

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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FOR THE WEEK OF MARCH 24-28, 2003

MEDICAL MALPRACTICE

On Monday the House State Administration Committee heard HB 1029, sponsored by the committee and Representative Connie Mack (R-Ft. Lauderdale), relating to adverse incident notification.

In its original form, the bill would have repealed the 24-hour notification of an adverse incident, while retaining the requirement for the 15-day report. Research shows that the Agency for Health Care Administration does not appear to initiate investigations of adverse incidents with the submission of a 24-hour notice but waits for more accurate and detailed information, which is submitted in the 15-day report.

The committee passed the bill with a strike-everything amendment that retains the 24-hour report mandate, and adds a requirement for filing of the reports with the Department of Health.

AIF supports reasonable regulatory requirements on hospitals and surgical centers to improve patient safety, reduce medical errors, and promote effective risk prevention. Reporting of adverse incidents can be an effective tool to accomplish this public policy objective, provided that a responsible state agency investigates such incidents without undue delay upon notification by affected health care providers. AIF supports the bill as amended.

Tuesday, the Senate Banking and Insurance Committee met and passed SB 2080, sponsored by Senator Durell Peaden (R-Pensacola). Some Capitol pundits have dubbed SB 2080 “The Trial Lawyers’ Medical Malpractice Bill,” which is a fairly accurate, albeit thoroughly ironic, description of the pending measure — given that Senator Peaden is a retired physician and not a practicing attorney. This bill came to the committee with the apparent support Senate President Jim King (R-Jacksonville).

The bill passed the Senate Banking and Insurance Committee on a very strong vote. Standing alone, this is clearly a bad bill. If enacted into law, it may exacerbate the insurance availability crisis and thereby trigger a chain reaction leading inexorably to a medical meltdown in Florida. Nonetheless, it is much too early in the session to be overly troubled by a bill that requires much improvement before it can be considered ripe for passage by the full Senate and House. Suffice to say, however, the spirit and intent of the bill, and the level of leadership support in the Senate, does prompt concern.

To view Tuesday’s detailed report on SB 2080, please go to
[http://fbnnet.com/DailyBriefs/2003Dailybriefs/dailybrief13.htm#Medical Malpractice](http://fbnnet.com/DailyBriefs/2003Dailybriefs/dailybrief13.htm#Medical%20Malpractice).

Also on Tuesday, the Senate Committee on Health, Aging and Long Term Care passed SB 564, a medical-malpractice bill of Senator Burt Saunders (R-Naples). It contains many of the tort reforms recommended by the governor's task force, minus the most important one: a cap on non-economic damages. It also grants sovereign immunity to emergency-room physicians, thereby limiting their exposure to civil lawsuits and excessive liability for jury awards. Likewise, the bill extends the Good Samaritan Act to hospital employees providing emergency care, and made other changes to the medical-claims process.

Before passing the bill, the committee members agreed to an insurance "bad faith" amendment that is weaker than the provision in the House bill. On balance, the bill contains more good than bad, but standing alone it fails adequately to address the medical liability problem.

To view a video clip relating to Medical Malpractice please go to <http://www.aif.com/taxmedia.htm>.

AIF supports a comprehensive package of measures designed to alleviate Florida's medical liability crisis, including, most notably, a \$250,000 cap on non-economic damages and necessary revisions to Florida's bad-faith insurance law. Vulnerability to large jury awards is why insurers have left the state. Many doctors, especially in the high-risk specialties, are leaving too. Now is the time for the Legislature to act decisively to provide immediate and lasting relief.

WORKER'S COMPENSATION

For a side-by-side comparison of the various Workers' Compensation plans being discussed this session go to <http://www.fbnet.com/2003-Articles/ProposalsWC.htm>.

To view a video clip on workers' compensation please go to <http://www.aif.com/taxmedia.htm>

CIVIL RIGHTS VIOLATION/DAMAGES

On Monday, the House State Administration Committee heard HB 215, sponsored by the House Judiciary Committee and Representative Jeff Kottkamp (R-Cape Coral), which allows the attorney general to file a civil rights action for discrimination when the offending conduct raises an issue of great public importance.

Under the bill, the attorney general may demand money damages, injunctive relief, and civil penalties not to exceed \$10,000 per violation. Currently, complaints alleging violations of state civil rights laws are filed with the Commission on Human Relations, which may take appropriate action. HB 215 would allow the attorney general to bypass the commission and file civil lawsuits against businesses in the State of Florida.

