumers to purchase only a limited quantity of liquor via direct shipments, yet unlimited amounts from state stores. The court noted that "there was no limit to the quantity which a citizen who patronized the dispensaries might buy and keep in his possession for personal use," whereas the law limited direct-shipment purchases to a specific quantity each month. 106 S. C., at 108, 90 S. E., at 403. This, the court reasoned, "was therefore clearly a discrimination made in favor of liquors bought from the dispensaries," and so was unconstitutionally discriminatory under the rule of *Scott*. 106 S. C., at 108, 90 S. E., at 403–404. The court thus recognized that *Scott*'s reasoning implied that a state monopoly system was unconstitutionally discriminatory unless it allowed consumers to purchase liquor directly from out-of-state shippers on the same terms as they could purchase liquor from the state monopoly system.

Brennan refutes the Court's characterization of *Scott*. It shows that the South Carolina system at issue in *Scott* was "discriminatory" because it banned direct importation, not because its provisions authorized the state alcohol administrator to prefer local products. Even the Court concedes that the Webb-Kenyon Act abrogated the right to direct importation recognized in *Scott*. See *ante*, at 16, 18. It follows that the Act also overturned the nondiscrimination reasoning that was the foundation of that right.

In sum, the Webb-Kenyon Act authorizes the discrimi-

natory state laws before the Court today.

II

There is no need to interpret the Twenty-first Amendment, because the Webb-Kenyon Act resolves these cases. However, the state laws the Court strikes down are lawful under the plain meaning of §2 of the Twenty-first Amendment, as this Court's case law in the wake of the Amendment and the contemporaneous practice of the States reinforce.

A

Section 2 of the Twenty-first Amendment provides: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." As the Court notes, *ante*, at 21, this language tracked the Webb-Kenyon Act by authorizing state regulation that would otherwise conflict with the negative Commerce Clause. To remove any doubt regarding its broad scope, the Amendment simplified the language of the Webb-Kenyon Act and made clear that States could regulate importation destined for in-state delivery free of negative Commerce Clause restraints. Though the Twenty-first Amendment mirrors the basic terminology of the Webb-Kenyon Act, its language is broader, authorizing States to regulate all "transportation or importation" that runs afoul of state law. The broader language even more naturally encompasses discriminatory state laws. Its terms suggest, for example, that a State may ban imports entirely while leaving in-state liquor unregulated, for they do not condition the State's ability to prohibit imports on the manner in which state law treats domestic products.

The state laws at issue in these cases fall within §2's broad terms. They prohibit wine manufacturers from "transport[ing] or import[ing]" wine directly to consumers

in New York and Michigan "for delivery or use therein." Michigan law does so by requiring all out-of-state wine manufacturers to distribute wine through licensed in-state wholesalers. *Ante*, at 5. New York law does so by prohibiting out-of-state wineries from shipping wine directly to consumers unless they establish an in-state physical presence, something that in-state wineries naturally have. *Ante*, at 6–7, 11–12. The Twenty-first Amendment prohibits out-of-state wineries from shipping wine into Michigan and New York in violation of these laws. In holding that the Constitution prohibits Michigan's and New York's laws, the majority turns the Amendment's text on its head.

The majority's holding is also at odds with this Court's early Twenty-first Amendment case law. In *State Bd. of Equalization of Cal.* v. *Young's Market Co.*, 299 U. S. 59 (1936), this Court considered the constitutionality of a California law that facially discriminated against beer importers and, by extension, out-of-state producers. The California law required wholesalers to pay a special $500 license fee to import beer, in addition to the $50 fee California charged for wholesalers to distribute beer generally. *Id.*, at 60–61. California law thus discriminated against out-of-state beer by charging wholesalers of imported beer 11 times the fee charged to wholesalers of domestic beer.

Young's Market held that this explicit discrimination against out-of-state beer products came within the terms of the Twenty-first Amendment, and therefore did not run afoul of the negative Commerce Clause. The Court reasoned that the Twenty-first Amendment's words are "apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes." *Id.*, at 62. The Court rejected the argument that a State "must let imported liquors compete with the domestic on equal terms," declaring that "[t]o say that, would involve not a construction of the Amendment, but a

rewriting of it." *Ibid.* It recognized that a State could adopt a "discriminatory" regulation of out-of-state manufacturers as an incident to a "lesser degree of regulation than total prohibition," for example, by imposing "a state monopoly of the manufacture and sale of beer," or by "channel[ing] desired importations by confining them to a single consignee." *Id.*, at 63. And far from "not consider[ing]" the historical argument that forms the core of the majority's reasoning, *ante*, at 22, *Young's Market* expressly rejected its relevance:

> "The plaintiffs argue that limitation of the broad language of the Twenty-first Amendment is sanctioned by its history; and by the decisions of this Court on the Wilson Act, the Webb-Kenyon Act and the Reed Amendment. As we think the language of the Amendment is clear, we do not discuss these matters." 299 U. S., at 63–64 (footnote omitted).

