

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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For the Week of April 9-13

CORRECTION

On Thursday, April 12, in Daily Legislative Brief, we mistakenly identified Sen. Rod Smith as the lone Democratic vote for SB 412 related to gun manufacturer's liability. In fact, Senators Richard Mitchell (D-Jasper) and Al Lawson (D-Tallahassee) also voted in favor of the measure. We apologize for this error.

WORKERS' COMPENSATION

On Monday, April 9, a good workers' compensation bill, CS/SB 1926 by *Sen. Jim King (R-Jacksonville)*, was approved unanimously by the Senate Banking and Insurance Committee. *Committee Chairman Jack Latvala (R-Palm Harbor)* worked diligently to assure that the bill included measures necessary to control costs and resolve cases expeditiously. Chairman Latvala and Senator King demonstrated an unusual understanding of the very complicated issues related to workers' compensation and moved through the bill and its amendments with ease and certitude. It was a welcome sight for the business community.

Both Senators invoked the "no controversial" amendments rule to insure that those types of issues would not be added to the bill. The more controversial reforms will be addressed next Monday, April 16th.

The committee also approved on a 6-5 vote SB 2224 by *Sen. Charlie Clary (R-Destin)* to transfer the Division of Workers Compensation to the Department of Insurance. Committee Democrats voted no after the AFL-CIO and the American Federation of State, County and Municipal Employees objected that the bill did not do enough to protect the jobs of the division's employees. The Legislature moved all other divisions except Workers Compensation out of the Department of Labor and Employment Security last year in a move to abolish the department.

AIF appreciates the hard work of the Senate and Chairman Latvala on workers' compensation reform on behalf of Florida's employers and injured employees. AIF supports the passage of both CS/SB 1926 and SB 2224.

GUN MANUFACTURERS AND CIVIL LIABILITY

On Wednesday, April 11, SB 412 by *Sen. Charlie Bronson (R-Indian Harbour Beach)* was read a second time on the Senate floor. On Thursday, April 11, the bill was passed on third reading by the Senate by a vote of 27 – 12 with one non-vote. It now moves to the House for consideration. The bill prohibits civil actions against firearms and ammunition manufacturers, distributors, dealers and trade associations by certain governmental entities under certain circumstances. The right to sue the firearm entities for damages, abatement, or injunctive relief resulting from the lawful design, marketing, or sale of firearms to the public is prohibited. The specified entities prohibited from bringing such suits are the state or its agencies and counties, municipalities, special districts, or other political subdivisions of the state. The bill does not prohibit an individual person from bringing a suit for breach of contract, breach of express warranty, or injuries resulting from a defect in materials or workmanship.

After national and state governments, including Florida, looted tobacco manufacturers for selling a legal product, it has become clear that gun manufacturers were next on the "hit list" of municipal, county and state governments and their trial attorney friends. Over 30 lawsuits by governments have been filed nationwide, although none of these suits have been successful at this date. Gun manufacturers are the first in line of what AIF believes is a lengthy list of legally manufactured products that trial attorneys have their eye on for future action.

AIF supports the bill and Sen. Bronson's continued efforts on its behalf. Protecting gun manufacturers from a legal assault is only the first step in insuring that our own governments, lacking the political will or wherewithal to ban or regulate products, which is their rightful jurisdiction, will not use legal artifice to plunder industries such as alcoholic beverage manufacturers, fast food chains, and any other business that has, at some time, produced something that may have been subject to misuse or abuse.

Rep. Allan Bense (R-Panama City) is the sponsor of the House companion bill HB 449; it awaits consideration on the House Special Order Calendar.

