# The Florida Senate

*Interim Project Report 2008-150* *November 2007*

Committee on Regulated Industries

## REVIEW OF SIMULCAST WAGERING AT PARI-MUTUEL FACILITIES


## SUMMARY

The pari-mutuel industry consists of 18 greyhound permits operating at 16 greyhound tracks, eight Jai Alai permits operating at six frontons, four thoroughbred permits operating at three thoroughbred tracks,[1] and one harness permit operating at one harness track. There is also a limited license to conduct intertrack wagering at a thoroughbred sales facility that meets certain statutory requirements. Patrons to pari-mutuel events can wager on live races at the facility or live races being conducted at other racetracks in Florida or out-of-state.

Wagering at these facilities may consist of bets placed on the live races or bets on televised races at other pari-mutuel facilities located either inside or outside the State of Florida.

Simulcast and intertrack wagering has become increasingly more important for Florida's pari-mutuel facilities. In fiscal year 2005-06, intertrack and simulcast wagers accounted for $1,030,372,562 or 73.3 percent of the total regular handle. Live racing accounted for only $375,130,374 or 26.7 percent of the total handle.

Several sections of ch. 550, F.S., including s. 550.615, F.S., create different limitations on the exchange of intertrack and simulcast signals. Recent litigation, however, has ruled s. 550.615(6), F.S., unconstitutional and will have an effect on other statutory provisions.

Chapter 96-364, L.O.F., that enacted s. 550.615(6), F.S., provided for a non-severability clause that stated if any provision of that act was held unconstitutional, the entire act was void and of no effect. That provision is codified at s. 550.71, F.S.

Staff recommends that s. 550.615(6), F.S., be repealed based upon the decision of the Supreme Court in *Florida Department of Business and Professional Regulation v. Gulfstream Park Racing Ass'n, Inc.* which held that statute unconstitutional as a special act in the guise of a general law and that the cross references in the statutes be reviewed and amended or deleted. It is further recommended that s. 550.71, F.S., be repealed.

Staff recommends that ch. 550, F.S., should continue to be reviewed to address some of the various taxing, broadcasting, and fee issues among the pari-mutuel industry.


## BACKGROUND

**Overview**

The regulation of the pari-mutuel industry is governed by ch. 550, F.S. Regulation and is administered by the Division of Pari-Mutuel Wagering (the division) within the Department of Business and Professional Regulation (DBPR or department).

*Pari-mutuel wagering* is a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. The pari-mutuel industry in the State of Florida is made up of horseracing, greyhound racing, and Jai Alai. There are 27 facilities currently in

[1] There were five thoroughbred pari-mutuel permits. However, the revocation of Hialeah Park's pari-mutuel wagering thoroughbred racing permit was affirmed on July 13, 2005. *Hialeah Racing Association, LLC v. Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering*, 30 Fla. L. Weekly D1699 (Fla. 3rd DCA July 13, 2005).

operation with 32 active permits in the state.[2] The industry consists of 18 greyhound permits operating at 16 greyhound tracks, eight Jai Alai permits operating at six frontons, four thoroughbred permits operating at three thoroughbred tracks,[3] and one harness permit operating at one harness track. Section 550.6308, F.S., authorizes a limited license to conduct intertrack wagering at a thoroughbred sales facility that meets the requirements of that section. Patrons to pari-mutuel events can wager on live races at the facility or live races being conducted at other racetracks in Florida or out-of-state. The wagers on races being conducted at other racetracks fall into two categories: wagers on live races occurring at other Florida tracks and on live races at tracks outside the state.

Wagers on live races at other tracks are divided into categories called intertrack and simulcast wagering under the Florida Statutes. *Intertrack wagering* is defined as "a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal re-broadcast from, another in-state pari-mutuel facility." *Simulcast wagering* is defined as "broadcasting events occurring live at an in-state location to an out-of-state location, or receiving at an in-state location events occurring live at an out-of-state location, by the transmittal, retransmittal, reception, and re-broadcast of television or radio signals by wire, cable, satellite, microwave, or other electrical or electronic means for receiving or re-broadcasting the events." Intertrack and simulcast wagering interactions occur at guest and host tracks. A *host track* is defined as "a track or fronton conducting a live or simulcast race or game that is the subject of an intertrack wager" which may serve as the in-state re-broadcast point for an out-of-state race or game.[4] A host track transmits signals to a guest track, and the guest track takes wagers on that signal. A *guest track* is a track or fronton receiving or accepting an intertrack wager.[5] An *intertrack simulcast* is one in which an out-of-state pari-mutuel facility broadcasts its race to a Florida pari-mutuel facility, and then the Florida pari-mutuel facility re-broadcasts the out-of-state contest to another pari-mutuel facility or facilities within Florida. Simulcasting and intertrack wagering have rules and regulations depending on the *market area*, which is defined as an area within 25 miles of a permitholder's track or fronton.[6]

