ASSOCIATED INDUSTRIES OF FLORIDA
LEGISLATIVE DAILY BRIEF
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FOR FEBRUARY 26, 2002

MORE BURDENS ON EMPLOYER'S HEALTH INSURANCE CARRIERS

HB 293 by Representative Holly Benson (R-Pensacola) was passed today by the House Council for Healthy Communities. Yet again, the bill received a "strike everything" amendment that effectively rewrote the entire bill in an attempt to address the concerns with the legislation. Again, the "civil cause of action" language, which created an additional venue whereby HMOs could be sued, was removed via the amendment. As passed by the Council, the bill can be best described as "balanced" between the concerns of the doctors, HMOs and employers. However, the Senate bill, SB 362 by Senator Burt Saunders (R-Naples) still needs considerable work and you can be sure that there will be a "run" at the HB 293 on the floor to restore provisions AIF and others have worked so hard to beat back through the committee process.

The original motive for the bill was the claim by doctors that they were not receiving "prompt pay" for their services to the insured from the carriers. The original House bill contained all sorts of administrative and tort hammers designed to force the HMOs to cut the checks. The bill was simply unacceptable in its original form and promised to be a premium-driving monstrosity for both the carriers and employers who pay for the insurance.

So-called "well intended" legislation always seems to originally contain a "sneak attack" by trial lawyers with language empowering them to bring suit against HMO with definitions and standards that would place the insurer at a costly, even crippling disadvantage. Florida's employers are the primary providers of health care benefits in Florida. Their ability to pay for this benefit must not be weakened any further by attorney-driven increases in their premiums. In addition, any problems with "prompt pay" lay at the feet of the medical practitioners, who, for whatever reasons, inadequately or unprofessionally administer their billing and provide the carriers with information that is inadequate, incomplete or just plain wrong.

BROWNFIELDS REDEVELOPMENT

CS/SB 2168 by Senator Jack Latvala (R-Palm Harbor) was passed today by the Senate Comprehensive Planning, Local and Military Affairs Committee. This "Brownfields Redevelopment" bill will increase the number of businesses potentially eligible for Brownfields redevelopment. Brownfields sites are abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination. In 1997, the Legislature created the Brownfields Redevelopment Program, which is a voluntary program through which the cleanup of Brownfields sites is initiated by landowners and developers rather than government regulators. By broadening the eligibility requirements, more businesses can locate to Brownfields areas and therefore, more Brownfields redevelopment could occur.

The House companion, HB 1281 by Representative Bob Allen (R-Merritt Island) is on the House Fiscal Policy and Resources Agenda tomorrow.

AIF supports the clean up and return to economic viability of these abandoned and often contaminated areas. This legislation will make the difference between property sites remaining abandoned and blighted or returning as a productive and useful element in the community.

KEEPING THE ACADEMY OF FLORIDA TRIAL LAWYERS FROM SUING STORES FOR PROVIDING POWERED SHOPPING CARTS TO THE DISABLED

The Senate Judiciary Committee did the right thing today and passed SB 1832 by Senator Durell Peaden (R-Crestview). The bill basically provides that if a retailer, such as our large Florida grocery stores, offers a motorized or powered shopping cart for use, they can't be sued if the patron using the cart suffers an accident harming the driver or others. It is worth again noting in this space that the Academy of Florida Trial Lawyers testified in opposition to this bill in the House last week. The Academy even suggested at the House Committee meeting that maybe powered shopping cart users could be assessed a $1 – 5 fee for use of the cart with the dollars being applied to liability insurance for the retail operation. Surely there must be a way to insure a "deep pocket" on this, the Academy reasoned. The Academy made the same suggestion today that the store should carry some liability insurance without explaining how the insurance would assist the plaintiff if the law specifically precludes tort with regards to the use of the powered cart. Like the House, the Senate Committee was uniformly unimpressed. The bill passed by a vote of 10 yeas and 0 nays.

AIF supports the bill. It would be tragic if a common courtesy such as powered shopping carts provided by retailers to disabled patrons were to be discontinued because the retailer faced financial ruin at the hand of a zealous trail lawyer.

PREMISES LIABILITY AND THE BANANA PEEL

The Senate Judiciary Committee passed SB 2256 by Senator Ginny Brown-Waite (R-Brooksville) today. The bill addresses the tort issue of customers slipping on a fruit or some other food product, falling and then, as a result, suing the store.

The need for this legislation was created by yet another unfortunate anti-business decision by the Florida Supreme Court last fall. The Florida Supreme Court struck again on November 15, 2001, handing down an opinion on a "Slip & Fall" case that only distantly had anything to do with prior precedent or pre-existing law.

