



# ICLG

The International Comparative Legal Guide to:

## Gambling 2017

**3rd Edition**

A practical cross-border insight into gambling law

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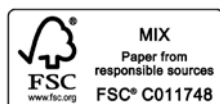
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# USA – Florida

Jones Walker LLP

Marc W. Dunbar



## 1 Relevant Authorities and Legislation

### 1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Gaming in Florida is regulated in some form or fashion by six different state agencies and nearly every local government in the State depending on the gaming activity. Florida's state-wide lottery is regulated by the Florida Department of Lottery. Pari-mutuel wagering on activities such as live and simulcast horse racing, dog racing and jai alai, as well as Florida's cardrooms and pari-mutuel slot machine facilities are regulated by the Florida Department of Business and Professional Regulation with additional law enforcement and investigatory oversight in a limited fashion from the Florida Department of Law Enforcement. The Department of Business and Professional Regulation also serves as the compliance agency for the gaming compact with the Seminole Tribe of Florida. Games played at state and local fairs, sweepstakes, game promotions and charitable raffles are the regulatory auspices of the Florida Department of Agriculture and Consumer Services. Bingo, arcade games and skill-based slot machines meeting statutory safe harbours for their operation are not regulated at the state level unless they are operated within bars, restaurants, hotels and other food or alcohol licensee establishments, and generally fall under regulations of local governments, law enforcement and state attorneys. Taxation of arcade machines and skill-based slot machines falls to the Florida Department of Revenue. General law enforcement oversight of most of Florida's gambling code, while typically left to local officials, is within the reach of Florida's Attorney General and the Department of Legal Affairs.

Tribal gaming in Florida, like the rest of the United States, is regulated by the gaming commissions of the sovereign tribes. Florida has three tribes with land in trust and eligible for Class II gambling as a matter of right. These tribes are the Seminole Tribe of Florida, the Miccosukee Tribe and the Poarch Band of Creek Indians. Class III tribal gaming is only conducted at present via a gaming compact with the Seminole Tribe of Florida and includes slot machine gaming and table-based card games, but does not include roulette and craps.

Cruise ship gaming is also prevalent in Florida and is regulated for the most part via the federal Johnson Act. Florida does have a Johnson Act exemption for day cruise operations which operate under an international flag and depart and return in the same day from a single port of call located in Florida. Florida's port commissions exercise some limited regulatory authority over these operations and

collected portage often tied to gross gaming revenues from these operations. The gaming activity permitted via these operations is unlimited, provided that the activity does not commence until the ship is in international waters and ceases upon the re-entry of the ship into Florida's territorial waters.

### 1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Florida's gambling code can be found in Chapter 849, Florida Statutes, and it generally prohibits all forms of gaming, gambling, betting and lotteries. Safe harbours exist for certain types of activities such as penny ante games, card games at certain pari-mutuel facilities, and certain qualifying lotteries conducted by motor fuel retailers, qualified charities, commercial establishments offering "no consideration" game promotions and time share resorts. A limited amount of skill-based machine gaming is allowed via certain designated qualified entities under Florida's Family Amusement Arcade Act, section 546.10, Florida Statutes. Florida courts have interpreted the gambling code very broadly providing that, without a legislatively created safe harbour, all forms of gambling including wagering on games of skill are prohibited. Florida's Supreme Court has also adopted a liberal view of "consideration" for the purpose of analysing a lottery transaction to include the mere requirement of attendance at the drawing or any effort by an individual to complete an entry into the lottery regardless of whether the individual contributes any monetary, pecuniary or other valuable possession for the privilege of participating in the lottery.

Florida's state lottery code can be found in Chapter 24, Florida Statutes. Florida's Department of Lottery administers the code and possesses relatively broad powers to authorised games of chance under the Lottery's oversight. This power does not extend to machine gaming such as video lottery which is reserved to Florida's Legislature and would otherwise adversely impact the revenue sharing under the gaming compact with the Seminole Tribe of Florida. Florida's lottery games include scratch off tickets, terminal and online entries into lottery drawings, ticket vending machines and internet-based second chance drawings.

Florida's Pari-Mutuel Code and its Pari-Mutuel Slot Machine Code can be found at Chapters 550 and 551, Florida Statutes, respectively. Florida's pari-mutuel card room statute is located at section 849.086, Florida Statutes. Florida authorises pari-mutuel wagering and simulcast wagering on horse races involving registered

thoroughbreds, standard breds, quarter horses, Appaloosas, Arabians, Palominos, Paints and Florida Cracker Horses. Florida also authorises pari-mutuel and simulcast wagering on greyhound races and jai alai games. Florida's card rooms can offer games of poker and dominoes as well as offer players jackpots based on pre-established hands of cards and dominoes.

## 2 Application for a Licence and Licence Restrictions

### 2.1 Who can apply for a licence to supply gambling facilities?

Any business entity engaged in the business of supplying equipment or services to Florida's pari-mutuel, cardroom or slot machine licensees must apply for a licence with Florida's Department of Business and Professional Regulation.

