

BUSINESS REGULATION

Overview

The area of business regulation includes issues relating not only to the regulation of business by the State but also to the business climate in the state. Legislation designed to improve the business climate in the state includes efforts to reform the civil justice system and to limit state agency discretion to adopt rules to implement legislative mandates.

Recently, the Legislature's major consumer protection and regulatory initiatives have been directed toward addressing new economic challenges while improving Florida's general business climate. After Hurricane Andrew made private sector homeowners' and other property insurance coverage unavailable, the Legislature created a publicly supported insurance provider and a fund to back up the private sector's ability to pay claims. The entire workers' compensation law was restructured in response to a cost spiral that threatened the viability of many businesses. Unregulated areas of consumer lending have been brought under control. The Legislature has adopted initiatives to simplify telecommunications taxes and to enable Florida to take the fullest advantage of the opportunities offered by the Internet. In the face of financial declines in the pari-mutuel industry, the Legislature adopted significant regulatory reforms and tax reductions. For regulated nonmedical professionals, the Legislature recently authorized license fee waivers and began the process of privatizing regulatory support services.

CIVIL LITIGATION REFORM (TORT REFORM)

Introduction

Chapter 99-225, Laws of Florida, adopts comprehensive modifications to Florida's civil justice system. The law is the culmination of over 2 years of debate, hearings, and review of the litigation system by the Florida Legislature. It incorporates several provisions passed by the Legislature but vetoed by Governor Chiles in 1998, as well as some revisions of the 1998 proposals and new provisions.

Commonly known as "tort reform," the law creates or modifies many aspects of Florida's civil justice system, and provides for voluntary trial resolution, alternative dispute resolution, increased juror participation in trials, and other mechanisms that are designed to make the civil litigation process fairer and more efficient for all parties.

In particular, the law modifies the burden of proof, revises conditions affecting recovery, and reconfigures caps related to punitive damages; restricts subsequent punitive damage awards under certain circumstances; abolishes joint and several liability for non-economic damages in all cases; establishes new limitations and maximum liability amounts, which increase with a defendant's share of fault, on joint and several liability for economic damages; and limits the vicarious liability of certain motor vehicle owners or rental companies for damages due to the operation of the vehicle by short term lessees or other permissive operators.

Summary of Legislative Action Taken

The "tort reform" legislation arose out of a 2-year process of hearings and negotiation in the Legislature. The House Civil Justice & Claims Committee, then chaired by Representative Tom Warner, began hearings in September 1997 to develop the House version of the 1998 legislation. The committee received extensive testimony from academics, practitioners and policy advocates. A Senate select committee conducted similar hearings in early 1998.

The 1998 legislation, SB 874 (vetoed by the Governor), which is substantially similar to HB 775, was the result of these two independent processes. The chief differences between the 1998 and 1999 final bills are the details of the products liability, punitive damages, and joint and several liability provisions. The policies underlying the 1998 and 1999 bills are substantially the same.

Implementation

Governor Bush signed HB 775 (third engrossed) into law on May 26, 1999, and it is codified as chapter 99-225, Laws of Florida.

Results and Impact

Chapter 99-225, Laws of Florida is currently the subject of a constitutional challenge in Leon County Circuit Court. The plaintiffs make a number of arguments including, but not limited to, vagueness, violation of the right to access to courts, use of the taxing power of the state to aid private parties, and equal protection.

CREATION OF THE STATUTORY STANDARD FOR ADMINISTRATIVE RULEMAKING (ADMINISTRATIVE PROCEDURE ACT)

Agency rulemaking has been an issue before the Florida Legislature for almost 10 years. Recent amendments to the Administrative Procedure Act (APA) have limited agencies' discretion in adopting administrative rules to implement statutory mandates.