The plaintiffs in *Young's Market* advanced virtually the same historical argument the Court today accepts. Brief for Appellees, O. T. 1936, No. 22, pp. 57–75. *Young's Market* properly reasoned that the text of our Constitution is the best guide to its meaning. That logic requires sustaining the state laws that the Court invalidates.

Young's Market was no outlier. The next Term, the Court upheld a Minnesota law that prohibited the importation of 50-proof liquor, concluding that "discrimination against imported liquor is permissible." *Mahoney* v. *Joseph Triner Corp.,* 304 U. S. 401, 403 (1938). One Term after that, the Court upheld two state laws that prohibited the importation of liquor from States that discriminated against domestic liquor. See *Indianapolis Brewing Co.* v. *Liquor Control Comm'n,* 305 U. S. 391, 394 (1939) (noting that the Twenty-first Amendment permitted States to "discriminat[e] between domestic and imported intoxicating liquors"); *Joseph S. Finch & Co.* v. *McKittrick,* 305

U. S. 395, 398 (1939). In sum, the Court recognized from the start that "[t]he Twenty-first Amendment sanctions the right of a State to legislate concerning intoxicating liquors brought from without, unfettered by the Commerce Clause." *Ziffrin, Inc.* v. *Reeves,* 308 U. S. 132, 138 (1939); accord, *Duckworth* v. *Arkansas,* 314 U. S. 390, 398–399 (1941) (Jackson, J., concurring in result); *Carter* v. *Virginia,* 321 U. S. 131, 138–139 (1944) (Black, J., concurring); *id.*, at 139–143 (Frankfurter, J., concurring). The majority gives short shrift to these persuasive contemporaneous constructions of the Twenty-first Amendment, as JUSTICE STEVENS properly stresses. *Ante*, at 3–4 (dissenting opinion).

B

The widespread, unquestioned acceptance of the three-tier system of liquor regulation, see *ante*, at 2–3, and the contemporaneous practice of the States following the ratification of the Twenty-first Amendment confirm that the Amendment freed the States from negative Commerce Clause restraints on discriminatory regulation. Like the Webb-Kenyon Act, the Twenty-first Amendment was designed to remove any doubt regarding whether state monopoly and licensing schemes violated the Commerce Clause, as the majority properly acknowledges. *Ante*, at 25–26; see also *supra,* at 15. Accordingly, in response to the end of Prohibition, States that made liquor legal imposed either state monopoly systems, or licensing schemes strictly circumscribing the ability of private interests to sell and distribute liquor within state borders. Skilton, State Power Under the Twenty-First Amendment, 7 Brooklyn L. Rev. 342, 345–346 (1938); L. Harrison & E. Laine, After Repeal: A Study of Liquor Control Administration 43 (1936).

These liquor regulation schemes discriminated against out-of-state economic interests, just as Michigan's and

New York's direct-shipment laws do. State monopolies that did not permit direct shipments to consumers, for example, were thought to discriminate against out-of-state wholesalers and retailers by favoring in-state products. See *Vance*, 170 U. S., at 451–452; *supra*, at 11–12. Private licensing schemes discriminated as well, often by requiring in-state residency or physical presence as a condition of obtaining licenses.[6] Even today, the requirement that liquor pass through a licensed in-state wholesaler is a core component of the three-tier system. As the Court concedes, each of these schemes is within the ambit of the Twenty-first Amendment, even though each discriminates against out-of-state interests. *Ante*, at 2–3, 25–26.