SERVICE FIRST – CIVIL SERVICE REFORM

On Tuesday, April 10, the Senate Governmental Oversight and Productivity Committee approved a significantly watered-down bill to improve state employee service to taxpayers, CS/SB 466 by committee *Chairman Rudy Garcia (R-Hialeah)*. Before presenting the bill for a vote, Chairman Garcia returned the requirements for removing a state employee to the present law requiring the state agency to show just cause for removal and to continue review of dismissals by the Public Employees Relations Commission. The bill previously allowed dismissal within the discretion of the manager and required the employee to show the action based on discrimination, political action or other unfair reason, just as in the private sector. Those central requirements for state workforce reform are in the House bill, HB 369, approved 74-43 by the House on March 22 and now awaiting Senate action.

Shortly before the committee meeting, Jon Shebel, Associated Industries president, along with representatives of the Florida Chamber of Commerce, the National Federation of Independent Business and the Florida Council of 100 held a news conference in the Capitol to show support for Governor Bush's Service First plan. "We should give state employees the same opportunities as employees in the private sector to prosper if they work hard," Shebel said. "We need a realistic system that relates to the real world, not some law (Career Service) written in 1955," he added.

AIF supports the Governor's Service First plan. Not only does it hold the prospect of treating our civil service employees better; it promotes efficiency and accountability within the civil service system. Florida's employers, who interact with the state every day, would benefit tremendously from a motivated, lean and highly professional state employee force. In addition, the savings realized to the state in state employee reductions and added efficiency would save employer's tens, even hundreds of millions of tax dollars in the long term.

UNEMPLOYMENT COMPENSATION FOR BIRTH & ADOPTION

CS/SB 500 by *Sen. Debbie Wasserman Schultz (D-Pembroke Pines)* would dip into the unemployment compensation trust fund to finance up to six weeks paid leave for parents of newborns. On Monday, April 9, the measure passed 7-4 despite objections that the measure would raise unemployment costs to employers. The bill goes next to the Senate Finance and Tax Committee chaired by *Sen. Lisa Carlton (R-Osprey)* who spoke against the measure.

AIF is opposed to CS/SB 500. While well intended, it seeks to establish another social benefit and fund it through the unemployment compensation trust fund. Adequate federal and state law is available to accommodate employees who adopt or welcome a newborn home. Worse yet, the current federal law provides for an exemption for employers with 50 or less employees in such matters. The bill captures these small employers. Why is it that when certain legislators want to help their constituents, the proposal usually costs Florida's employers money?

COMMUNICATIONS SERVICES TAX SIMPLIFICATION

On Monday, April 9, the Senate Finance & Taxation Committee adopted SB 1878 by *Senator Jim Horne (R-Orange Park)*. The bill establishes a unified communications services tax. The current laws governing taxation of communications services in Florida are not keeping pace with converging industries, advancing technology and bundling of services. When most of the laws were written, there was one telecommunications company providing all your communications needs. But, there have been many changes since then. Instead of one monopoly provider, there are many different companies providing a varied array of electronic communications services. New technologies like the Internet and wireless service, as well as cable TV companies offering telephone service, make the existing statutes difficult at best to administer. Not all competing providers are taxed the same and some services are not taxed at all, even though the service they offer is effectively the same as one being taxed. Companies are bundling services together in a single package for a single price when the component services are all taxed differently.

What is the solution? A single, unified tax imposed by the State and administered by the Department of Revenue on all electronic communications services. This would include wire line and wireless telecommunications, paging, data communications, cable TV, and satellite TV.

The 2000 Legislature actually passed the unified communications tax, but the 2001 Legislature will have to pass the new tax rate. AIF supports the effort to establish a unified communications tax statewide.

The new unified tax is intended to be revenue neutral for the state and local government. Customer bills will be easier for consumers to understand since there is but one state tax and not five different ones, each with a different tax base.

A unification of the communications tax base under one simplified services tax would provide equity among the telecommunications service providers, a tax process the consumer can understand and a more predictable revenue stream for the state and local governments.