The 1996 revisions to the APA were a culmination of 5 years of legislative and gubernatorial efforts to address agency rulemaking. These efforts addressed concerns that agencies were not fairly treating persons regulated by these agencies when applying policies that affected the substantial interests of those persons. Prior to 1991, agencies did not necessarily adopt all policies affecting regulated persons. Agencies were allowed, through an appellate court decision, to adopt a rule when the agency believed that it had acquired sufficient knowledge of the situation to promulgate a rule that could be generally applied. The discretion provided through this decision was viewed by many as an abuse of the rulemaking authority granted in the APA, because it meant that all those regulated by the agency might not be treated in a similar manner; it was called "phantom government." To address this phenomenon, the Legislature enacted, in 1991, a provision in the APA stating that rulemaking was not a discretionary decision of the agency. Agencies were to initiate rulemaking as soon as it was feasible and practicable. This provision resulted in an explosion of rules adopted by state agencies. This situation, to the public, was no better than the phantom government of the previous years. In addition, judicial

decisions developed a lenient standard for determining the validity of proposed rules. A challenged rule would be deemed valid if it was found to be reasonably related to the implementing statute. Over the years, this “reasonably related” standard had been stretched so far that few, if any, rules would be found invalid if challenged. Thus the public felt that not only was it over regulated, but that no recourse was available to challenge the regulatory decisions.

Subsequent to the 1991 amendments to the APA, the Legislature conducted investigations into agency rulemaking. For several years, proposals were developed to limit agency discretion in rulemaking and to increase legislative oversight of agency rulemaking activities. In 1996, the Legislature passed a bill that reorganized and revised the APA, provided for uniform rules, and in general made the APA more accessible to the lay public as well as to attorneys who do not normally practice administrative law. Specific to this discussion, the 1996 bill included a provision that addressed the standard to be used by agencies when adopting administrative rules. The Legislature overruled the judicially created “reasonably related” standard in the 1996 legislation and created a statutory standard for rulemaking. This standard reads, in part, that “an agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. . . . Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.”

In 1997, the district courts of appeal provided an interpretation of the new rulemaking standard through three cases arising from challenges to proposed administrative rules. In the lead case, *St. Johns River Water Management District v. Consolidated-Tomoka Land Co.*, the court examined the application of the standard in an effort to resolve what it believed to be a conflict between the limiting nature of the standard and other provisions in the APA that stated that rulemaking was not a discretionary act. The facts in that case were that the petitioner land owners challenged proposed rules of the water management district that would create a regulatory subdistrict in the Spruce Creek and Tomoka River Hydrologic Basins, and would create new standards for managing and storing surface waters in developments within this basin. The Administrative Law Judge (ALJ) held that the proposed rules were not arbitrary or capricious, were supported by competent and substantial evidence, and substantially accomplished the statutory objectives. However, the ALJ found the rules invalid because they lacked the underlying statutory detail required by the new rulemaking standard. The water management district appealed on this issue.

The First District Court of Appeal reversed the ALJ’s final order, holding the proposed rules valid. The court applied a “functional test” based on the nature of the power or duty at issue and not on the level of detail in the language of the applicable statute. To the court, “the question is whether the rule falls within the range of powers the Legislature has granted to the agency for the purpose of enforcing or implementing the statutes within its jurisdiction. A rule is a valid exercise of delegated legislative authority if it regulates a matter directly within the class of powers and duties identified in the statute to be implemented.” In applying this test, the court found that delegated legislative authority was to identify the geographic areas that required greater environmental protection and to impose more restrictive permitting requirements in those areas. The challenged rules fell within the class of powers delegated by the statute and therefore were a valid exercise of delegated legislative authority.

This interpretation was not well received in the Legislature and it expressed its disapproval through legislation passed in 1999. The legislation included a statement of legislative intent that disapproved the analysis of the *Tomoka* case but did not overrule the decision. The Legislature also amended the rulemaking standard to provide that an agency may only adopt rules that implement or interpret a specific grant of rulemaking authority. Several administrative decisions currently on appeal will provide the courts of appeal another opportunity to review the application of the rulemaking standard to proposed administrative rules.