---

[6] See Note, Economic Localism in State Alcoholic Beverage Laws–Experience Under the Twenty-First Amendment, 72 Harv. L. Rev. 1145, 1148–1149, and n. 25 (1959) (hereinafter Economic Localism); see also 3 Colo. Stat. Ann., ch. 89, §4(a) (1935) (residency requirement); 17 Fla. Stat. Ann. §561.24 (1941) (prohibiting out-of-state manufacturers from being distributors); Ill. Rev. Stat., ch. 43, §120 (Smith-Hurd 1937) (residency requirement); Ind. Stat. Ann. §3730(c) (1934) (residency requirement); 1 Md. Ann. Code, Art. 2B, §13 (1939) (residency requirement); 4B Ann. Laws of Mass., ch. 138, §§18, 18A (1965) (residency requirements); 5 Comp. Laws Mich. §9209–32 (Supp. 1935) (residency requirement); 1 Mo. Rev. Stat. §4906 (1939) (citizenship requirement); Neb. Comp. Stat., ch. 53, Art. 3, §53–328 (1929 and Cum. Supp. 1935) (residency requirement); §53–317 (physical presence requirement); 1 Nev. Comp. Laws §3690.05 (Supp. 1931–1941) (residency and physical presence requirements); 2 Rev. Stat. of N. J. §33:1–25 (1937) (citizenship and residency requirements); N. C. Code Ann. §3411(103)(1½) (1939) (residency requirement); 1 N. D. Rev. Code §5–0202 (1943) (citizenship and residency requirements); Ohio Code Ann. §6064–17 (1936) (residency and physical presence requirements); R. I. Gen. Laws, ch. 163, §4 (1938) (residency requirement); 1 S. D. Code §5.0204 (1939) (residency requirement); Vt. Rev. Stat., Tit. 28, ch. 271, §6156 (1947) (residency requirement); 8 Rev. Stat. Wash. §7306–23G (Supp. 1940) (physical presence requirement); §7306–27 (citizenship and residency requirements); Wis. Stat. §176.05(9) (1937) (citizenship and residency requirements); Wyo. Rev. Stat. Ann. §59–104 (Supp. 1940) (citizenship and residency requirements).

Many States had laws that discriminated against out-of-state products in addition to out-of-state wholesalers and retailers. See Kallenbach, Interstate Commerce in Intoxicating Liquors Under the Twenty-First Amendment, 14 Temp. L. Q. 474, 483–484 (1940); T. Green, Liquor Trade Barriers: Obstructions to Interstate Commerce in Wine, Beer, and Distilled Spirits 12–19, and App. I (1940) (hereinafter Green).[7] For example, 21 States required that producers who had no physical presence within the State first obtain a special license or certificate before doing business within the State, thus subjecting them to two layers of licensing fees. *Id.*, at 12. Thirteen States charged lower licensing fees for wine manufacturers who used locally grown grapes. *Id.*, at 13. Arkansas went so far as to create a blanket exception to its licensing scheme for locally produced wine. See 2 Pope's Digest of Stat. of Ark. §§14099, 14105, 14113 (1937). Eight States taxed out-of-state liquor products at greater rates than in-state products. Green 13. Twenty-nine States exempted exports from excise taxes that were applicable to imports. *Id.*, at 14. At least 10 States (plus the District of Columbia) imposed special licensing requirements on solicitors of out-of-state liquor products. See Harrison & Laine, *supra*, at 194–195. Like the California law upheld in *Young's Market*, 10 States charged wholesalers who dealt in imports greater licensing fees. Economic Localism 1150; Crabb, State Power Over Liquor Under the Twenty-First

[7] See also, *e.g.*, Ill. Rev. Stat., ch. 43, §115(h) (Smith-Hurd 1937) (special license for growers of locally grown grapes); Comp. Laws Mich. §9209–55 (Supp. 1935) (exemption from malt tax for in-state manufacturers); Nev. Comp. Laws §3690.15 (Supp. 1931–1941) (special importer's fees; lower license fees for manufacturers and wholesalers who deal in in-state products); N. M. Stat. Ann. §72–806 (Supp. 1938) (licensing exemption for in-state wineries); R. I. Gen. Laws Ann., ch. 167, §8 (1938) (authorizing state agency to impose retaliatory tax); Utah Rev. Stat. §46–8–3 (Supp. 1939) (requiring state commission to prefer locally grown products).

Amendment, 12 U. Det. L. J. 11, 27 (1948); Green 13. Many States also passed antiretaliation statutes limiting or banning imports from other States that themselves discriminated against out-of-state liquor. Economic Localism 1152; Green 14. All told, at least 41 States had some sort of law that discriminated against out-of-state products, many if not most of which (contrary to the Court's suggestion, *ante*, at 22) predated *Young's Market* and its progeny. See, *e.g.,* Green App. I. This contemporaneous state practice refutes the Court's assertion, *ante*, at 21–22, 25, that the Twenty-first Amendment allowed States to discriminate against out-of-state wholesalers and retailers, but not against out-of-state products.