### 2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Florida requires officers and directors of companies conducting slot machine gaming, pari-mutuel wagering or card room activities to obtain a licence. In addition, employees whose job duties require regular interaction on or with personnel on the gaming floor likely will also be required to be licensed. Licences are not site-specific and will grant privileges to conduct business at other licensed gaming establishments.

### 2.3 What restrictions are placed upon any licensee?

Restrictions exist depending on the classification held by the licensee. Various individual licence classifications are as follows:

- **Pari-mutuel – Professional**
  - Includes, but is not limited to: authorised agent, jockey agent, racing or game official; or alternate, association officer; director; manager; assistant; chief of security; doctor; general manager; harness driver; horse broker; bloodstock agent; horseman's bookkeeper; jockey or apprentice jockey; nurse; officer/director/shareholder of any business; owner (greyhound, harness, quarter horse or thoroughbred); official (race or game); paramedic, EMT/physician's assistant/plant or track superintendent; trainer or assistant trainer; player (jai alai); public relations director; veterinarian; mutuels manager; totalisator manager/supervisor; assistant moneyroom manager, supervisor, assistant; and or any other professional person with access to restricted areas.
- **Pari-mutuel – General**
  - Includes, but is not limited to: athletic trainer; ball boy; ball maker; blacksmith; plater; cesta maker; exercise person; groom; head lead out/lead out; horse clipper; hot walker; kennel helper; maintenance employee (with access to restricted areas); outrider; pony rider; security employee; stable agent; stable help; vendor representative (with access to restricted areas); veterinarian assistant; mutuels clerk/teller; totalisator employee; moneyroom employee; and any other professional person with access to restricted areas.

- **Cardroom – Employee**
  - All cardroom employees except food service, security, maintenance, or mutuel teller employees. Possession of this licence does not allow access to any restricted areas other than the cardroom.
- **Cardroom – Business, Officer, Director or Shareholder**
  - Requires fingerprint card only, provided that the individual is not otherwise performing duties of an employee which could otherwise require licensure at that classification.
- **Pari-mutuel/Cardroom – Supervisor**
  - This class of licence is for supervisors of food service, security, maintenance, and mutuel teller employees who require access to restricted areas of the track as well as the cardroom.
- **Pari-mutuel/Cardroom – Employee**
  - This class of licence is for food service, security, maintenance, and mutuel teller employees who require access to restricted areas of the track as well as the cardroom.
- **Slot machine – Professional**
  - Occupations include (but are not limited to): slot operations managers; slot shift managers; floor supervisors; slot tech managers; slot tech supervisors; slot technicians; slot attendants; facility (slot machine licensee) management; slot machine officers, directors and shareholders; chiefs of security; security officers; surveillance directors, investigators, supervisors, operators, and technicians; maintenance supervisors; controllers; count team employees; cage cashiers; count room managers and supervisors; cage managers and supervisors; information systems managers; systems analyst supervisors; operations analyst supervisors; revenue audit managers; and supervisors.
- **Slot machine – General**
  - Occupations include (but are not limited to): maintenance employees; information systems technicians; systems and operations analysts; revenue auditors; income audit analysts and auditors; and food service employees.
- **Slot machine – Business employee**
  - Required for general and professional level employees who work for an entity which does business with a pari-mutuel slot machine facility who would otherwise meet one of the classifications for licensure if the individual worked directly for a slot machine licensee.
- **Slot machine – Business, Officer, Director or Shareholder**
  - Requires fingerprint card only, provided that the individual does not access the slot machine floor and is not otherwise performing duties of an employee which could otherwise require licensure at that classification.

### 2.4 What is the process of applying for any gambling licence or regulatory approval?

Typically, a gaming licence requires the submittal of the established application, fingerprint card and requisite fees. Upon receipt of same, the Division of Pari-mutuel Wagering will open an investigation into the applicant. This investigation can range from a mere background check via the state's uniform criminal offence database or as elaborate of a detailed suitability review involving the interviews of associates of the applicant, credit checks and a detailed review of past businesses and associations.

## 2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Review of an application licence can range from one week to six months or longer depending on the classification of licence sought and completeness of the initial application and responses to deficiency letters from the Department. Issued licences are typically for one year or three years, depending on the desire of the applicant. Prior to licence expiration, renewal notice is typically provided to the licensee. If requisite relicensing paperwork is not submitted in a timely fashion, the licence will expire. Suspension or revocation proceedings may be undertaken by the Director of the Division of Pari-mutuel Wagering for sundry offences committed by the licensee.

## 2.6 By product, what are the key limits on providing services to customers? Please include in this answer the material promotion and advertising restrictions.

Limitations are established from time to time by regulatory rule or can be the result of a restriction placed on a licensee by the Director. In general, no solicitation for services or supplies should be undertaken prior to application for licensure. Florida does not place restrictions on advertising legal commercial gaming products; however, there are prohibitions on the use of the term “lottery” in a business entity’s name or any unauthorised promotion of Florida Lottery products.