PROPERTY INSURANCE

Summary of Legislative Action Taken

Background

Hurricane Andrew created a crisis in availability of property insurance for homeowners and businesses throughout Florida. With \$16 billion in insurance claims payments, Hurricane Andrew's costs were about twice as high as the then-existing consensus worst-case estimate for a Florida hurricane. Recognizing that their old loss projections were grossly understated and that Hurricane Andrew was not "the big one," but just one of the 10 Category 4 or 5 hurricanes to hit Florida since 1919, various insurance companies decided to restrict their exposure to future Florida hurricane losses. The result of these business decisions was that soon after Hurricane Andrew many property buyers could not obtain necessary insurance and many property owners could not get replacement insurance after being dropped by their property insurers.

Beginning with two Special Sessions in 1993 (the year following Hurricane Andrew), and continuing through recent years, the Legislature has repeatedly addressed both the short-term and the long-term aspects of the property insurance crisis caused by Hurricane Andrew. In the short term, the Legislature sought to assure that all Florida property owners or buyers could obtain reasonably priced property insurance. For the long term, the purpose was to restore a competitive private sector market that was capable of growing to meet the needs of a growing Florida population.

Insurers Of Last Resort ("Residual" Markets)

In order to assure that all property owners are able to obtain insurance, even where no private sector companies are accepting new business, the Legislature created one insurer of last resort and significantly expanded the role of another. These state-created entities function like insurance companies, except that instead of maintaining large amounts of capital and surplus, they have the ability to levy assessments on the general public.

The Residential Property and Casualty Joint Underwriting Association (RPCJUA) was created in the December 1992, Special Session. It is required by law to write a full homeowners' (or other property) insurance policy to any applicant who cannot obtain coverage from a Florida-licensed insurance company. When the RPCJUA's premiums and other resources are not sufficient to pay claims, the RPCJUA incurs debt by issuing bonds and levies assessments against all Florida property insurance policyholders to pay off the debt. Major amendments to the RPCJUA law

have included provisions facilitating lines of credit and other financial arrangements, and provisions intended to assure that the RPCJUA does not charge rates that compete with the private sector. The Legislature also authorized a series of incentives to encourage private sector companies to take over RPCJUA policies.

The Florida Windstorm Underwriting Association (FWUA) has been an insurer of last resort providing windstorm coverage (i.e., hurricane, tornado, hail, and other wind losses) in a limited coastal area since 1970, but it did not provide coverage in hurricane-prone Dade, Broward, and Palm Beach Counties until after Hurricane Andrew. Subsequent legislation provided for financing similar to the RPCJUA (i.e., the ability to levy assessments on non-FWUA policyholders to cover deficits), for rates that are not lower than private sector rates, for barriers to entry to assure that the FWUA did not take business away from the private sector, and for a freeze on further geographic expansion. When the FWUA provides windstorm coverage on a property, another insurer provides coverage for other perils, such as fire, theft, and liability.

Florida Hurricane Catastrophe Fund (“Cat Fund”)

The insurance that insurance companies buy to protect themselves against catastrophic claims is known as “catastrophe reinsurance.” The cost and availability of catastrophe reinsurance fluctuate greatly from year to year. In an attempt to assure a stable supply of reinsurance to protect Florida property insurers from catastrophic losses, to protect Florida property owners from premium increases based on rising reinsurance costs, and to attract new property insurers to the Florida market, the Legislature created the Florida Hurricane Catastrophe Fund. The Catastrophe Fund provides up to \$11 billion of catastrophe reinsurance in the aggregate to Florida residential property insurers in exchange for actuarially determined premiums, but the fund’s obligations apply only if the total residential insured losses in Florida exceed a statutory trigger of approximately \$3 billion. When the fund’s cash balance is not sufficient to meet the fund’s obligations, it may issue bonds and levy assessments of up to 6 percent on all property and casualty insurance premiums (including homeowners’, auto, and liability) other than workers’ comp. The Internal Revenue Service has ruled that the fund is exempt from federal income tax and that its bonds are to be treated the same as tax-free municipal bonds.