Rather than credit the lay consensus this state practice reflects, the Court relies instead on scattered academic and judicial commentary arguing that the Twenty-first Amendment did not permit States to enact discriminatory liquor legislation. *Ante*, at 22. Most of the commentators and judges the Court cites did not adopt the construction of the Amendment the Court embraces. For example, some argued that the Twenty-first Amendment only allowed States to enact nondiscriminatory prohibition laws—*i.e.,* to allow "dry states to remain dry." See Note, 55 Yale L. J. 815, 816–817 (1946); de Ganahl, The Scope of Federal Power Over Alcoholic Beverages Since the Twenty-First Amendment, 8 Geo. Wash. L. Rev. 819, 822–823 (1940); Friedman, Constitutional Law: State Regulation of Importation of Intoxicating Liquor Under the Twenty-First Amendment, 21 Cornell L. Q. 504, 511–512 (1936); Recent Cases, Constitutional Law—Twenty-first Amendment, 85 U. Pa. L. Rev. 322, 323 (1937); W. Hamilton, Price and Price Policies 426 (1938). The Court, by contrast, concedes that a State could have a discriminatory licensing or monopoly scheme. *Ante*, at 25–26. The Court must concede this, given that state practice shows that the Twenty-first Amendment authorized such prac-

tices, and given that the Webb-Kenyon Act allowed States to enforce their own licensing laws, even if they did not prohibit the use and consumption of liquor entirely. Others apparently defended the position that the Twenty-first Amendment did no more than prevent Congress from permitting the direct importation of liquor into a State, leaving the Constitution untouched. See *Joseph Triner Corp.* v. *Arundel*, 11 F. Supp. 145, 146–147 (Minn. 1935); *Young's Market Co.* v. *State Bd. of Equalization of Cal.*, 12 F. Supp. 140, 142 (SD Cal. 1935), rev'd, 299 U. S. 59 (1936). Still others did not state a clear view on the scope of the Twenty-first Amendment. See generally Legislation, Liquor Control, 38 Colum. L. Rev. 644 (1938); Wiser & Arledge, Does the Repeal Amendment Empower a State to Erect Tariff Barriers and Disregard the Equal Protection Clause in Legislating on Intoxicating Liquors in Interstate Commerce?, 7 Geo. Wash. L. Rev. 402 (1939) (arguing that the Twenty-first Amendment did not repeal the Equal Protection Clause). Instead of following this confused mishmash of elite opinion—the same sort of elite opinion that drove the expansive interpretation of the negative Commerce Clause that prompted the Twenty-first Amendment—I would credit the uniform practice of the States whose people ratified the Twenty-first Amendment. See *ante*, at 5 (STEVENS, J., dissenting).

The majority's reliance on the difference between discrimination against manufacturers (and therefore, their products) and discrimination against wholesalers and retailers is difficult to understand. The pre-Twenty-first Amendment "nondiscrimination" principle enshrined in this Court's negative Commerce Clause cases could not have prohibited discrimination against the producers of out-of-state goods, while permitting discrimination against out-of-state services like wholesaling and retailing. See *Lewis* v. *BT Investment Managers, Inc.*, 447 U. S. 27, 42 (1980) (invalidating state law that discriminated against

banks, bank holding companies, and trust companies with out-of-state business operations); *Memphis Steam Laundry Cleaner, Inc.* v. *Stone,* 342 U. S. 389, 394–395 (1952) (invalidating tax that discriminated against solicitors for out-of-state-licensed businesses). Discrimination against out-of-state wholesalers and retailers also risks allowing "economic protectionism." The Court's concession that the Twenty-first Amendment allowed States to require all liquor traffic to pass through in-state wholesalers and retailers shows that States may also have direct-shipment laws that discriminate against out-of-state wineries.

III

Though the majority dismisses this Court's early Twenty-first Amendment case law, it relies on the reasoning, if not the holdings, of our more recent Twenty-first Amendment cases. *Ante,* at 23–26. But the Court's later cases do not require the result the majority reaches. Moreover, I would resolve any conflict in this Court's precedents in favor of those cases most contemporaneous with the ratification of the Twenty-first Amendment.

A

The test set forth in this Court's more recent Twenty-first Amendment cases shows that Michigan's and New York's direct-shipment laws are constitutional. In *Bacchus Imports, Ltd.* v. *Dias,* 468 U. S. 263 (1984), this Court established a standard for determining when a discriminatory state liquor regulation is permissible under the Twenty-first Amendment. At issue in *Bacchus* was a Hawaii statute that imposed a 20 percent excise tax on liquor, but exempted certain locally produced products from the tax. The Court held that the Twenty-first Amendment did not save the discriminatory tax. The Court reasoned that the Twenty-first Amendment did not permit state laws that constituted "mere economic protec-

tionism," because the Twenty-first Amendment's "central purpose . . . was not to empower States to favor local liquor industries by erecting barriers to competition." *Id.*, at 276. The Court noted that the State did "not seek to justify its tax on the ground that it was designed to promote temperance or to carry out any other purpose of the Twenty-first Amendment, but instead acknowledg[ed] that the purpose was 'to promote a local industry.'" *Ibid.* (quoting Brief for Appellee Dias, O. T. 1983, No. 82–1565, p. 40). The Court therefore struck down the tax, "because [it] violate[d] a central tenet of the Commerce Clause but [was] not supported by any clear concern of the Twenty-first Amendment." 468 U. S., at 276; accord, *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority,* 476 U. S. 573, 584–585 (1986) ("[O]ur task . . . is to reconcile the interests protected by the" Twenty-first Amendment and the negative Commerce Clause).