Simulcasting may only be accepted between facilities with the same class of pari-mutuel wagering permit,[7] e.g., horseracing permitholders may only receive and broadcast signals from other horseracing permitholders. However, simulcasting also includes the re-broadcast of the signal to in-state permitholders and certain exceptions apply.[8] Simulcast signals must be made available to all permitholders eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345, F.S.[9] Horse tracks licensed under ch. 550, F.S., may only receive broadcasts of horseraces conducted outside the state while the track is racing live.[10] All broadcasts of horseraces sent to locations outside of Florida or received from locations outside of Florida must comply with the provisions of the Interstate Horseracing Act of 1978, 92. Stat. 1811, 15 U.S.C. ss. 3001, et seq.[11]

The wagering system in the pari-mutuel industry is a complicated combination of different bets, odds, payouts, and taxes. When a person places a bet, the pari-mutuel facilities use a *totalisator system*, a computer based system that records and totals the bets on races in specific pools and calculates, displays, and orders payouts on the specific bets.[12]

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[2] Currently there are 10 inactive pari-mutuel permits in the state, including two greyhound permits, three Jai Alai permits, and five quarter horse permits.

[3] There were five thoroughbred pari-mutuel permits. However, the revocation of Hialeah Park's pari-mutuel wagering thoroughbred racing permit was affirmed on July 13, 2005. *Hialeah Racing Association, LLC v. Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering*, 30 Fla. L. Weekly D1699 (Fla. 3rd DCA July 13, 2005).

[4] Section 550.002(16), F.S.

[5] Section 550.002(12), F.S.

[6] Section 550.002(13), F.S.

[7] Section 550.3551, F.S.

[8] Section 550.615, F.S.

[9] Section 550.6305(9)(g)1., F.S.

[10] Section 550.3551(3), F.S., provides that "[a]ny horse track licensed under this chapter may receive broadcasts of horseraces conducted at other horse racetracks located outside this state at the racetrack enclosure of the licensee during its racing meet." A meet is defined by s. 550.002(20), F.S., as the "conduct of live racing or Jai Alai for any stake, purse, prize, or premium." (emphasis added)

[11] *See* s. 550.3551(2)(a) and (3)(a), F.S.

[12] Section 550.002(36), F.S.

## Types of Pari-mutuels

*Greyhound racing* was authorized in Florida in 1931.[13] Betting is permitted on the outcome of the races around an oval track. The greyhounds typically chase a "lure," which is usually a mechanical hare or rabbit. Racing greyhounds are those which are bred, raised, or trained to be used in racing at a pari-mutuel facility and are registered with the National Greyhound Association.[14]

*Horse Racing*, like greyhound racing, was also authorized in the State of Florida in 1931. Currently, the state authorizes three forms of horse racing classes for betting; thoroughbred, harness, and quarter horse racing. Florida currently has approximately 600 horse farms throughout the state which generate a direct economic impact of approximately $3 billion.[15]

*Thoroughbred racing* involves only horses specially bred and registered by certain bloodlines. The thoroughbred industry is highly regulated and specifically overseen by national and international governing agencies. Thoroughbred horses are defined as "a purebred horse whose ancestry can be traced back to one of three foundation sires and whose pedigree is registered in the American Stud Book or in a foreign stud book that is recognized by the Jockey Club and the International Stud Book Committee.[16] Pari-mutuel betting is allowed on the outcome of the race which runs typically from one mile to one and one-quarter of a mile.[17]

*Harness racing* in the State of Florida is currently only permitted at the Pompano Park facility. Harness racing uses standardbred horses, which are a "pacing or trotting horse … that has been registered as a standardbred by the United States Trotting Association" (USTA) or by a foreign registry whose stud book is recognized by the USTA.[18]

*Quarter horse racing* is currently legal in the State of Florida, but at the present time[19] no facilities are in operation. Quarter horses are defined as those developed in the western United States which are capable of high speed for a short distance.[20] They are registered with the American Quarter Horse Association. Quarter horse racing is over a much shorter distance than either the thoroughbred or harness race classes with races only permitted at less than 870 yards.