Ratemaking

After Hurricane Andrew, methods of ratemaking for property insurance became controversial. Old ratemaking methods did not take into account such factors as Florida’s dramatic population shifts or the long-term cyclical nature of the hurricane threat, and therefore produced inadequate rates. The actuarial community was nearly unanimous in the view that computer models offered the best assurance that rates were neither inadequate nor excessive, while regulators rejected any method that indicated significant rate increases. In order to resolve the controversy, the Legislature created the Florida Commission on Hurricane Loss Projection Methodology (Commission) to provide continuing expert review of hurricane loss models. The Commission’s findings are admissible and relevant in any rate proceeding.

Moratorium On Hurricane-Related Cancellations And Nonrenewals

In 1993, the Legislature responded to several insurers' threats to leave Florida by enacting a 3-year moratorium on hurricane-related cancellations and nonrenewals. Insurers were limited to dropping no more than 5 percent of their policies (no more than 10 percent in any one county) a year for reasons of reducing hurricane losses. The moratorium has been extended over the years, and is now set to expire on June 1, 2001.

Implementation

There are no current implementation issues in this area.

Results and Impact

A private sector property insurance market exists today in all but the most vulnerable areas of the state. At the peak of the property insurance crisis in late 1996, private sector property insurance coverage was unavailable in most of the state and nearly 1 million Florida homeowners, in both coastal and inland areas, were able to obtain coverage only through the RPCJUA and another 300,000 coastal homeowners could obtain coverage only through the FWUA. Today, private sector insurance coverage is again available almost everywhere except in Dade, Broward, Palm Beach, and Monroe Counties and in limited coastal areas of other counties. Today, the FWUA insures approximately 425,000 properties with a combined insured value of \$88 billion; two-thirds of the FWUA's exposure is in Dade, Broward, Palm Beach, and Monroe Counties. The RPCJUA today insures approximately 60,000 properties with a combined insured value of \$9.5 billion, almost entirely in Dade, Broward, and Palm Beach Counties. Except for these 485,000 properties, private sector insurers cover all other Florida properties. The restoration of the private market was in part the result of incentives to depopulate the residual market, and in part the result of significant premium increases that reflected current information about hurricane costs.

Premiums for residual market coverage have also increased significantly, but the RPCJUA and FWUA continue to impose costs on holders of private sector property insurance policies. Even though the Florida hurricanes in recent years have been relatively minor, since 1995 the RPCJUA has levied \$41 million in assessments on the public and the FWUA has levied \$217 million in assessments on the public. Although recently-approved rate increases reduce the potential size of future FWUA assessments, the FWUA's projected losses from a 100-year hurricane are still more than 10 times as high as their projected annual premium revenues, and any major hurricane is expected to result in major assessments.

The Catastrophe Fund had a balance of \$3 billion as of the beginning of 2000, and projects a balance of \$3.6 billion at the end of the year (presuming no significant hurricane losses during the year). The fund is able to issue up to \$7.4 billion in bonds if needed.

The Florida Commission on Hurricane Loss Projection Methodology annually reviews commercially available hurricane loss projection models to determine whether they meet a detailed set of criteria. This review has included examination of proprietary information that had

previously been kept confidential by the modeling companies. There are currently five models that have met the Commission's standards for reliability.

WORKERS' COMPENSATION

Summary of Legislative Action Taken

Background

Double-digit rate increases in the early 1990's culminated in a legislative overhaul of the workers' compensation system in 1993. Except for a few narrowly tailored bills enacted within the last few years, Florida's current workers' compensation system is largely the product of the Legislature's major reform effort from 1993. Legislation since 1993 has focused on areas such as the Special Disability Trust Fund (SDTF), fraud, and funding of system administration.