NURSING HOME CARE REFORM

On Tuesday, April 10, CS/SB 1202, a bill to reform Florida's nursing home care, was amended and adopted by the Senate Judiciary Committee. Before approving the long-term care reform bill, CS/SB 1202 by *Sen. Ginny Brown-Waite (R-Brooksville)*, the Senate Judiciary Committee adopted a key amendment limiting punitive damages in suits against nursing homes and assisted living facilities. The amendment by *Sen. Jim Horne (R-Orange Park)* would limit punitive damages to three times compensatory damages or \$1 million unless the defendant acted wrongfully solely for financial gain, in which case the limit would rise to \$4 million. The amendment passed on a voice vote.

Negotiations between the nursing home care providers and trial lawyers had resolved other issues such as limiting attorney fees and setting clear standards of responsibility before breaking down over the issue of punitive damages. The trial lawyers wanted no limit. The bill also requires increased staff in the homes and makes other quality of care reforms. It goes next to the Appropriations Subcommittee on Health and Human Services.

The next stop for the bill is Senate Appropriations before consideration by the full Senate. The committee is scheduled to meet Wednesday, April 18.

While certainly the human side of this issue, the care of our elder citizens, is compelling, the fiscal stability of the state is at risk, as well. General revenue is actually a relatively small slice of the budget expenditure pie for Florida. Many expenditures by the state are trust funded, designated for a specific purpose, and are not quite as exposed to the cyclical whims of the economy as general revenue is. Medicaid is funded out of a mix of state and federal dollars. The state Medicaid dollars come out of general revenue. Nursing homes are funded out of the Medicaid monies. If there is a crisis in nursing home care, if homes are going under, it is the state, and the dollars in general revenue that must pick up the slack. "Picking up the slack," can mean, as it does this year, *that a tax cut is in doubt*.

Effective reform is critical to the business community. A squeeze of a billion dollars in the Medicaid dollars, such as we have this year, can have an enormous ripple effect throughout the budget, the state's tax policy and ultimately, the business community. We pay the taxes. AIF supports the CS/SB 1202 for that reason.

EDUCATION GOVERNANCE

On Tuesday, April 10, the Senate Governmental Oversight and Productivity Committee approved CS/SB 2108 by *Sen. Jim Horne (R-Orange Park)* to begin the process of establishing a unified system for governance of Florida public education from Kindergarten through graduate school. The bill directs Gov. Bush to appoint members of a state Board of Education by July 1, but it would share its duties with the Governor and Cabinet acting as the state Board of Education until a 1998 constitutional revision takes effect in January 2003. They and an advisory committee will work out the operating details and report back to the 2002 Legislature. The bill replaces the Board of Regents with an appointed board at each university.

AIF supports these efforts to implement reform of our education system. Florida's employers need high quality, trained, and equipped people. These reforms are an important first step in improving the quality of potential employees for the business community and they brighten the future for all of Florida's citizens.

CABINET REORGANIZATION

Rep. Ron Greenstein (D-Coconut Creek), co-chair of the centrist Florida Democratic Leadership Council (FDLC) announced today the group had formally taken the position of supporting Comptroller Robert Milligan's recommended reorganization of the Florida Cabinet. The FDLC is an organization of Florida Senate and House Democrats who are seeking to establish policies that feature responsibility and accountability. The FDLC takes a dimmer view of "big government" proposals than some of its more liberal colleagues in the party and makes an effort to work with Republicans where they can agree on issues that offer no simple solution at either end of the spectrum.

The FDLC is backing a reorganization of the Florida Cabinet that would feature an elected Chief Financial Officer who would execute the constitutional duties currently held by the Comptroller and Treasurer & Insurance Commissioner. The regulatory duties would be performed by three appointed department heads, each overseeing insurance, banking and financial services, respectively. An executive director, appointed by the Governor and Cabinet and approved by the Senate would nominate the three department heads with final approval given by the Governor and Cabinet. HB 681 by *Rep. Leslie Waters (R-Largo)* was passed by the House two weeks ago and largely embraces this arrangement. The bill awaits consideration by the Senate.

