

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
WEEKLY UPDATE**



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**FROM THE WEEK OF MARCH 15-19, 2004**

### CONSTITUTIONAL AMENDMENTS

An interesting new development has taken shape this week, as House Speaker Johnnie Byrd (R-Plant City) unveiled a plan that would attempt to cap attorney fees in medical malpractice cases through a proposed constitutional amendment. HJR 1337 by Representative Baxter Troutman (R-Winter Haven) has been filed as the vehicle for the Speaker's proposal. Reactions on this attempt to bring back one of last year's most contentious debates have been less than favorable from both the Senate and House of Representatives.

This joint resolution creates a new section of the Florida Constitution in Article I whereby a claimant in a medical malpractice lawsuit has a right to fair compensation. More specifically, the resolution would assure that claimants would receive at least 70% of the first \$250,000 of all monies received, and 90% of all monies received in excess of \$250,000 exclusive of court costs.

HJR 1337 was slated for consideration before the House Judiciary Committee on Thursday, March 18th. This resolution was not heard before the committee because apparently the votes were not there to pass it out. Though AIF and the business community have always been supportive of tort reform initiatives particularly in the medical malpractice arena, this proposed constitutional amendment is ill conceived because of two reasons:

- the current medical malpractice law which was passed after very heated debate last session, has only been in place since January 1st, 2004, and so there has not been sufficient time to ascertain the impact of the recently approved caps on damages on medical malpractice insurance rates; and
- AIF and the business community does not believe that the Constitution is an appropriate place for limits on people's salaries, rather it is a document reserved for altering the structure of government or limiting the powers of state government.

We understand that this resolution may be heard by a different House committee next week. Because of the extensive debate already heard on this issue, the chances of this bill ever being heard in the Senate are remote.

**AIF opposes proposed constitutional amendments unless they deal with government structure or limiting governmental powers.**

Also on the constitutional amendment front, the Senate Judiciary Committee met on Tuesday March 16<sup>th</sup> and passed Senate Joint Resolutions 2392, 2394, and 2396 by Senator Jeff Atwater (R-North Palm Beach) and Senator Rod Smith (D-Gainesville). These are the resolutions aimed at reforming the state's constitutional amendment citizen initiative process. SJR 2392 would raise the ratification threshold required to pass an initiative to 60 percent from 50% + 1 percent. SJR 2394 moves the deadline for the Secretary of State to receive certified initiative petition signatures from the supervisors of elections from 91 days before the general election to February 1 of each general election year. SJR 2396 limits the scope of constitutional amendments and revisions that can be placed on the ballot by citizen initiatives to those that are appropriate for inclusion in the Constitution as determined by the Florida Supreme Court.

One major development to surface during Tuesday's meeting was an amendment by Senator Jeff Atwater to SJR 2392. The amendment would provide that the increase to the ratification threshold for citizen initiatives would only apply to those initiatives that qualified after July 16, 2004 at 12:00 PM. Qualified initiatives are those that have passed Supreme Court scrutiny and the Secretary of State has certified the roughly 500,000 signature required to be on the ballot. The original language in the bill set a deadline of June 1st, 2004. The significance of this amendment is that it would allow petition sponsors an additional six weeks to qualify for the 2004 ballot at the 50% + 1 vote threshold. This deadline shift is just two weeks short of the current deadline which is August 31st of any general election year.

The amendment and all three SJRs passed easily through the committee.

Senate Bills 2398, 2400 and 2402 which would authorize a special election to be held concurrently with the August 31, 2004 primary election for the purpose of submitting the above-referenced joint resolutions, also passed through the Senate Judiciary Committee on Tuesday, March 16. Support for the special election bills is less enthusiastic than the joint resolutions. Senator Lisa Carlton (R - Osprey) indicated her opposition to the special elections with a "no" vote on the bills. Senator Carlton indicated that election issues of this magnitude might best be left to November voters - citing low primary turnout as a major concern. Because these bills are calling for a special election it requires a 3/4ths vote of the entire Senate (30 members) and House of Representatives (90 members).