Workers' Compensation Act of 1993

The Workers' Compensation Act of 1993 represented a substantial rewrite of the workers' compensation laws in a number of areas, including: managed care, indemnity benefits, attorney's fees, dispute resolution, residual market, the SDTF, workplace safety, and fraud. Some of the key changes included: mandatory use of managed care for the delivery of medical benefits, effective January 1, 1997; limiting permanent total disability benefits to certain catastrophic injuries; reducing the cap on temporary disability benefits; eliminating wage-loss benefits; reducing the attorney's fee schedule; enhancing the informal dispute resolution functions of the Division of Workers' Compensation; expediting the formal dispute resolution process; creating a self-funding joint underwriting association as an insurer of last resort for employers having difficulty obtaining workers' compensation insurance; requiring certain employers to rehire injured employees; delineating conduct constituting criminal fraud; authorizing the Division to issue stop-work orders and civil penalties to employers that fail to obtain workers' compensation coverage; authorizing premium credits for employers implementing safety programs; shifting regulatory responsibility of self-insurance funds from the Division to the Department of Insurance; and creating the Workers' Compensation Oversight Board.

Subsequent Revisions to the Workers' Compensation Act

Since the passage of the 1993 Act, the Legislature has revised the workers' compensation act in a few areas, as indicated below.

Special Disability Trust Fund. The Legislature terminated the SDTF for accidents occurring on or after January 1, 1998, and capped the SDTF assessment rate at 4.52 percent.

Fraud and Noncompliance. In 1997, the Statewide Grand Jury and the Workers' Compensation Oversight Board issued reports and recommendations on workers' compensation fraud. In response, the Legislature revised provisions relating to exemptions, increased the criminal penalties for workers' compensation fraud, increased the statute of limitations for prosecuting

workers' compensation fraud cases, and granted the Division investigatory and subpoena powers.

Funding of Administration. The Legislature clarified that the terms "net premiums written" and "net premiums collected"-the bases for the SDTF and Workers' Compensation Administration Trust Fund (WCATF) assessments, respectively-include premiums ceded to reinsurers. Also, beginning July 1, 2001, insurers are required to report the full premium value of large deductible policies for the WCATF assessment. On January 1, 2000, the cap on the WCATF assessment was reduced from 4 percent to 2.75 percent.

Implementation

There are some areas of the 1993 reform that remain unimplemented. For example, the Division of Workers' Compensation has not enacted rules on employer sanctions for failing to observe obligation to rehire requirements, and the Office of the Judge of Compensation Claims has not adopted uniform rules of procedure and performance measures. Implementation challenges remain in other areas of workers' compensation, including enforcement of the managed care requirement, which affects the degree to which employers provide medical care through approved managed care arrangements.

Results and Impact

The 1993 reforms have reduced rates and reduced the size of the residual market for workers' compensation coverage. Other results are less clear.

Rates

Compared to 1993 rates, the workers' compensation rates are 17.3 percent lower in 2000 (rates were as much as 25.1% lower than 1993 rates in 1998).

Attorney Involvement

In 1993, the Legislature created the Employee Assistance and Ombudsman Office (EAO) in the Division of Workers' Compensation to assist in the informal resolution of disputes without the accrual of attorney's fees. According to the division, attorneys file 95 percent of requests for assistance (which initiate the EAO process). In 1994, 30,400 employees filed 41,268 petitions for benefits (which initiates formal dispute resolution). In 1998, 35,003 employees filed 96,791 petitions for benefits.

Dispute Resolution

According to the 1993 reform, the dispute resolution process should take 120 days from beginning to end. According to a House Committee on Insurance interim report, dispute resolution actually takes an average of 268 days (excluding settled cases, which are estimated in the report to be 85% of all litigated cases).

Residual Market

The amount of premiums written by the Workers' Compensation Joint Underwriting Association in 1999 was \$6.4 million, down from \$328.2 million in 1993.

CONSUMER LENDING

Summary of Legislative Action Taken

Background

A growing number of people are using nonbank entities such as title loan companies, pawnbrokers, and "payday lenders" as sources of emergency cash.

In 1995, legislation was passed that allowed some secondhand dealers to engage in motor vehicle title loans. The borrower maintains physical possession of the motor vehicle and the lender holds the motor vehicle title. Because the title lender does not physically hold the motor vehicle, the transaction is classified as a title loan and not a pawn. At that time, secondhand dealers were permitted to charge a maximum fee (as distinguished from an interest rate) of 22 percent per month on a title loan transaction. There was no prohibition against capitalizing (same effect as compounding) the 22 percent rate. This capitalization, or "roll-over" of the agreement, seems to have caused consumers the most trouble as interest rates, per annum, have been estimated by some accounts to be as high as 296 percent.

