

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
WEEKLY UPDATE**



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FROM THE WEEK OF JULY 21 - 25, 2003

**STATUS OF MEDICAL MALPRACTICE DELIBERATIONS  
AND  
WARNING ABOUT PROPOSED TAX RULES FOR  
IN-HOUSE COMMUNICATIONS SERVICES**

**ALL QUIET ON THE MED-MAL FRONT**

It was a quiet week in the state capitol as Special Session C came to a silent and unlamented end on Monday. A skeleton crew of legislative employees patrolled the halls, while many key staffers, along with a significant number of Florida legislators, spent the week in California at the annual convention of the National Conference of State Legislatures.

Although an official proclamation has yet to be issued, expectations are that Governor Jeb Bush will schedule a fourth special session beginning on August 5 and lasting anywhere from 10 days to two weeks.

According to press reports, the governor intends to ratchet up the pressure on Senate Republicans who have opposed the business-backed medical-liability reform proposals of the governor and the House of Representatives. At the same time, however, the governor is wisely extending an olive branch to reticent Republicans and is working hard to repair the GOP breach created by disagreement over the med-mal issue. On Tuesday he visited Senator Tom Lee (R-Brandon), who has been among the most outspoken critics of the governor's reform package. Senator Lee, next in line to become Senate president, is also one of the two members of the upper chamber who are negotiating with the House for an end to the standoff. Those negotiations are going on quietly and behind the scenes.

The governor remains steadfast in support of meaningful legislation to assure continuing access to quality healthcare in Florida. However, he is not inflexible. He insists on a good bill. But he recognizes that failure to pass a bill does no good at all. House leaders too are negotiating in good faith – to achieve a good result – and not just to pass a barely acceptable bill.

A breakthrough is near – a lot nearer than most people realize – on this highly contentious medical malpractice issue. In fact, Governor Bush has agreed to participate in a med-mal “summit” with key House and Senate leaders this coming Tuesday and Wednesday, in an attempt to finally resolve remaining differences prior to the commencement of the next special session the following week. Quite clearly, this is a good sign.

At the end of the regular session the House and Senate were miles apart. Over time, however, Senate leaders have moved much closer to the House position, and vice versa. Although earlier permutations of the Senate malpractice bill missed the mark by a wide margin – and were therefore opposed by reform-minded organizations (such as AIF) – the most recent Senate proposals can be viewed in a more positive light. In fact, House and Senate bills are now a lot more similar – and a lot less dissimilar – which certainly sets the stage for a final agreement.

Nevertheless, the House still has the better bill, which the governor strongly supports. As such, we predict that the ultimate compromise will largely embody the House position, notwithstanding additional concessions that may be necessary to cement a final deal with the Senate.

Before a final agreement is reached, however, the parties must come to grips with a lingering issue – that being the constitutionality of any agreed-upon cap on non-economic damages.

Regrettably, damage caps in both the House and Senate bills are constitutionally suspect. The notion of an “aggregate cap” on damages (regardless of the number of claimants) – first advanced by the Senate and now embodied in both the House and Senate bills – raises serious equal protection concerns. Likewise, requiring a trial court judge to determine whether the statutory damage cap can be “pierced” is problematic, as a denial of the constitutional right to a jury trial. Most importantly, under controlling legal precedent a limitation on non-economic damages may be stricken down as unconstitutional, absent any “commensurate benefit” in the final enactment.

These defects can easily be cured and, as such, the constitutionality of the cap on non-economic damages can be materially strengthened – in anticipation of the inevitable barrage of legal challenges that will be commenced by the Trial Bar. If, however, legislative leaders fail to cover the constitutional bases, all their concerted efforts – during the 60-day regular session and (at least) three additional sessions – will have been for naught.

### **New Tax on In-House Communications Services?**

While everyone has been focused on the medical liability pageant, the engine of government diligently chugs along. Of particular interest to employers: a workshop being held on August 1 by the Department of Revenue (DOR) on its proposed rule for applying the communications services tax to “substitute communications systems.” DOR is defining those to include computer LAN systems that connect multiple computers in a business (or even printers to multiple computers); certain wireless dispatch systems; and systems that monitor manufacturing equipment, pipelines, rail systems or utilities.

Because a substitute communications system must be capable of providing switched service, the crux of the present debate concerns the meaning and application of the term “switched service”.

During the 2003 Regular Session it came to the attention of AIF that DOR was planning to adopt rules that would expand the definition of “substitute communications systems” beyond what the Legislature intended when it adopted the unified communications services tax in 2001. AIF worked with key lawmakers to craft legislation to prevent DOR from adopting an overly expansive rule but the problems created by a legislative solution were so complex that time ran out on the regular session before the issue could fairly be redressed.

**WARNING:** If DOR's proposed rule is adopted, businesses with in-house computer networks, two-way mobile systems, and other affected systems, may have to pay the 9.17-percent statewide communications services tax, plus any applicable local taxes, based on the depreciation costs and service expenses associated with the substitute communications system.

Please go to <http://www.aif.com/Articles-2003/servicetaxrules.htm> to view the proposed rule.

The rule hearing will take place on Friday, August 1, in Room 116 of the Larsen Building in Tallahassee (located on the corner of Monroe Street and Gaines Street, one block south of the Capitol). The hearing is scheduled to begin at 9:00 a.m.

- 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://fbnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.