Although the bill is well-intended, AIF does not support this legislation because it undermines the jurisdiction and authority of the Commission on Human Relations and creates another layer of litigation in an area already well protected by a myriad of state and federal laws and causes of action.

PAYCHECK PROTECTION

The last bill before the House State Administration Committee on Monday was the Paycheck Protection Act, HB 1357, which was sponsored by Representatives Fred Brummer (R-Apopka) and Hugh Gibson III (R-The Villages).

This bill empowers teachers by protecting their First Amendment free-speech rights. Under the bill, unions could no longer force teachers to make automatic contributions to the union's social, political, or ideological activities. It gives school districts collective-bargaining authority over the collection of union dues through automatic payroll deduction. This allows school districts to choose what to do on this matter and maintains local control. It also allows for the automatic deduction of dues to cover collective bargaining, contract administration, and grievance adjustment costs.

The committee passed the bill with a four to one vote.

The First Amendment of the Bill of Rights protects the rights of citizens of this nation to speak freely, which includes the right not to be compelled to support political speech they find repugnant. This bill will allow teachers to pay union dues for collective bargaining and to make additional contributions for other union projects; the teachers union will have to seek voluntary funding for their political activities, just as every other organization in Florida must.

TAXATION

Tuesday, the Senate Commerce, Economic Opportunities and Consumer Services Committee heard and passed SB 1162, sponsored by Senator Ken Pruitt (R-Port St. Lucie). On Wednesday, the House Finance and Tax Committee heard HB 333, sponsored by Representative Gayle Harrell (R-Port St. Lucie), which is identical to SB 1162.

These two bills revive, re-enact and re-adopt certain provisions relating to the tourist-development tax and the Florida Taxpayer's Bill of Rights that are otherwise scheduled to be repealed on October 1, 2003. The committee passed HB 333 with a favorable vote of 22 to zero.

To review Tuesday's detailed report on this issue please go to
<http://fbnnet.com/DailyBriefs/2003Dailybriefs/dailybrief13.htm#Taxation> .

Tourism is central to our state's economy. The local optional tourism tax is an important tool for local governments to promote tourist destinations in Florida. The Taxpayer's Bill of Rights assures minimum standards of fairness in the administration of revenue laws of this state. AIF supports HB 333 and SB 1162.

On Thursday, the Senate Finance and Taxation considered SB 1776, the streamlined sales and use tax bill, sponsored jointly by the committee and a number of different senators.

It is fundamentally unfair that brick-and-mortar retailers in the state of Florida are placed at a competitive disadvantage, simply because they comply with the law by collecting and remitting sales tax. Likewise, it is unfair that lower income and elderly Floridians pay full sales tax when they shop in local stores whereas higher income Floridians often pay no tax at all when they purchase big-ticket items over the internet. And, at a time when state government is facing increased fiscal pressures, it makes no sense at all for Florida to forgo much needed dollar and cents that are otherwise due and owing – but virtually uncollectible – under current Florida law.

To review Thursday's detailed report on SB 1776 please go to <http://fbnnet.com/DailyBriefs/2003Dailybriefs/dailybrief15.htm#Taxation> .

AIF believes that the State of Florida could equalize the treatment of all retail vendors regarding the assessment and collection of state sales tax if a uniform national collection system were developed. Furthermore, the state treasury would benefit since the use tax, currently levied but not collected on catalog and Internet sales, would be collected and remitted to the state treasury.

The Senate Finance and Taxation Committee also heard and passed on Thursday SB 2062, an important bill sponsored by Senator Tom Lee (R-Brandon). This is the scholarship funding tax credit bill.

This bill increases the total amount of corporate income tax credits that may be granted each state fiscal year from \$50 million to \$75 million. Five percent of the total credits would still be reserved for small businesses. It also indexes to inflation scholarship amounts awarded per enrollee for years after the 2003-04 school year. The additional credits available can provide approximately 6,700 additional scholarships to private schools, and at the same time reduce the number of students in Florida public schools by the same number.

Businesses in Florida have a vested interest the state's education system. An educated populace is essential to a market-based economy and a democratic society. School choice can improve the quality of education in the state of Florida. AIF supports legislation, such as SB 2062, which fosters school choice in a cost-efficient manner for business and government alike.

EDUCATION

Tuesday, the Senate Education Committee heard and unanimously passed SB 1854, sponsored by Senator Alex Diaz de la Portilla (R-Miami), on charter and alternative school personnel.

This bill requires that all personnel at alternative schools ("second chance schools") who are hired to fill positions requiring direct contact with students must also comply with the state and federal rules and must file a complete set of fingerprints as required by the current Florida law.