2000 Legislation

Legislation was passed in the 2000 Legislative Session, which provided: agency oversight by the Department of Banking and Finance (DBF); interest rates that mirror those in the consumer finance loan statute (chapter 516, F.S.); criminal penalties for violators of the act; and interest rate disclosures mirroring those of the Federal Truth in Lending Act. In short, the overall effect of the bill was to reduce the amount of interest currently charged to each consumer and, in addition, to establish a regulatory framework for the title loan industry that provides consumer protections.

Implementation

The DBF has not yet noticed for a rules workshop, but anticipates one will be held in August 2000.

Results and Impact

Action by the Legislature appears to have put a damper on the growth of the title loan industry. However, the need for nonbank loans remains. Apart from a title loan, a person in need of cash and lacking traditional lending sources could get a "payday loan" through a person licensed by the DBF under Part II of chapter 560, F.S., as a check casher. Under the statute, a check casher may charge up to 10 percent of the face amount of a personal check as a fee for the service of

cashing the check. A practice has begun whereby the check casher accepts a post-dated check or agrees to wait a certain number of days before cashing the check. If a licensed check casher defers the presentment of the check for a period of time the transaction appears to have the characteristics of a loan, and it is the department's position that, although the statute does not expressly prohibit this, it is probable the drafters of the legislation did not contemplate this practice.

It is the DBF's position that licensed check cashers are not permitted to execute "roll-overs" of these transactions because the resulting compounding of interest would clearly convert the transaction into a type of loan not authorized by any Florida statute. Should a licensee engage in a roll-over, the DBF maintains that such action is a regulatory violation which could result in civil penalties and a criminal violation of chapter 687, F.S., should the interest rate exceed 18 percent per annum.

In the 2000 Legislative Session, the Legislature attempted, but failed to pass a bill regulating this practice. The DBF has scheduled a rules workshop for check cashers on July 17, 2000.

TELECOMMUNICATIONS AND TECHNOLOGY

Summary of Legislative Action Taken

Telecommunications

In 1995, the Legislature adopted a comprehensive rewrite of the law governing telecommunications. That rewrite was followed by passage of the federal Telecommunications Act in 1996. The Florida Act was intended to open the local telephone exchange market to competition and streamline its regulation.

The Florida Act opened the local exchange market by authorizing alternative local exchange companies to provide telecommunication services in territories that were served by the three largest local exchange companies (Sprint, GTE, and BellSouth). The Florida Act allowed each of those companies to either continue rate-of-return as the method of ratemaking or adopt price cap regulation. All have elected price cap regulation. (Price cap regulation capped the local exchange companies rates for basic local telecommunications service at the rates in effect on July 1, 1995.)

The smaller companies may stay under rate-of-return regulation until they either elect price regulation or January 1, 2001, whichever occurs first. After January 1, 2001, a smaller local exchange company may continue rate base regulation only until an alternative company is certificated to operate in its territory.

The Legislature recognized that full competition may not immediately occur, and therefore protected residential and business customers by capping rates of basic local telecommunications services for GTE and Sprint until January 1, 2000, and limiting rate increases after that date.

The Florida Act also maintained Universal Service requirements for local telephone service along with Carrier of Last Resort responsibilities of the local exchange companies. Universal Service is the concept that everyone who wants local telecommunications service should have access to that service at just, reasonable, and affordable rates. The Carrier of Last Resort requirement mandates that the local exchange company furnish basic local telecommunications service within a reasonable time to any person requesting such service within the company's service territory. These requirements have now been extended through January 1, 2004.

The original Florida Act provided for a gradual reduction in the amount of access charges. (Access charges are charges paid by the long distance companies to the local exchange companies for the use of their networks.) This section was amended in 1998 to provide for Sprint and GTE to reduce their access charges by a total of 15 percent. The annual reductions were eliminated.