## 2.7 What are the tax and other compulsory levies?

Fees for licensure can range from \$50 to \$3,000 depending on the type of occupational licence sought. Facility licensing depends on the type of activity conducted with pari-mutuel activity licensed on a daily basis depending on the pari-mutuel activity conducted by the applicant; cardrooms are assessed annually at \$1,000 per licensed table. Similarly, slot machine facilities are assessed annually for a \$2 million licence fee.

In addition to these regulatory levies, general taxation is also established by the Florida Legislature. Pari-mutuel activity taxation is based on a percentage of wagering handle, cardroom activity is based on a percentage of table gross receipts, and slot machine gaming is based on a percentage of gross gaming revenue. The general rates, credits and exclusions from taxation depend on the type of licence held by the operator and typically also depend on where in the State the activity is occurring.

Compulsory levies also exist to subsidise the pari-mutuel purses and prizes, as well as the state’s agriculture industry tied to the breeding of horses and greyhounds. These rates are typically a percentage of the underlying gambling activity, and also vary depending on the type of gambling activity and where the activity is occurring.

## 2.8 What are the broad social responsibility requirements?

Slot machine facilities are required to pay an annual compulsive gambling fee of \$250,000 and to adopt compulsive gambling programmes on which its employees are required to demonstrate annual training.

## 2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

Florida has no laws which supersede the US federal government’s AML laws and requirements, and as such, suppliers and other involved in the gaming industry would be subject to the same requirements in Florida as those imposed at the federal level. Virtual currencies have not been authorised for use in regulated gaming facilities in Florida.

## 3 The Restrictions on Online Supply/Technology Support/Machines

### 3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Other than the sale of lottery tickets and second chance drawings associated with the Florida Lottery, online gambling is prohibited in Florida.

### 3.2 What other restrictions have an impact on online supplies?

This is not applicable in Florida.

### 3.3 What terminal/machine-based gaming is permitted and where?

Slot machine gaming is currently underway at the tribal facilities located on the reservations of the Miccosukee and Seminole Tribes, as well as at eight pari-mutuel facilities located in Miami-Dade and Broward Counties. Current court actions are pending throughout Florida’s court system to expand slot machine gambling to pari-mutuel facilities located outside of these two counties.

## 4 Enforcement and Liability

### 4.1 Who is liable for breaches of the relevant gambling legislation?

Individuals and businesses can be prosecuted for breaching Florida’s laws on gambling.

### 4.2 What is the approach of authorities to unregulated supplies?

Gaming equipment and paraphernalia is deemed contraband and can be subject to forfeiture proceedings if it is not possessed by licensed individuals for use by regulated entities or entities which are otherwise authorised under local ordinance or federal law to possess such gaming supplies. Florida’s gambling code provides for judicial process for such confiscatory and disposition proceedings.

#### 4.3 Do other non-national laws impact upon liability and enforcement?

Only to the extent that international law applies to gambling on cruise ships will foreign laws apply to gambling and gambling enforcement. As it relates to tribal gaming, tribal laws and ordinances often have an impact and can be determinative of enforcement and liability.

#### 4.4 Are gambling debts enforceable in your jurisdiction?

Florida does recognise gambling debts, provided that they are on legal gambling activities within its state borders. Otherwise, Florida will recognise judgments from foreign jurisdictions on gambling debts to the extent that Florida's court system is used to domesticate the judgment for its corresponding enforcement against individuals or property located within its borders.

## 5 Anticipated Reforms

#### 5.1 What (if any) intended changes to the gambling legislation/regulations are being discussed currently?

Florida will embark in a comprehensive review of its gambling laws in the 2017 Legislative Session as a result of a sunset provision in the gaming compact with the Seminole Tribe of Florida which impacts the play of table games on Seminole reservations. The sunset provision, along with two pending lawsuits related to the Tribe's table game play and the expansion of slot machines to additional Florida pari-mutuel facilities which are expected to be

ruled upon before the commencement of the 2017 Florida General Session of the Legislature, will drive the Florida Senate and Florida House of Representative to consider a slate of changes to Florida's gaming laws.



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Mr. Dunbar also teaches Gambling and Pari-mutuel Law at Florida State University College of Law, has been an expert witness in gaming cases and is regularly cited as a "gaming expert" by numerous state, national and international publications. He also has an active practice lobbying the Florida Legislature and the executive agencies of the State of Florida on behalf of a variety of clients. Mr. Dunbar is a regular media commentator on Florida gaming issues, hosts a website, [www.floridagamingwatch.com](http://www.floridagamingwatch.com), dedicated to Florida's gaming industry and is a regular columnist on gaming law.



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Jones Walker's gaming practice, the largest in the Southeastern United States, provides full-spectrum legal counsel to clients on gaming law. The firm represents all participants in the industry, including casinos, tribes, product manufacturers and suppliers, pari-mutuels, sweepstakes and charities. The firm also represents other parties – such as investors, lenders and vendors – that have gaming-related interests.

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