**AIF supports politically viable initiative reforms aimed at facilitating a more responsible process and at protecting the sanctity and supremacy of the state's constitution.**

### **Workers' Compensation**

The House Insurance Committee met on Monday, March 15th and held a workshop on HB 1251 sponsored by Committee Chairperson, Representative Kim Berfield (R-Clearwater). The bill's intent is to create solutions to the potential deficits in Subplan D of the Florida Workers' Compensation Joint Underwriting Association (FWCJUA).

AIF continues its leadership role in the Coalition of Business and Insurance Industry on this workers' compensation issue as it has over the past few years. The Coalition strongly believes that the deficits will continue to increase, most likely at the expense of all Florida's employers, unless Subplan D is required to charge actuarially sound rates to its policyholders. However, Representative Berfield asked the Coalition last week to develop possible solutions to the JUA that would help to eliminate the deficit and prevent those deficits from re-occurring.

Tamela Perdue, on behalf of AIF and the Coalition, presented the Committee with a list of concepts that the Coalition developed to address this issue.

To read the details of the concepts go to  
<http://www.fbnnet.com/2004Articles/315WorkersComp.htm>

AIF and the Coalition will continue to work closely with the House Insurance Committee to craft a fair and equitable solution to eliminate the potential deficit in Subplan D while providing fairness to all Florida's employers.

**AIF is clearly aware that the deficit in Subplan D of the JUA is a problem that must be addressed. However, AIF will encourage the Legislature to look for other ways to create a permanent solution to the problem, including an adjustment of the rate structure for the Subplan to a more actuarially sound level. A one time appropriation as suggested by this bill only serves as a temporary fix and does not provide a permanent solution**

## **MEDICAL MALPRACTICE**

On Wednesday, March 17th the House Insurance Committee met for purposes of receiving testimony as to medical malpractice and the impact that last year's legislation has had on the affordability and availability of medical malpractice insurance. Dr. West on behalf of the Florida Medical Association testified that their members have seen average rate increases of over 45%, and in the case of many specialists, insurance is not available at any price. Dr. West urged the Legislature to pass additional legislation in the following areas: expert witness qualifications, defense attorneys' access to subsequent treating physicians, loopholes in the caps that went into affect last year, establishment of medical review panels for the review as to the merit of malpractice lawsuits, and sovereign immunity for Miami teaching physicians practicing at Jackson Memorial Hospital.

Representatives from the Academy of Florida Trial Lawyers urged the Committee to give last year's legislation a chance to work before making any additional changes.

On Thursday, March 18th House Insurance Committee Chairwoman Kim Berfield (R-Clearwater) quickly released a 25 page proposed committee bill (PCB-IN-04-05) that includes a provision prohibiting hospitals or HMO's from requiring in their contracts that doctors have medical malpractice liability insurance. However, language in this PCB was never discussed during the committee's work shop on March 17<sup>th</sup>.

PCB-IN-04-05 is on the agenda for the next meeting of the House Insurance Committee on Monday, March 22nd.

**AIF opposes legislation that would restrict the rights of hospitals, HMO's and other medical facilities to require doctors, as a condition to practice in such facilities, to carry prescribed liability coverages, to include permissible structures of said coverages.**

### **SUBSTITUTE COMMUNICATIONS TAX**

The Senate Communications and Public Utilities Committee unanimously passed SB 2302 by Senator Mike Haridopolos (R-Melbourne) on Tuesday, March 16th. This proposed legislation repeals the substitute communications tax currently in law. According to Florida Statutes, a *substitute communications system* is a stand alone system providing its own exclusive communications service rather than having those services provided through a third party communications service dealer. Examples include: two-way radios, two or more computers networked together in an office or household environment, an intercom system, and PDAs if administered through a company rather than a third party service provider.

Less than \$1 million in revenue is currently collected from this tax and no other state in the country has such a tax. The bill now goes to the Senate Comprehensive Planning Committee.

On Wednesday, March 17th the House Business Regulation Committee unanimously passed HB 735 by Representative John Stargel (R-Lakeland), SB 2302's companion in the House. HB 735 is now on its way to the House Finance and Tax Committee.