In 1998, the Legislature enacted laws to protect consumers from both slamming and cramming. Slamming is the unauthorized changing of a customer's long distance carrier. Cramming is placing charges on a customer's bill for services that were not ordered. The Public Service Commission (PSC) has adopted rules to protect consumers from these practices.

During the 2000 Legislative Session, the Legislature passed CS/CS/CS/SB 1338 (chapter 2000-260, Laws of Florida), which established a unified communications taxation scheme for the state. This legislation combined the different types of communications taxes and fees into one tax to be divided between the state and local governments. The legislation combines the sales tax on communications services, the local public services tax, local franchise and permit fees on telecommunications companies and cable companies, and allocates the gross receipts tax on communications into a single taxing scheme. This will be administered by the Florida Department of Revenue and distributed to the Public Education Capital Outlay Fund, the General Revenue Fund and to local governments.

Internet

In 2000, the Legislature enacted major legislation addressing the ways businesses and state government use the Internet.

The law adopts the Uniform Electronic Transactions Act to facilitate Internet-based commerce by specifying the criteria that must be met in order for contracts signed over the Internet to be binding. The new law also requires each county to establish an Internet-based index of public records.

The law establishes the State Technology Office within the Governor's Office and provides duties of the new Chief Information Officer. The law also allows the state to accept credit card payments over the Internet and to use the Internet in the procurement process.

The new law also requires Enterprise Florida, Inc. to engage in a campaign to attract, retain, and grow information technology businesses in Florida, and creates incentives for the establishment

of a network access point in the state. A Network Access Point (NAP) is a switching facility that acts as a point for exchange of Internet traffic served by different Internet Service Providers.

Results and Impact

The telecommunications industry in Florida is continuing its transition to a competition market from a regulatory scheme. There are many alternative local exchange companies certificated in Florida, primarily to compete for the business customer. There are very few, if any, competing for the residential customer at this time. The telecommunications industry continues to be a declining cost industry as new innovations reach the market.

PARI-MUTUELS

Summary of Legislative Actions Taken

Background

Pari-mutuel wagering is a system of betting where all the money wagered is combined in a single pool. A portion of the money is withheld; the rest is paid to the winners. The takeout – the portion not returned to the bettors – is split in some manner between the track, the state, and purses for the players or racing animals. As a matter of custom, when the reference is made to pari-mutuel wagering, it is generally understood to mean wagering on horseracing, dog racing, or jai alai games. These groups collectively make up Florida's pari-mutuel industry.

Over the last decade, there has been a steady decline in attendance and wagering handle for horseracing, dog racing, and jai alai games. ("Wagering handle" means the aggregate contribution to a pari-mutuel pool; i.e., the total of all dollars wagered.) The trend has resulted in lower state revenues from pari-mutuel activities. Total state revenue collections from all pari-mutuel operations alone have decreased from \$118,466,567 in FY 1988-89 to \$62,934,837 for FY 1998-99. Likewise, over the past decade, numerous amendments to the pari-mutuel statutes have been adopted in efforts to mitigate the impact of this decline.

Recent Legislation

Major legislation enacted in 1996 established minimum purse requirements, implemented tax savings by creating daily license fee tax credits for greyhound permit holders, implemented additional annual tax savings of up to \$500,000 each for greyhound permit holders in the panhandle and \$360,000 each for other greyhound tracks, and authorized card rooms at pari-mutuel facilities. The tax relief provided by the 1996 legislation was approximately \$15,000,000 annually.

The 1996 revisions also provided increased opportunities for intertrack wagering and full-card simulcasting. Intertrack wagering allows a Florida permit holder to accept wagers on pari-mutuel events broadcast from another Florida pari-mutuel facility. With full-card simulcasting, a Florida permit holder may receive and broadcast an out-of-state pari-mutuel facility's entire schedule of horse races, dog races, or jai alai games.