Michigan's and New York's direct-shipment laws are constitutional under *Bacchus*. Allowing States to regulate the direct shipment of liquor was of "clear concern" to the framers of the Webb-Kenyon Act and the Twenty-first Amendment. *Bacchus*, *supra*, at 276. The driving force behind the passage of the Webb-Kenyon Act was a desire to reverse this Court's decisions that had precluded States from regulating the direct shipment of liquor by out-of-state interests. See *supra*, at 14–15. The laws struck down in *Scott* v. *Donald,* 165 U. S. 58 (1897), and *Vance* v. *W. A. Vandercook Co.,* 170 U. S. 438 (1898), required out-of-state manufacturers to ship liquor through the State's liquor regulation scheme—exactly what the Michigan and New York schemes do. By contrast, there is little evidence that purely protectionist tax exemptions like those at issue in *Bacchus* were of any concern to the framers of the Act and the Amendment.

Moreover, if the three-tier liquor regulation system falls within the "core concerns" of the Twenty-first Amendment,

then so do Michigan's and New York's direct-shipment laws. The same justifications for requiring wholesalers and retailers to be in-state businesses equally apply to Michigan's and New York's direct-shipment laws. For example, States require liquor to be shipped through in-state wholesalers because it is easier to regulate in-state wholesalers and retailers. State officials can better enforce their regulations by inspecting the premises and attaching the property of in-state entities; "[p]resence ensures accountability." 358 F. 3d 223, 237 (CA2 2004). It is therefore understandable that the framers of the Twenty-first Amendment and the Webb-Kenyon Act would have wanted to free States to discriminate between in-state and out-of-state wholesalers and retailers, especially in the absence of the modern technological improvements and federal enforcement mechanisms that the Court argues now make regulating liquor easier. *Ante*, at 28–29. Michigan's and New York's laws simply allow some in-state wineries to act as their own wholesalers and retailers in limited circumstances. If allowing a State to require all wholesalers and retailers to be in-state companies is a core concern of the Twenty-first Amendment, so is allowing a State to select only in-state manufacturers to ship directly to consumers, and therefore act, in effect, as their own wholesalers and retailers.

B

The Court places much weight upon the authority of *Bacchus*. *Ante*, at 24–25. This is odd, because the Court does not even mention, let alone apply, the "core concerns" test that *Bacchus* established. The Court instead *sub silentio* casts aside that test, employing otherwise-applicable negative Commerce Clause scrutiny and giving no weight to the Twenty-first Amendment and the Webb-Kenyon Act. *Ante*, at 8–12, 26–30. The Court therefore at least implicitly acknowledges the unprincipled nature of

the test *Bacchus* established and the grave departure *Bacchus* was from this Court's precedents. See 468 U. S., at 278–287 (STEVENS, J., dissenting); *James B. Beam Distilling Co.* v. *Georgia,* 501 U. S. 529, 554–557 (1991) (O'CONNOR, J., dissenting). *Bacchus* should be overruled, not fortified with a textually and historically unjustified "nondiscrimination against products" test.

Bacchus' reasoning is unpersuasive. It swept aside the weighty authority of this Court's early Twenty-first Amendment case law, see 468 U. S., at 281–282 (STEVENS, J., dissenting), because the *Bacchus* Court thought it "'an absurd oversimplification'" to conclude that "'the Twenty-first Amendment has somehow operated to "repeal" the Commerce Clause,'" *id.*, at 275 (quoting *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.,* 377 U. S. 324, 331–332 (1964)). The Twenty-first Amendment did not impliedly repeal the Commerce Clause, but that does not justify *Bacchus*' narrowing of the Twenty-first Amendment to its "core concerns."

The Twenty-first Amendment's text has more modest effect than *Bacchus* supposed. Though its terms are broader than the Webb-Kenyon Act, the Twenty-first Amendment also parallels the Act's structure. In particular, the Twenty-first Amendment provides that any importation into a State contrary to state law violates the Constitution, just as the Webb-Kenyon Act provides that any such importation contrary to state law violates federal law. Its use of those same terms of art shows that just as the Webb-Kenyon Act repealed liquor's negative Commerce Clause immunity, the Twenty-first Amendment likewise insulates state liquor laws from negative Commerce Clause scrutiny. Authorizing States to regulate liquor importation free from negative Commerce Clause restraints is a far cry from precluding Congress from regulating in that field at all. See *Bacchus, supra,* at 279, n. 5 (STEVENS, J., dissenting). Moreover, *Bacchus*' concern that the Twenty-first Amendment repealed the Commerce

Clause is no excuse for ignoring the independent force of the Webb-Kenyon Act, which equally divested discriminatory state liquor laws of Commerce Clause immunity.