For more details on this issue read the AIF Special Notice on Substitute Communications Tax from March, 15<sup>th</sup> at <http://fbnnet.com/2004Articles/commsubtax.htm>

View a video clip of Senator Mike Haridopolos (R-Melbourne) discussing this issue at <http://fbnnet.com/multimedia.htm>.

**AIF supports legislation to repeal this "new" tax which would harm the ability of businesses in Florida to compete.**

## HEALTH CARE CONSUMERS RIGHT TO KNOW ACT

The House Health Care Committee met on Wednesday, March 17th and passed HB 701 also known as the Health Care Consumers Right to Know Act by Representative Donna Clarke (R-Sarasota). The bill requires the State of Florida to make the price and performance data (average length of stay, readmission rates, mortality rates, and infection rates) it already collects on Florida's hospitals and outpatient facilities available to the public on the internet. Currently, hospitals and surgical centers are only required to submit discharge data on a quarterly basis to the Agency for Health Care Administration (AHCA). In addition, the bill also protects consumers from unfair facility charges for non-emergency care and gives consumers the ability to audit their health care bills and patient records.

During the committee meeting, a strike-all amendment, which replaced the entire language of the bill, was offered by Representative Clarke, Representative Gayle Harrell (R-Port St. Lucie), and Representative Ed Homan (R-Temple Terrace). As amended the bill retains a patient's right to get an estimate from health care facilities prior to using the facility and provides for price comparison for health care facilities:

- AHCA to maintain a website for 100 conditions and procedures that is more user friendly;
- the website to include individual facility information regarding volume of cases, patient charges, length of stay, readmission rates, complication rates, mortality rates, infection rates and whether the hospital has a computerized physician order entry system and;
- AHCA to study improving the web site annually and to issue a public report with recommendations on further improvements.

The bill was passed unanimously by the Committee and will now be heard by the House Insurance Subcommittee on Health Access and Financing.

For more details on this issue read the AIF Special Notice on the Health Care Consumer Right to Know Act from March 8<sup>th</sup> at <http://fbnnet.com/2004Articles/healthcheckSN.htm>

**AIF supports legislation that would allow the citizens of Florida to make better informed choices about where they get their care and how their health care dollars are spent. Increasing consumer access to pricing and performance data should drive competition between health care providers thereby reducing the cost of health care for employers and their employees.**

## HEALTH CARE

The House Health Care Committee passed HB 1629 by Representative Frank Farkas (R-St. Petersburg) on Thursday, March 18th. The bill incorporates many of the recommendations of the Governor's Health Insurance Task Force and the House Select Committee on Health Insurance. Both groups met throughout the state during 2003 for purposes of receiving input from employers, health care providers, insurers, and other stakeholders. AIF was an active participant in all of these meetings. The bill contains the following provisions which will help to improve the availability and affordability of health insurance:

- Hospital cost of service and quality data which would be available via the internet to consumers to assist them in the selection of their hospitals.
- Makes available the concept of Health Savings Accounts (HSA's) to employers as authorized by federal legislation championed by President Bush. These HSA's would allow employees to save pretax monies for the purpose of paying for future medical expenses.
- Establishes regional purchasing pools for small employers (1 to 50 employees).
- Establishes a pool for uninsurable individuals. The bill currently provides for an assessment on the premiums of insurers and self-insurers which would fund any deficits. *(After discussions with AIF lobbyists, Representative Farkas agreed to remove this assessment mechanism at the bill's next committee stop).*
- The bill also authorizes a new class of insurance agents, Insurance Advisor, who will assist employers in designing benefit packages to meet their employees' needs.

AIF lobbyists were successful in beating down a last minute amendment that would require a new health insurance mandate for rehabilitative services for congenital speech and hearing conditions. Not only would this have added another mandate to the extraordinarily long list of insurance mandates that already exists in Florida law, but it would have been extremely expensive for consumers. As a result of quick thinking by our lobbyist they were able to defeat this bad amendment and keep a lid on the ever increasing cost of health insurance for employers and employees.

AIF thanks Representative Farkas for taking the lead in this important legislation. HB 1629 will be heard next in the House Insurance Committee.

**AIF supports legislation that allows employers to provide or expand access to high-quality, affordable health benefits to their employees without additional government intrusion or mandates.**

- 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.