In 1998, the Legislature addressed tax relief for greyhound permit holders once again by allowing permit holders who are unable to utilize their tax credit fully to transfer, for eventual reimbursement, the unused credit to another greyhound track. Among its other provisions, that legislation also required purse and reporting requirements for host greyhound tracks sending simulcast and intertrack broadcasts outside the market area; clarified that greyhound permit holders must pay purses when conducting intertrack wagering on any day falling within a race meet; and, provided a formula for the weekly disbursement of purses.

Most recently, in the 2000 Session, the Legislature extended approximately \$20 million in additional tax relief to the pari-mutuel industry by reducing tax rates and providing tax credits for the various classes of permit holders. This latest reduction in taxes is anticipated to reduce total state revenues from pari-mutuels for FY 2000-2001 to approximately \$35 million.

Implementation

There are no current implementation issues in this area.

Results and Impact

The legislation described above is too recent to determine the extent to which it may have enhanced the long-term survival of the pari-mutuel industry. The amounts of the tax reductions are specified in "Summary of Legislative Actions Taken" under the Pari-Mutuels section on the previous page.

ALCOHOLIC BEVERAGE SURCHARGE

Summary of Legislative Action Taken

Over the last four years, Legislative efforts to provide tax relief to the Alcoholic Beverage industry have been aimed at eliminating entirely or at least reducing the alcoholic beverage surcharge, which has been the subject of much controversy and debate since its inception in 1990. In 1997, the Legislature enacted a conditional repeal of the surcharge, but the conditions that would have triggered the repeal never materialized. The Legislature took a different approach in the 1999 Session – a phased in repeal of the surcharge. Legislation was passed which reduced the surcharge by one-third, cutting the levy on each ounce of liquor and 4 ounces of wine from 10 cents to 6.67 cents, on each 12 ounces of beer from 4 cents to 2.67 cents, and on each 12 ounces of cider from 6 cents to 4 cents. This reduction had an annual tax relief impact of approximately \$37.7 million. The Legislature in the 2000 Session continued the phase-in of tax relief by reducing the surcharge by one-half. The annual tax relief impact of the latest reduction equals about \$39.7 million.

Results and Impact

The amount of the tax reduction is specified in "Summary of Legislative Actions Taken," above.

PROFESSIONAL REGULATION

Summary of Legislative Action Taken

License Renewal Fee Waiver

The Department of Business and Professional Regulation (DBPR) licenses approximately 676,000 individuals practicing in 22 non-medical professions in Florida. These professionals must renew their licenses every 2 years, along with paying a renewal fee. As of July 1, 1999, the Professional Regulation Trust Fund showed a balance of approximately \$43.6 million. The DBPR studied each profession's account within the fund and determined that 14 of the 22 profession's accounts had sufficient balances to pay for the cost of regulation for 2 years. Based on these findings, the 2000 Legislature gave DBPR authority to waive licensure renewal fees for up to 2 years when BBPR determines that a profession's account balance warrants such a waiver.

Privatization of Regulatory Support Services

The DBPR provides support services, such as issuing licenses and collecting fees, to all of the professional boards except the Board of Professional Engineers. The 1997 Legislature statutorily established a nonprofit organization to provide all support services to that board.

At the request of professional engineers, the 2000 Legislature allowed the nonprofit corporation to continue providing support services to the Board of Professional Engineers. However, the law was changed to ensure the nonprofit corporation spends public funds prudently, and is fully accountable for its actions. The 2000 Legislature also took DBPR's recommendation in authorizing the privatization of support services to the other boards. The act requires DBPR to enter into a contract by October 1, 2000, with a private company to provide support services to the Board of Architecture and Interior Design. To help with the company's start-up costs, \$500,000 was appropriated.

Implementation

The DBPR intends to waive licensure renewal fees for 14 regulated professions in 2000 and 2001. Implementation issues with respect to privatization of support services have not yet arisen.

Results and Impact

The fee waiver will save approximately 250,000 licensees a total of approximately \$15.5 million in license renewal fees, in lieu of the trust fund continuing to increase its balance. Privatization of regulatory support services, as authorized in 2000, has not yet been implemented.