*Jai Alai* is a game originating from the Basque region in Spain played in a fronton[21] in which a ball is hurled through the court and points are assessed based on legal throws and catches. Jai Alai was first permitted in 1935. Florida is the only state where Jai Alai is currently played.

## Poker Rooms and Slot Machines

Pari-mutuel facilities within the state are also allowed to operate poker cardrooms under s. 849.086, F.S. The *cardrooms* are facilities "where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."[22] The *authorized games* at the cardrooms include a game or series of games of poker or dominoes played in a non-banking manner, i.e. where the facility has no stake in the outcome. Such activity is regulated by DBPR and must be approved by ordinance of the county commission where the pari-mutuel facility is located.

Voters in Broward County recently approved a measure allowing for Las Vegas-style slot machines at pari-mutuel facilities. *Las Vegas-style Slot Machines* are those which are banked by the house and regulated by a random number generator. The Las Vegas-style slot machines payout at different levels as determined by the facility and state law.[23] *Bingo-type* machines are networked together and use a random number generator to play an electronic bingo game to determine prize payouts, but unlike the Las-Vegas style machines, they are not banked by the house. Although these Las

[13] *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.
[14] Section 550.002(29), F.S.
[15] Estimate provided by the representative of the Florida Breeders' and Owners' Association. The Department of Agriculture and Consumer Services has estimated that direct impact of the entire horse industry, comprising racing, showing, recreation, and other activities, is approximately $3 billion.
[16] Section 550.002(35), F.S.
[17] Anything over 870 yards is considered a thoroughbred racing distance.
[18] Section 550.002(33), F.S.
[19] As of November 1, 2007.
[20] Section 550.002(28), F.S.
[21] "A building or enclosure that contains a playing court with three walls designed and constructed for playing the sport of Jai Alai or pelota," Section 550.002(10), F.S.
[22] Section 849.086(2)(c), F.S.
[23] Section 551.104(4)(j), F.S., provides that "the payout percentage of a slot machine is no less than 85 percent."

Vegas-style and bingo-type machines look and play nearly identical to the perception of what a "slot machine" entails, they are distinguishable only by examining their inner workings. Las Vegas-style machines are currently only offered in Broward County and bingo-type machines are offered at the tribal gaming facilities of the Seminole and Miccosukee Indian Tribes.[24]

## METHODOLOGY

In preparation of this report, committee staff met with or communicated with representatives of the Department of Business and Professional Regulation and the pari-mutuel industry, reviewed and analyzed the intertrack and simulcast provisions of ch. 550, F.S., and the Interstate Horseracing Act of 1978, and reviewed the current judicial decisions and litigation concerning the intertrack and simulcast provisions.

## FINDINGS

### Legislative History

Simulcast wagering was originally enacted in 1987 in a limited area.[25] Simulcast and intertrack wagering was authorized for all pari-mutuel permitholders in 1990.[26] Prior to 1992, pari-mutuel wagering was divided between two chapters of the Florida Statutes. Chapter 550, F.S., dealt with horseracing and dogracing while ch. 551, F.S., dealt with Jai Alai frontons. Most, but not all, of these chapters were repealed in 1992.[27] Intertrack and simulcast wagering were enacted in ch. 92-348, L.O.F., as part of the enactment of a revised ch. 550, F.S.[28]

In 1996, ch. 96-364 L.O.F., affected simulcasting in several ways. It amended s. 550.615(6), F.S., to allow simulcasting for all permitholders, except for greyhounds. It authorized greyhound permitholders in Dade and Broward counties to conduct simulcasting. It required that, in order to receive simulcasting, all permitholders, except for harness permitholders, must be conducting live performances. Previously, consent from local permitholders was required in the South Florida area before any permitholder in the area could engage in intertrack wagering. In August of 2007, the Supreme Court of Florida held that s. 550.615(6), F.S., was an unconstitutional special law in guise of a general law.[29]

The act also created s. 550.615(9), F.S.,[30] which provides that in any area of the state where there are only four active permits, one for thoroughbred horseracing, two for greyhound racing, and one for Jai Alai games, located in two contiguous counties (Hillsborough and Pinellas counties), no intertrack wager could be accepted on the same class of live races or games without the written consent of the operating permitholder conducting the same class of live races or games if the guest track is within the market area of the permitholder. This provision affects Tampa Greyhound Track and Derby Lane Greyhound Track.