Stripped of *Bacchus*, the Court's holding is bereft of support in our cases. *Bacchus* is the only decision of this Court holding that the Twenty-first Amendment does not authorize the in-state regulation of imported liquor free of the negative Commerce Clause. Given the uniformity of our early case law supporting even discriminatory state laws regulating imports into States, then, Michigan's and New York's laws easily pass muster under this Court's cases.

Nevertheless, in support of *Bacchus*' holding that "state regulation of alcohol is limited by the nondiscrimination principle of the Commerce Clause," the Court cites *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority,* 476 U. S. 573 (1986), and *Healy* v. *Beer Institute,* 491 U. S. 324 (1989). *Ante*, at 24–25. At issue in those cases was the constitutionality of protectionist legislation that controlled the price of liquor in other States. *Brown-Forman*, *supra*, at 582–583; *Healy*, *supra*, at 337–338. In invalidating such a statute, *Brown-Forman* found that the Twenty-first Amendment, by its terms, gives "New York only the authority to control sales of liquor in New York, and confers no authority to control sales in other States." 476 U. S., at 585; see also *Healy*, *supra*, at 342–343 (following *Brown-Forman*'s construction). *Brown-Forman* and *Healy* are beside the point in these cases. *Brown-Forman* did not involve a facially discriminatory law. See 476 U. S., at 579. And unlike *Healy*, there is no claim here that the Michigan and New York laws do anything but regulate within their own borders, thereby interfering with the ability of other States to exercise their own Twenty-first Amendment power.

Equally inapposite are the cases the Court cites concerning state laws that violate other provisions of the Consti-

tution or Acts of Congress. *Ante*, at 23–24. Cases involving the relation between the Twenty-first Amendment and Congress' affirmative Commerce Clause power are irrelevant to whether the Twenty-first Amendment protects state power against the negative implications of the Commerce Clause. See *James B. Beam*, *supra*, at 556 (O'CONNOR, J., dissenting); *Bacchus*, *supra*, at 279, and n. 5 (STEVENS, J., dissenting). Similarly, my interpretation of the Twenty-first Amendment would not free States to regulate liquor unhampered by other constitutional restraints, like the First Amendment and the Equal Protection Clause. As this Court explained in *Craig* v. *Boren*, 429 U. S. 190, 205–207 (1976), the text and history of the Twenty-first Amendment demonstrate that it displaces liquor's negative Commerce Clause immunity, not other constitutional provisions.

IV

The Court begins its opinion by detailing the evils of state laws that restrict the direct shipment of wine. *Ante*, at 2–4. It stresses, for example, the Federal Trade Commission's opinion that allowing the direct shipment of wine would enhance consumer welfare. FTC, Possible Anticompetitive Barriers to E-Commerce: Wine 3–5 (July 2003), available at http://www.ftc.gov/os/2003/07/winereport2.pdf (as visited May 12, 2005, and available in Clerk of Court's case file). The Court's focus on these effects suggests that it believes that its decision serves this Nation well. I am sure that the judges who repeatedly invalidated state liquor legislation, even in the face of clear congressional direction to the contrary, thought the same. See *supra*, at 7–12. The Twenty-first Amendment and the Webb-Kenyon Act took those policy choices away from judges and returned them to the States. Whatever the wisdom of that choice, the Court does this Nation no service by ignoring the textual commands of the Constitution and Acts of

Congress. The Twenty-first Amendment and the Webb-Kenyon Act displaced the negative Commerce Clause as applied to regulation of liquor imports into a State. They require sustaining the constitutionality of Michigan's and New York's direct-shipment laws. I respectfully dissent.

TAB 12

SUPREME COURT OF THE UNITED STATES

Nos. 03–1116, 03–1120 and 03–1274

JENNIFER M. GRANHOLM, GOVERNOR OF MICHIGAN, ET AL., PETITIONERS
03–1116 *v.*
ELEANOR HEALD ET AL.

MICHIGAN BEER & WINE WHOLESALERS ASSOCIATION, PETITIONER
03–1120 *v.*
ELEANOR HEALD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUANITA SWEDENBURG, ET AL., PETITIONERS
03–1274 *v.*
EDWARD D. KELLY, CHAIRMAN, NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL, STATE LIQUOR AUTHORITY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May 16, 2005]

JUSTICE STEVENS, with whom JUSTICE O'CONNOR joins, dissenting.