<p>AIF is grateful for the FDLC's position on this very important issue. AIF agrees with the FDLC that this arrangement best implements the will of the voters as expressed in their approval of the 1998 constitutional revision.</p>

COURT REFORM

On Wednesday, April 11, the House Judicial Oversight Committee ran out of time to vote on a proposed amendment to the Florida Constitution, HJR 827 by *Rep. Fred Brummer (R-Apopka)*, which would reduce Judicial Nominating Commissions, and the Florida Bar, to ministerial roles in selection of judges. The amendment, if approved by the Legislature and voters, would require the nominating commissions to forward to the governor **all applicants** for judicial appointments that the commissions find qualified. Currently the Commission takes applicants and recommends selected candidates to the Governor. The governor's appointments would be subject to Senate confirmation.

Brummer is also the sponsor of HB 367 that would have the governor make all appointments to the nominating commissions, rather than the governor make three, the Florida Bar three and those six appoint another three. It passed the House 65-50 on March 22.

AIF supports HJR 827 as another important piece in “checking” a judicial branch that has become overrun with the influence of attorneys and their interests to the exclusion of its broader responsibilities to the public. The judicial branch has taken on the trappings of an ancient priesthood, exceeding its role as a third branch of the government by consistently “writing law” as opposed to simply interpreting the constitutionality of the law.

“CRASH FOR CASH” PUBLIC RECORDS REFORM

HB 1805 received a favorable vote from the House Committee on State Administration on Thursday, April 12. This bill, formerly PCB IN 01-02, represents one of the suggestions that came from a Grand Jury report dealing with insurance fraud relating to personal injury protection released last fall. According to the report, approximately \$1.1 billion in fraudulent auto insurance claims are being filed annually and a large portion of that sum is directly attributable to Personal Injury Protection (PIP) fraud.

An unholy alliance of doctors, chiropractors and lawyers has conspired to solicit openly and aggressively victims of car accidents to file fraudulent PIP claims. The conspirators hire runners to monitor police reports and find reported car accidents. Car accident victims, no matter how minor the accident, are solicited by the runner to participate in a claim or claims for medical services needed as a result of the accident. Personal hectoring and repeated phone calls shortly after the accident are not uncommon. Kickbacks of as much as \$600 are used by the runners to entice accident victims into seeking “therapy” at clinics set-up for the express purpose of treating accident victims, known as “crash clinics.” Some “crash clinics” also cooperate with lawyers who may file personal injury lawsuits on behalf of the crash victims. Florida’s no-fault auto insurance law guarantees up to \$10,000 in medical care to anyone injured in a crash. This provides the ingredient for a soup of illegal solicitation of accident victims, billing for unnecessary services and patient brokering. Eating the cost of this fraud is the average Florida family, which, according to the Department of Insurance, is paying an estimated additional \$246 a year on their auto insurance policy.

Existing statutes make it a crime to use police reports to solicit for commercial purposes. In addition, Florida Bar rules also prohibit telephone solicitations and impose other restrictions on lawyers, such as requiring them to wait 30 days before contacting a crash victims. As is usually the case, the Bar has not even remotely done anything to enforce or sanction lawyers in violation of these rules.

This bill defines “personally-identifying information” in motor vehicle crash reports and requires the Department of Highway Safety and Motor Vehicles (DHSMV) and law enforcement agencies to hold these records, making them confidential for a specific period of time. Only authorized parties listed may obtain crash reports with personal identity information during the exempted period. With the reduction in this ugly fraud, insurance rates should decrease.

Rampant fraud against auto insurance carriers has an enormous ripple effect throughout Florida’s economy, costing employers and employees hundreds and thousands of dollars in additional expenses per year. Such corruption, if unchecked, breeds contempt for the law and, in addition, diminishes the peoples’ respect for the government and the medical and legal professions.

This report was prepared by Curt Leonard, Manager – Governmental Affairs at Associated Industries of Florida (AIF) and Jere Moore, AIF Reporter. Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

- For more information on all of the important legislative information concerning the business community, go to our “members only” Florida Business Network web site at <http://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.