It created s. 550.6305(9)(c), F.S., to provide that the statutory distribution of net proceeds to the host track, host track purses, and guest track may be amended by contract among the host and guest permitholders and the horsemen's association at the host track.

Subsection (d) of s. 550.6305, F.S., was created to provide that in any area of the state where there are only two permits, one for dogracing and one for Jai Alai, a permitholder may accept wagers on re-broadcasts of out-of-state thoroughbred horseraces from a Florida thoroughbred permitholder not subject to the net proceeds distribution if the thoroughbred permitholder is conducting live races and accepting wagers on the out-of-state horseraces. In this case the permitholder is entitled to 45 percent of the net proceeds.[31] One half of the remaining proceeds are

[24] Under the Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701-2721, Las Vegas-style slot machines are considered Class III gaming devices and the bingo-style machines are considered Class II gaming devices.

[25] Chapter 87-38, L.O.F., limited wagering to any county that had two quarterhorse permits that were not racing as of January 1, 1987 and one Jai Alai permit. It was limited to one qualifying county and could not be located at an existing pari-mutuel facility.

[26] Chapter 90-352, L.O.F.

[27] Chapter 91-197, L.O.F., repealed those provisions effective July 1, 1992.

[28] Chapters 550 and 551, F.S., were repealed and the Legislature enacted new provisions of ch.550, F.S., at a Special Session in December of 1992 that combined pari-mutuel regulation under one chapter.

[29] *Florida Dept. of Business and Professional Regulation v. Gulfstream Park Racing Association, Inc.*, 2007 WL 2492308, 32 Fla. L. Weekly S542 (Fla. Sept. 6, 2007).

[30] Renumbered as s. 550.615(9), F.S., by s. 13, ch. 2000-354, L.O.F.

[31] Net proceeds is defined by s. 550.6305(9)(a), F.S., as "the amount of takeout remaining after the payment of state taxes, purses required pursuant to s. 550.0951(3)(c)1., F.S., the cost to the permitholder required to be paid to the out-of-state horse track, and breeders' awards paid to the Florida Thoroughbred Breeders' Association and the Florida Standardbred

distributed to the host facility and one half is paid by the host facility as purses. Section 550.6305(f), F.S., was also created to provide for the same provisions for harness racing. According to the department, this affects Palm Beach Kennel Club.

The act also created s. 550.6305(9)(g), F.S., to provide that if a thoroughbred permitholder accepts wagers on an out-of-state simulcast signal, it must make the signal available to any eligible permitholder, provided that no thoroughbred permitholder is required to re-broadcast the signal to any permitholder if the average gross daily returns to the host are less than $100 per performance based on a 30-day period.

The act further stated that any thoroughbred permitholder that accepted wagers on a simulcast signal received after 6 p.m. must make the signal available to any permitholder eligible to conduct intertrack wagering and it included the permitholders in the South Florida area identified in s. 550.615(6), F.S. Similar requirements were provided for the Ocala Breeders' Sales when quarterhorse races were run at the facility and it was limited to the number of performances for a full schedule of quarterhorse races under s. 550.002(11), F.S.[32]

Section 25 of ch. 96-364, L.O.F., provided what has been termed "a reverse severability clause."[33] The section provided that "if the provisions of any section of this act are held to be invalid or inoperative for any reason, the remaining provisions of this act shall be deemed to be void and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included." Up until this year, none of the provisions in that act had been held unconstitutional. As noted above, the Supreme Court has held s. 550.615(6), F.S., unconstitutional as a special act. This subsection was created in ch. 96-364, L.O.F. The Supreme Court requested that the parties research and brief the issue of a reverse severability clause, but the majority opinion did not address the issue. Chief Justice Lewis did address this issue in his concurring opinion. He noted that although severability clauses are highly persuasive, they are not binding on courts. Chief Justice Lewis also pointed out that the majority of the provisions contained in ch. 96-364, L.O.F., have subsequently been amended and that it appeared that the only provisions which would be affected are ss. 550.71 and 550.6335, F.S.