Congress' power to regulate commerce among the States includes the power to authorize the States to place burdens on interstate commerce. *Prudential Ins. Co.* v. *Benjamin,* 328 U. S. 408 (1946). Absent such congressional approval, a state law may violate the unwritten rules described as the "dormant Commerce Clause" either by

imposing an undue burden on both out-of-state and local producers engaged in interstate activities or by treating out-of-state producers less favorably than their local competitors. See, *e.g.*, *Pike* v. *Bruce Church, Inc.,* 397 U. S. 137 (1970); *Philadelphia* v. *New Jersey,* 437 U. S. 617 (1978). A state law totally prohibiting the sale of an ordinary article of commerce might impose an even more serious burden on interstate commerce. If Congress may nevertheless authorize the States to enact such laws, surely the people may do so through the process of amending our Constitution.

The New York and Michigan laws challenged in these cases would be patently invalid under well settled dormant Commerce Clause principles if they regulated sales of an ordinary article of commerce rather than wine. But ever since the adoption of the Eighteenth Amendment and the Twenty-first Amendment, our Constitution has placed commerce in alcoholic beverages in a special category. Section 2 of the Twenty-first Amendment expressly provides that "[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Today many Americans, particularly those members of the younger generations who make policy decisions, regard alcohol as an ordinary article of commerce, subject to substantially the same market and legal controls as other consumer products. That was definitely not the view of the generations that made policy in 1919 when the Eighteenth Amendment was ratified or in 1933 when it was repealed by the Twenty-first Amendment.[1] On the con-

---

[1] In the words of Justice Jackson: "The people of the United States knew that liquor is a lawlessness unto itself. They determined that it should be governed by a specific and particular Constitutional provision. They did not leave it to the courts to devise special distortions of the general rules as to interstate commerce to curb liquor's 'tendency to

trary, the moral condemnation of the use of alcohol as a beverage represented not merely the convictions of our religious leaders, but the views of a sufficiently large majority of the population to warrant the rare exercise of the power to amend the Constitution on two occasions. The Eighteenth Amendment entirely prohibited commerce in "intoxicating liquors" for beverage purposes throughout the United States and the territories subject to its jurisdiction. While §1 of the Twenty-first Amendment repealed the nationwide prohibition, §2 gave the States the option to maintain equally comprehensive prohibitions in their respective jurisdictions.

The views of judges who lived through the debates that led to the ratification of those Amendments are entitled to special deference. Foremost among them was Justice Brandeis, whose understanding of a State's right to discriminate in its regulation of out-of-state alcohol could not have been clearer:

> "The plaintiffs ask us to limit [§2's] broad command. They request us to construe the Amendment as saying, in effect: The State may prohibit the importation of intoxicating liquors provided it prohibits the manufacture and sale within its borders; but if it permits such manufacture and sale, it must let imported liquors compete with the domestic on equal terms. To say that, would involve not a construction of the Amendment, but a rewriting of it. . . . Can it be doubted that a State might establish a state monopoly of the manufacture and sale of beer, and either prohibit all competing importations, or discourage impor-

---

get out of legal bounds.' It was their unsatisfactory experience with that method that resulted in giving liquor an exclusive place in constitutional law as a commodity whose transportation is governed by a special, constitutional provision." *Duckworth* v. *Arkansas*, 314 U. S. 390, 398–399 (1941) (opinion concurring in result).

> tation by laying a heavy impost, or channelize desired importations by confining them to a single consignee?" *State Bd. of Equalization of Cal.* v. *Young's Market Co.,* 299 U. S. 59, 62–63 (1936).[2]

In the years following the ratification of the Twenty-first Amendment, States adopted manifold laws regulating commerce in alcohol, and many of these laws were discriminatory.[3] So-called "dry states" entirely prohibited such commerce; others prohibited the sale of alcohol on Sundays; others permitted the sale of beer and wine but not hard liquor; most created either state monopolies or distribution systems that gave discriminatory preferences to local retailers and distributors. The notion that discriminatory state laws violated the unwritten prohibition against balkanizing the American economy—while persuasive in contemporary times when alcohol is viewed as an ordinary article of commerce—would have seemed strange indeed to the millions of Americans who condemned the use of the "demon rum" in the 1920's and 1930's. Indeed, they expressly authorized the "balkanization" that today's decision condemns. Today's decision may represent sound economic policy and may be consistent with the policy choices of the contemporaries of Adam Smith who drafted our original Constitution;[4] it is not,

---

[2] According to Justice Black, who participated in the passage of the Twenty-first Amendment in the Senate, §2 was intended to return "'absolute control' of liquor traffic to the States, free of all restrictions which the Commerce Clause might before that time have imposed." *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.,* 377 U. S. 324, 338 (1964) (dissenting opinion).