In question was the classic "slip and fall" litigation, where the plaintiff claimed injury on the store premises as a result of slipping on a fruit product and falling. In this *Owens v. Publix Supermarkets* case, the Court held that the plaintiff need only show that they fell as a result of the errant fruit product. Thenceforth, the burden of proof immediately shifts to the defendant to prove non-negligence. <u>The defendant must now show that its actions were reasonable both with regards to inspection and maintenance procedures.</u>

Prior to this decision, the burden fell upon the plaintiff in a slip and fall case to show that the defendant had constructive knowledge of there being an errant fruit substance dangerously lurking on the premises' floor. This higher, and genuinely more practical standard, allowed on a fairly consistent basis, defendants to obtain a summary final judgement without trial where proof was lacking. With this recent Court decision, every slip and fall case is virtually guaranteed to go before a jury. Needless to say, this decision by the Court will cost businesses millions of dollars each year. The Florida Supreme Court has simply turned the law on its head with its *Owens v. Publix Supermarkets* decision.

While this compromise bill between the Academy of Florida Trial Lawyers and the business community does not take us back to the common law standard held prior to the *Owens* case, the bill does restore some balance and equity.

By dramatically shifting the burden of proof in slip and fall cases to the defendant, the Florida Supreme Court increased the legal exposure of Florida's employers exponentially by the tens of millions of dollars. The Florida Legislature must act to restore some sanity and clarity to a body of case law maimed by the Court. The bill that passed today represents a compromise between the interests of the trial attorneys and the business community. However, the bill still needs some "work" to get it closer to the necessary defenses businesses enjoyed prior to the *Owens* decision.

CABINET REORGANIZATION

The House Council for Competitive Commerce approved HB 577 by Representative Mark Flanagan (R-Bradenton) today. The vote was unanimous. The bill was amended to make extensive technical changes to marry up the policy mandates in the bill with innumerable statues that would be affected by a shift in Cabinet authorities and administration.

As we have previously reported, HB 577 embraces a reorganization of the Florida Cabinet supported by AIF. The 1998 voter-approved revision of the Florida Cabinet collapsed the State's Treasurer & Insurance Commissioner and State Comptroller into one office known as the Chief Financial Officer. HB 577 places the new CFO firmly in charge of the state's finances and the Constitutional duties currently shared by both offices. However, the bill places the necessary distance between the CFO and the extensive duties of regulating the insurance securities and banking industries. While the Senate is moving a version advertised as a "compromise" with the House position, we maintain that the House bill best protects the citizens of Florida from the potential political compromise of the Office of CFO while insuring the regulatory integrity of these industries.

Representative Mark Flanagan has done an outstanding job explaining and re-explaining the rationale for the House position.

AIF supports the House position on the reorganization of the Florida Cabinet. HB 577, by Representative Mark Flanagan (R-Bradenton), provides for the simplification and consolidation of governance, a desire expressed by the vote of the people in 1998, while at the same time providing for the necessary public and legislative oversight of the commissioner-selection process. In addition, this structure provides for a fair and equitable regulatory environment for the insurance and banking industries while in no way diminishing the historic oversight and enforcement authority practiced by the current Treasurer and Comptroller. The Senate hybrid companion bill, CS/SB 662/232, fails to meet these standards. You can view AIF's position on CS/SB 662/232 at http://www.aif.com/issuepages%20TEST.htm.

FOOD SERVICE TRAINING "REFORM?"

The story line on this issue just gets weirder and weirder. SB 1450 by Senator Lee Constantine (R-Orlando) was amended today and passed by the Senate Regulated Industries Committee. As we reported last week, a hospitality organization tried to get the Committee to put an amendment on SB 1450 that raised substantially the assorted fees on food service establishments, privatized food service training and steered the certification training, education and state money to only one, possible provider. That *provider* would be that same hospitality organization pushing the amendment. What a coincidence! However, raising the fees created such a fuss last week, the Department of Business and Professional Regulation and the hospitality organization backed away from the notion today. This makes sense, since the Department could already do this by rule.

However, on a different fee, related to the voluntary Health Education Program (HEP), the Committee did adopt language that allowed the Department to raise the current fee from $6 to $10. The weird part is that the Committee pursued and adopted language that again would privatize the HEP and send it, solely and by statute, to this one hospitality organization. The HEP program is an introductory course to food service providers, however, any organization acting as a sole source provider will be able to steer all future, state mandated, food certification training to its own programs and "cut out" any other private sector training providers. In addition, this hospitality organization will get state money, over $400,000, to operate the HEP; generously funded by the fee increase it convinced the Committee to adopt! This is the kind of deal you expect to read about in a Third World country receiving U. S. financial aide**.**

If the Division wishes to privatize this activity, at the minimum, this privatization should be conducted by bid and not be directed to one group by statute. Both for profit and nonprofit organizations should have the opportunity to bid on such a privatization effort. However, it is important to remember privatization efforts are to supply greater efficiency and savings. So far, we have seen no committee testimony or data suggesting the HEP program is suffering or that privatizing would be of benefit. The bill should either be killed or corrected by eliminating the current language that benefits one organization and is simply unethical.

Stay tuned to our daily brief and to our web site at www.fbnnet.com as the legislature makes some very important decisions on the state's economy. These decisions will have a major impact on the business community and AIF will be reporting to you everything that happens.

This report was prepared by Curt Leonard, Manager – Governmental Affairs at Associated Industries of Florida (AIF). 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.