The bill originally required charter-school personnel to comply with the state and federal rules that govern school personnel. Since charter schools are already in compliance with Florida law, however, Senator Ken Pruitt (R-Port St. Lucie) offered an amendment that removes charter schools. This bill now only applies to alternative schools.

To view the AIF issue pages relating to Charter Schools go to the following links:

School Choice/Opportunity Scholarships:
<http://fbnnet.com/2003issues/Education/SchoolChoice.htm>

Charter School Funding:
<http://fbnnet.com/2003issues/Education/CharterSchoolFunding.htm>

Many AIF members have expressed interest in opening and supporting charter schools. In its original form, SB 1854 would have imposed unnecessary regulatory burdens on operations of charter schools, thereby impeding the exercise of parental choice. As amended, however, the bill deletes any reference to charter schools. As such, the bill is now acceptable to the business community.

HOSPITALITY INDUSTRY

On Tuesday, the House Subcommittee on Trades, Professions and Regulated Business heard and passed with amendments HB 1595, a public food-service establishments bill sponsored by Representative Jerry Paul (R-Port Charlotte).

The bill will reduce inspections at recognized facilities to no more than twice per year as long as the facility maintains the standards associated with the designation. This will not prohibit the division from conducting re-inspections to verify that violations have been corrected, nor will it prohibit inspections in response to a documented public complaint or a suspected outbreak of a food-borne illness.

AIF supports reasonable, cost-efficient measures to promote food safety. Although the bill could be strengthened to recognize positive outcomes and not merely training to achieve such outcomes, it is, nevertheless, a constructive piece of legislation that manifests appreciation and support by a state regulatory agency for best practices in the hospitality industry.

GENERAL ELECTIONS

On Tuesday the General Elections were held for Senate District 26 and House District 30. Mike Haridopolos (R) will represent Senate District 26 after Donna Hart (D) with 63.1 percent of the vote.

Thad Altman (R) won the House District 30 seat by defeating Bruce Wechsler (LIB) with 72.4 percent of the vote.

Please go to <http://www.aif.com/Articles-2003/SpecialGeneral.htm> to view the full results

VIOLENCE IN THE WORKPLACE

Wednesday, the House Judiciary Committee heard HB 13 sponsored by Representative Mark Mahon (R-Jacksonville), which deals with arrests for assaults in the workplace.

This bill will allow an officer to arrest a person without a warrant when there is probable cause to believe that a person has committed an assault upon another person in the workplace of the person assaulted. The bill defines the term "workplace" to mean a single physical location where business is conducted or services or operations are performed as well as the area within 100 feet of that location. The committee passed this bill with an amendment on a favorable vote of 17 to zero.

AIF supports HB 13. This bill will aid law enforcement in the arrest and prosecution of persons who may have committed serious crimes in the workplace.

ENVIRONMENT

Wednesday, CS/SB 956 SB 956, sponsored by Senator Dennis Jones (R-Seminole), passed before the Senate Natural Resources Committee and received a favorable vote from the Senate Committee on Comprehensive Planning.

This proposed legislation protects persons, including property owners, who may be liable for dry-cleaning solvent contamination against liability for property damage claims of any kind from any person unless that person sells, transfers, or changes the land use of the contaminated property or demonstrates that actual economic damage has occurred as a result of the contamination. This will eliminate the "double dipping" that has taken place in the past when a property owner has used the funds from the Drycleaning Solvent Cleanup Program to restore the property and has also sued the person who contaminated the property.

AIF supports legislation that provides incentives for voluntary cleanup of polluted sites by property owners by offering them protection against wasteful litigation .

Wednesday, HB 1123, sponsored by Representative Donna Clarke (R-Sarasota), received a favorable vote from the House Natural Resources Committee.

This bill will allow risk-based corrective action (RBCA) standards, which are used for brownfields, dry cleaning, and underground petroleum storage tank cleanup, to be used for all other contaminated sites. This will help expedite the cleanup of contaminated sites. Also, because the bill will allow certain contaminated sites to be cleaned to less-stringent levels, there will be a cost savings to site owners (which includes both private sector and local government owners) in terms of funds expended for site cleanup. These sites could be used for further development.

Setting unreasonably high standards for remediation of contaminated sites delays the cleanup of those sites, which harms the environment and the state's economy by keeping the property from being put to gainful use.

PUBLIC LANDS, WATER, AND NATURAL RESOURCES

Receiving a favorable vote from the House Subcommittee on Public Lands and Water Resources Wednesday was HB 279, sponsored by Representative Larry Cretul (R-Ocala), which pertains to consumptive uses and water permitting.