In 1998, ch. 98-190, L.O.F., amended ss. 550.01215(1) and (5), F.S., to allow a thoroughbred permitholder to receive and re-broadcast out-of-state races after 7 p.m. rather than between the hours of 7 p.m. and 10 p.m. This act amended s. 550.6305(9)(g), F.S., to provide that, as a condition of accepting such signal, a guest track must accept intertrack wagers on all live races being conducted by all thoroughbred permitholders that are conducting live races, subject to the provisions of s. 550.615(4), F.S. This subsection prohibits a permitholder from accepting intertrack wagers on the same class of race or game as is being conducted by a permitholder of the same type within a market area without written permission by that operating permitholder.

In 2000, ch. 2000-354, L.O.F., created s. 550.615(8), F.S., to authorize any greyhound track located in one of three contiguous counties where there are only three permitholders, all of which are greyhound permitholders (the Jacksonville market area), and which leases another greyhound track in the same market area for purposes of conducting live racing to also receive intertrack wagering at the leased facility when it is conducting its live races or games at the leased facility.[34]

In 2005, ch. 2005-288, L.O.F., amended s. 550.002(11), F.S., to reduce the number of live performances to constitute a full schedule for certain Jai Alai facilities.

**Intertrack and Simulcast Wagering**

Intertrack and simulcast wagering has, in recent years, become a much more important and critical aspect of track and fronton revenue. The percentages of the total handle[35] based on simulcasting and intertrack wagering have increased throughout the pari-mutuel industry at a steady rate.[36] For the FY 2005-06, intertrack and

Breeders and Owners Association," to be used as set forth in s. 550.625(2)(a) and (b), F.S.

[32] A quarter horse permitholder must conduct at least 40 live regular wagering performances in the preceding year.

[33] The clause is codified at s. 550.71, F.S.

[34] The Division of Statutory Revision has noted that the reference to subsection (9) found in s. 550.6305, F.S., is incorrect due to the repeal of this subsection by s. 44, ch. 2000-354, L.O.F.

[35] "Handle" is defined in s. 550.002(13), F.S., as the aggregate contributions to the pari-mutuel pools. A pari-mutuel pool is the total amount wagered on a race or game for a single possible result. *See* s. 550.002(24), F.S.

[36] *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities,* Interim Report No.

simulcast wagering accounted for $1,030,372,562 or 73.3 percent of the $1,405,502,936 total handle wagered on pari-mutuels during that year. The live events accounted for $375,130,374 or 26.7 percent of the total handle. Intertrack wagering accounted for $264,347,601 or 58.9 percent of the $448,500,724 total handle on greyhound racing. Simulcasting and intertrack wagering in thoroughbred racing had $635,675,000 or 81.7 percent of the $778,127,248 total handle. For harness racing, intertrack and simulcast wagering accounted for $86,785,677 or 90.1 percent of the $96,337,963 total handle. Finally, intertrack wagering for Jai Alai accounted for $43,564,284 or 52.8 percent of the total $82,537,001 total handle. Jai Alai did not have any revenue generated from simulcasting in 2005-06.[37]

Permitholders are required to pay purses on intertrack and simulcast greyhound races.[38] Purses and breeders' awards are also required to be paid on thoroughbred intertrack and simulcast races.[39]

**Florida's Regulation of the Intertrack Signal**

The Pari-Mutuel Wagering Act, as defined by ch. 550, F.S., creates specific limitations on the exchange of intertrack signals, which include the following limitations.

Tracks and frontons must be licensed by the Division of Pari-Mutuel Wagering and must have conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers.[40]

Host tracks may require a guest track within 25 miles of another permitholder to receive, in any week, at least 60 percent of the host track's live races that the host track is making available on the days that the guest track is operating live races or games.[41]

A host track may also require, when the guest track is not operating live and is within 25 miles of another permitholder, that the guest track accept 60 percent of the host track's live races that it is making available in that week. Permitholders may not attempt to restrain a permitholder from sending or receiving intertrack wagering broadcasts.[42] These provisions are applicable to Dade, Broward, Pinellas, Hillsborough, Duval, Volusia, Clay, and Seminole Counties.