[3] See generally Green, Interstate Barriers in the Alcoholic Beverage Field, 7 Law & Contemp. Prob. 717 (1940); *post,* at 22–25 (THOMAS, J., dissenting).

[4] Cf. *Knickerbocker Ice Co.* v. *Stewart,* 253 U. S. 149, 169 (1920) (Holmes, J., dissenting) ("I cannot for a moment believe that apart from the Eighteenth Amendment special constitutional principles exist against special drink. The fathers of the Constitution so far as I know ap-

however, consistent with the policy choices made by those who amended our Constitution in 1919 and 1933.

My understanding (and recollection) of the historical context reinforces my conviction that the text of §2 should be "broadly and colloquially interpreted." *Carter* v. *Virginia,* 321 U. S. 131, 141 (1944) (Frankfurter, J., concurring).[5] Indeed, the fact that the Twenty-first Amendment was the only Amendment in our history to have been ratified by the people in state conventions, rather than by state legislatures, provides further reason to give its terms their ordinary meaning. Because the New York and Michigan laws regulate the "transportation or importation" of "intoxicating liquors" for "delivery or use therein," they are exempt from dormant Commerce Clause scrutiny.

As JUSTICE THOMAS has demonstrated, the text of the Twenty-first Amendment is a far more reliable guide to its meaning than the unwritten rules that the majority enforces today. I therefore join his persuasive and comprehensive dissenting opinion.

---

proved it").

[5] As he added in that case, "since Virginia derives the power to legislate as she did from the Twenty-first Amendment, the Commerce Clause does not come into play." *Carter* v. *Virginia*, 321 U. S., at 143.

TAB 13

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JERRY BAINBRIDGE, *et al.*,

Plaintiffs,

vs. **Case No. 8:99-CV-2681-T-27TBM**

RICHARD TURNER, Director of the Florida Division of Alcoholic Beverages and Tobacco, in his official capacity,

Defendant.

_____/

ORDER

BEFORE THE COURT is Plaintiffs' Agreed Motion for Judgment on the Pleadings (Dkt. 188). Defendant does not oppose Plaintiffs' motion.

Plaintiffs have alleged, and Defendant concedes, that Florida's direct shipment law, codified at §§ 561.54(1)-(2) and 561.545(1), Florida Statutes, is unconstitutional under the authority of *Granholm v. Heald*, 125 S.Ct. 1885 (2005), to the extent that they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

In *Granholm*, the Supreme Court determined that state statutory schemes which limit or prohibit direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers violate the Commerce Clause. 125 S.Ct. at 1907. The Court reasoned that these schemes increase the cost of out-of-state wines, exclude from the market those out-of-state wineries that cannot find a wholesaler, grant in-state wineries a competitive advantage and otherwise discriminate against interstate commerce in violation of the commerce Clause, U.S. Const., Art I, § 8. *See* 125 S.Ct. at 1895-96.

Florida's direct shipment scheme, codified in §§ 561.54 and 561.545, Florida Statutes, does precisely what was determined to be unconstitutional in *Granholm*. Florida's direct shipment statutes prohibit out-of-state vendors and producers from delivering wine directly to Florida residents whereas in-state producers are not so prohibited. Florida's statutory scheme requires out-of-state wine to pass through a wholesaler and retailer, whereas wine produced in Florida is not required to pass through a wholesaler and distributor. Florida's statutory scheme thereby discriminates against out-of-state wine producers to the advantage of in-state wine producers in violation of the Commerce Clause and is therefore unconstitutional under *Granholm*.

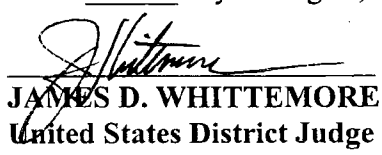
The statutes at issue apply on their face to all alcoholic beverages. The only beverage at issue in this case, however, is wine. This Order does not address the constitutionality of these statutes with respect to other types of alcoholic beverages, such as beer and spirits.

Plaintiffs' Agreed Motion for Judgment on the Pleadings (Dkt. 188) is GRANTED. It is ORDERED AND ADJUDGED that §§ 561.54 and 561.545, Florida Statutes, violate the Commerce Clause to the extent that they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

IT IS FURTHER ORDERED that Defendant is ENJOINED from enforcing Florida Statutes §§ 561.54 and 561.545 against out-of-state vendors and producers.

IT IS FURTHER ORDERED that Defendant shall pay costs and reasonable attorneys' fees to Plaintiffs pursuant to 42 U.S.C. § 1988 in an amount to be determined in a subsequent proceeding. The Court reserves jurisdiction to tax costs and award attorneys' fees.

DONE AND ORDERED in chambers this 5th day of August, 2005.



JAMES D. WHITTEMORE
United States District Judge

Copies to: Counsel of Record