This bill requires that no consumptive use permit (CUP) — which allow a user to withdraw a specified amount of water, either from the groundwater or from a lake or river — can be issued unless the local government has been given due notice and the opportunity to object to the issuance of the proposed CUP. It also requires that the proposed use of water be consistent with the affected local government's comprehensive plan and that the permit applicant obtain necessary land use and zoning permits.

The subcommittee also heard HB 1069, a water resources bill sponsored by Representative David Russell (R-Brooksville). HB 1069 attempts to enhance the linkage between growth management and available water supplies while addressing the need for increased water conservation, the need for the development of additional alternative water supplies, and the need for increased use of reclaimed water.

In its original form the bill would have hindered development and growth in Florida. Representative David Russell (R-Spring Hill) offered a "strike everything" amendment to alleviate some of the business community's concerns, but the bill still has a way to go. Once the bill was amended, it received a favorable vote.

AIF supports comprehensive changes that end unreasonable duplicative and unnecessary programs and reviews in the growth-management process. However, AIF opposes legislation, such as HB 279 and HB 1069 that imposes burdensome growth management restrictions on Florida business and industry under the guise of water resource protection.

HB 1407, sponsored by Representative Joe Spratt (R-Sebring), also received a favorable vote from the subcommittee. This bill requires the Department of Environmental Protection (DEP) to inventory all lands owned by the federal government, state, water management districts, and local governments on a county-by-county basis. In any county with 50 percent or more of its land owned by the public, DEP would then have to identify all lands in the county purchased using the various conservation trust funds.

The bill also provides conditions under which certain lands must be made available for surplus. It eliminates reversion of state funds for certain land acquisition purposes and requires state agencies and water management districts to prepare and submit to the Department of Revenue requests for certification of payment in lieu of taxes from requesting local governments. The bill also eliminates the 10-year limit on payment in lieu of taxes for each tax loss.

HB 1407 will result in a positive fiscal impact to local governments since many tracts of land will be returned to local ad valorem tax rolls. It will also result in a positive fiscal impact to the state since the proceeds from the sale of surplus lands will flow to the state for future land acquisitions. Some property that may be put back on the property rolls for the local governments will become available for Florida businesses to purchase and appropriately develop.

SMOKE-FREE WORKPLACE

On Thursday, HB 1757, sponsored by the House Business Regulation Committee and Representative Manuel Prieguez (R-Miami), which implements the anti-smoking amendment of the state constitution, was considered by the House of Representative on a second reading. No amendments were added and it is expected to come up next week for a formal vote.

Under the Florida Clean Indoor Air Act, which was enacted before the anti-smoking amendment, a business owner is required to develop, implement, and post a policy regarding the designation of smoking and nonsmoking areas or rooms. HB 1757 deletes the authorization for designated smoking areas or rooms. The bill also requires businesses to develop and implement no-smoking policies, which may include procedures to take when a customer violates the no-smoking law, and must include a prohibition on employee smoking in the workplace.

The House bill differs from the approach being taken by the Senate, which most notably allows smoking activities in stand-alone bars, including bars that sell some food.

This is an issue that affects all businesses in Florida, not just restaurants and bars. Although the constitutional amendment leaves little room for doubt as to the ultimate impact on most all workplaces in this state, AIF will continue to monitor Amendment 6 implementation bills to ensure that the final enactment does not place an undue burden on employers and their ability to conduct business.

AMENDING THE STATE CONSTITUTION

Thursday, the Senate Finance and Taxation Committee heard SB 464, sponsored by Senator Rod Smith (D-Gainesville). This bill expands the application of the fiscal-impact study amendment approved by voters last year by requiring all constitutional amendments or revisions to carry a corresponding statement of probable fiscal impact. In other words, if SB 464 becomes law, a fiscal impact statement would accompany any future constitutional amendment proposed by the Legislature, a constitutional commission, or a citizen initiative. This is a good idea. The Senate Finance and Taxation Committee passed the bill with a favorable vote of five to zero.

To view Thursday's detailed report on SB 464, please go to [http://fbnnet.com/DailyBriefs/2003Dailybriefs/dailybrief15.htm#Amending the State Constitution](http://fbnnet.com/DailyBriefs/2003Dailybriefs/dailybrief15.htm#Amending%20the%20State%20Constitution).

HB 1521, sponsored by Representative Will Kendrick (D-Carrabelle) and Representative Mike Hogan (R-Jacksonville), came before the House Subcommittee on Ethics and Elections on Thursday. This bill is a proposed constitutional amendment that stiffens requirements for constitutional amendments proposed by citizen initiatives.