Guest tracks within the market area of the operating permitholder must receive consent from the host track to receive the same class signal.[43]

Permitholders within the market area of the host track must have the consent of the host track to take an intertrack wager.[44]

In any county of the state where there are only two pari-mutuel permitholders, one for dogracing and one for Jai Alai, a permitholder is required to receive the written consent of the other permitholder if it wishes to conduct intertrack wagering and is not conducting live races or games. If neither permitholder is conducting live races or games, intertrack wagers may be accepted on horseraces, games, or both.[45]

In any three contiguous counties where there are only three greyhound permitholders, a permitholder who leases a facility of another permitholder to conduct its live race meet may conduct intertrack wagering throughout the year, including the time the live meet is being conducted at the leased facility.[46]

All costs of receiving the transmission of the broadcasts shall be borne by the guest track and all costs of sending the broadcasts shall be borne by the host track.[47]

**Interstate Horseracing Act**

Interstate broadcasts of horseraces must also comply with the provisions of the Interstate Horseracing Act of 1978 (IHA).[48] The IHA requires that an interstate off-track wager[49] may be accepted by an off-track betting system only if consent is obtained from the host racing association, the host racing commission, and the off-

2006-145, Florida Senate Committee on Regulated Industries, September 2005.

[37] *75th Annual Report for Fiscal Year 2005-2006*, Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation (December 2006)

[38] *See* s. 550.09514(2)(c), F.S.

[39] *See* ss. 550.26165(1) and 550.2625(2)(e), F.S.

[40] Section 550.615(2), F.S.; *See* s. 550.002(11), F.S., for "full schedule of live racing or games."

[41] Section 550.615(3), F.S.

[42] Section 550.615(3), F.S.

[43] Section 550.615(4), F.S.

[44] Section 550.615(5), F.S.

[45] Section 550.615(7), F.S.

[46] Section 550.615(8), F.S.

[47] Section 550.615(10), F.S.

[48] 15 U.S.C. ss. 3001 et seq.

[49] A "legal wager placed or accepted in one state with respect to the outcome of a horse race taking place in another state and includes pari-mutuel wagers where lawful in each state involved. . ." see 15 U.S.C. s 3002(3).

track racing commission. Once this consent is obtained, the in-state track receiving the transmission must get the approval of currently operating tracks[50] operating within 60 miles before the site can accept the intertrack wagers on the out-of-state races. If no currently operating tracks are within 60 miles of the facility, then the facility must obtain approval from the closest currently operating track in an adjoining state.

**Litigation**

In the case of *Gulfstream Park Racing Association v. Tampa Bay Downs, Inc.*[51], Gulfstream originally negotiated an exclusive contract deal with an out-of-state host track to disseminate the out-of-state track's simulcasting signal. Tampa Bay Downs (TBD) then attempted to re-broadcast the signal, and Gulfstream sought a declaratory judgment and injunctive relief against TBD. Gulfstream alleged that TBD did not have the ability to re-broadcast the signal since Gulfstream had "an exclusive agreement" to distribute in Florida. Tampa Bay Downs then filed a countersuit stating that these exclusivity arrangements violated the Pari-Mutuel Wagering Act and that Gulfstream's actions violated antitrust laws. The case was appealed to the Eleventh Circuit Court of Appeals and that court certified the case to the Florida Supreme Court on the issue of whether ch. 550, F.S., prohibits exclusive distribution contracts between in-state and out-of-state thoroughbred tracks.[52]

The Florida Supreme Court[53] held that Gulfstream's actions did indeed violate the Pari-Mutuel Wagering Act and submitted their response to the United States Court of Appeals, Eleventh Circuit who granted summary judgment to Tampa Bay Downs on the matter of the nullification of exclusivity.[54]

In *Florida Department of Business and Professional Regulation v. Gulfstream Park Racing Association, Inc.*, 2007 WL 2492308 (Fla.), 32 Fla. L. Weekly S542, the Division initially filed a complaint against Gulfstream Park for engaging in an unauthorized exchange of an intertrack wagering signal. Gulfstream then filed suit against the division challenging the implementation and constitutionality of s. 550.615(6), F.S.