As filed, HB 1521 contained some useful provisions. Most importantly, the bill required that signatures on petitions for constitutional amendments have to be collected by September 1 of the year preceding the next general election. This would assure at least one intervening session of the Legislature — and one last chance for the Legislature to appropriately address the subject matter — before it appeared on the ballot.

As amended, HB 1521 still contains some provisions that strengthen the integrity of the initiative process but it was watered down in committee. Although it passed without any dissenting votes the bill was better in its original form.

The people retain the ultimate right to alter or revise the state constitution in accordance with fundamental precepts of democratic rule. AIF supports measures that strengthen the integrity of the constitutional amending process, especially with respect to citizen initiatives. The subject matter of proposed amendments should be constitutional in character, and clearly understood by an informed electorate.

IDENTITY THEFT & INTERNET FRAUD

Thursday, the House Subcommittee on Criminal Justice heard HB 1161, sponsored by Representative Leslie Waters (R-St. Petersburg). HB 1611 would amend Florida law to provide for increased penalties for the criminal use of personal-identification information, also known as identity theft.

A strike-everything amendment was introduced and adopted by the committee. The original bill dealt with the requirement of financial institutions to provide two free copies of credit reports to consumers each calendar year. The strike all addressed the issue by removing the requirement completely. No other significant substantive changes were included in the amendment. The amendment was adopted and the bill was passed.

Identity theft and internet fraud cost businesses in Florida hundreds of millions of dollars a year. AIF supports legislation that will protect consumers and businesses by promoting prevention and prosecution of these crimes, but will monitor any bills to ensure that they do not impose wasteful or punitive burdens on businesses.

PRIVATE PROPERTY RIGHTS PROTECTION

Thursday, the House Subcommittee on Local Affairs heard HB 113, sponsored by Representative Jeff Kottkamp (R-Cape Coral), which amends the Bert J. Harris Private Property Rights Protection Act (Harris Act).

The bill is designed to correct a circuit court decision that undermined the original intent of the law, by dealing with certain issues relating to the statute of limitations and sovereign immunity.

At the subcommittee meeting, there were six amendments filed, of which three were withdrawn, including one amendment that provided the most controversy by deleting the sovereign-immunity provision. This provision was intended to and restore it to the original intent of the Bert Harris Act, which the court decision nullified. The amendment, which passed on a five-to-four vote, gutted Representative Kottkamp's bill.

At that time, every business group that supported the bill then opposed it. Some were encouraging passage to keep the issue alive for negotiation further down the line when time ran out and the bill was temporarily passed.

The Harris Act provides an avenue for a property owner against government overreaching on property rights. Legislative action is necessary to ensure that the Harris Act continues to work to protect Florida citizens and businesses from government over-regulation. AIF will continue to support legislation that protects private property rights.

MINING

Thursday, HB 673, sponsored by Representative Gustavo Barreiro (R-Miami), relating to Mining Activities passed unanimously out of the House Insurance Committee.

This bill creates a streamlined administrative hearing and procedures process for allegations of property damage caused by the use of explosives and blasting associated with construction materials mining. Three amendments were adopted: two were technical in nature and the third related to attorneys fees. The original bill rewarded attorneys fees to the prevailing party not to exceed \$15,000. The amendment awards attorneys fees to the prevailing party if the suit is ruled a frivolous suit under current law.

AIF supports this bill because it reduces waste by, among other things, giving both the plaintiff and the defendant incentives to avoid frivolous lawsuits.

AUTOMOBILE INSURANCE: PERSONAL INJURY PROTECTION

Thursday evening, the House Insurance Committee took up PCB IN 03-01a, its version of personal injury protection (PIP) reform.

The general consensus of the members was that if the system cannot be fixed it needs to be repealed. Representative Don Brown (R-DeFuniak Springs) offered an amendment to the bill mandating a cost-benefit study of the no-fault PIP system by the Office of Insurance Regulation. The report would be due next year, in time for the Legislature to take action on the amendment's other provision that calls for the sunset repeal of no-fault next year. That amendment, one of 60 amendments that came up during the meeting, passed on a voice vote.

There are some constructive provisions in the bill, mostly as they pertain to prevention of fraud. The bill was significantly and unacceptably weakened, however, when the members rejected a strong provision for alternative dispute resolution in favor of a more costly alternative favored by the trial lawyers and some health-care providers.

AIF favors reform of Florida's automobile-insurance law to return stability to the no-fault insurance market by reducing unnecessary litigation over medical and lost-wage benefits.

- 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.