The case was recently decided by the Florida Supreme Court which ruled that s. 550.615(6), F.S., was an unconstitutional special law but the opinion failed to address the non-severability clause found in s. 550.71, F.S.[55] As noted above, the non-severability clause specifically states that if any provision of the act is found to be invalid or inoperative for any reason, the remaining provisions of the act shall be deemed to be void and of no effect, as the legislative intent was for the act to remain as a whole. This has not yet been challenged or reviewed by the courts and has the potential to impact the provisions of ch. 550, F.S.

**Perspectives from the Industry and DBPR**

Representatives from both the pari-mutuel facilities and DBPR had similar concerns regarding the issues on ruling s. 550.615(6), F.S., unconstitutional. First, the s. 550.615(6), F.S., should be deleted. Second, any cross referenced statutes would need to be reviewed and amended or deleted. Third, the reverse severability clause should be repealed since recent litigation and statutory changes have made the severability clause obsolete.

Representatives from the horseracing industry were divided in their view. Some did not feel that any changes needed to be made to the existing system other than the statutory changes identified in the preceding paragraph. Others were of the opinion that prior legislation, such as CS/CS/SB 2474 by the Committee on Criminal Justice, Regulated Industries, and Senator Haridopolos (2004), should be reviewed to evaluate some of the changes suggested by that legislation.

Some of the pari-mutuel facility representatives made reference to "parity for all" in signal deregulation. For example, in order to take a horse racing signal at a greyhound track, the greyhound track must go through a Florida horse track in order to acquire the signal. The pari-mutuel representatives desired greater ease in acquiring these signals.

[50] 15 U.S.C. s. 3002(14) defines currently operating tracks as "racing associations conducting pari-mutuel horseracing at the same time of day (afternoon against afternoon; nighttime against nighttime) as the racing association conducting the horseracing which is the subject of the interstate off-track wager."
[51] 294 F.Supp. 1291 (M.D. Fla. 2003).
[52] *Gulfstream Park Racing Ass'n, Inc. v. Tampa Bay Downs, Inc.*, 399 F.3d 1276 (11th Cir. 2005).
[53] *Gulfstream Park Racing Ass'n, Inc. v. Tampa Bay Down, Inc.*, 948 So.2d 599 (Fla. 2006).
[54] *Gulfstream Park Racing Ass'n, Inc. v. Tampa Bay Down, Inc.* 479 F.3d 1310 (11th Cir. 2007).
[55] The non-severability clause and potential effects are addressed by C.J. Lewis in a concurring opinion.

Representatives from the greyhound tracks indicated that there should be parity and equalization of the simulcasting taxes. Currently, the simulcast horse racing is taxed at a level of 2.4 percent while the greyhound racing is at 5.5 percent.

There is no consensus among the industry representatives on whether there should be changes to the taxes, purses, and distributions for simulcast and intertrack wagering. Affecting one rate on one segment of the industry invariably affects the rates of other segments of the industry.

## RECOMMENDATIONS

Based on the findings of this report, staff recommends that:

Section 550.615(6), F.S., should be repealed based upon the decision of the Supreme Court in *Florida Department of Business and Professional Regulation v. Gulfstream Park Racing Ass'n, Inc.* that held that statute unconstitutional as a special act in the guise of a general law.

Additionally, the statutory cross references to s. 550.615(6), F.S., should be reviewed and deleted or amended. The cross references are included in ss. 550.0951, 550.09514(2)(b), 550.3551(6)(a) and (b), and 550.6305(2), F.S. The repeal of s. 550.615(6), F.S., may have significant implications in the tax rates of some of the pari-mutuel facilities identified in these statutes.

The cross references to s. 550.615(9), F.S., should be deleted. In 2000, ch. 2000-354, L.O.F., repealed the provisions of s. 550.615(9), F.S., as noted by the Division of Statutory Revision in its footnote. This cross reference has never been repealed.

The non-severability clause provided in s. 25, ch. 96-364, L.O.F. and codified in s. 550.71, F.S., should be repealed. Many of the provisions amended by ch. 96-364, L.O.F., have subsequently been amended and the original intent of the clause has been abrogated. The fact that the Supreme Court failed to address the non-severability clause suggests that the Court no longer views the provision as relevant.

Chapter 550, F.S., should continue to be reviewed to address some of the various taxing, broadcasting, and fee issues among the pari-mutuel industry.