ASSOCIATED INDUSTRIES OF FLORIDA
LEGISLATIVE WEEKLY UPDATE
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FOR THE WEEK OF FEBRUARY 18-22, 2002

FLORIDA HOUSE SLAMS SENATE TAX REFORM PLAN

As planned, the Florida House of Representatives met as a "Committee of the Whole," to debate the Senate tax reform plan on Wednesday, February 20. The results were astonishing. The plan was rejected by a vote of 0 yeas and 100 nays. While popular legislation or simply non-controversial legislation may often receive overwhelming "yes" votes, long time Capitol observers are scratching their heads trying to remember when last any proposal on any topic received such a resounding "no" vote.

While the Senate debate three weeks ago focused on abstract notions of revenue shortfalls, recessions and more government spending, the House members told story after story about members in their districts, businesses, friends, associates and family and how they would be directly harmed by the Senate plan. Representatives Nancy Detert (R-Venice) and Sara Romeo (D-Tampa) even spoke as business people and their personal experiences regarding the ill fated services tax of 1987. Not only did the House Select Committee on Florida's Economic Future take public testimony all over the state from real people and experts, but it was obvious that the House members had turned their collective ear towards the folks they represent. The debate was simple, honest and genuine and it certainly reflected the genius of our forefathers in constructing a deliberative body created for the expressed purpose of being "close to the people."

AIF is opposed to the Senate's tax reform plan. It unnecessarily and injuriously amends the Florida Constitution as a vehicle for the reform. Any consideration of Florida's sales tax exemptions should remain under the direct purview and authority of the Executive Branch and Legislature. Also, the plan compromises any rational consideration of the sales tax exemptions under current law by establishing a predetermined end result. If adopted, the plan will require the repeal of $4.2 billion in sales tax exemptions regardless of their merit or their ability to meet objective criteria or *any* criteria. Finally, the plan is based upon faulty or outright inaccurate assumptions regarding Florida's future tax revenues.

AIF would support a measure that provided for a methodical review, utilizing objective criteria, of all the current sales tax exemptions enjoyed by businesses, organizations and services. Florida's current business sales tax exemptions actually comprise only $1.88 billion of the $22 billion total in sales tax exemptions. We believe the vast majority of these business exemptions would withstand even the most severe scrutiny if the criteria embraced economic competitiveness, fairness and benefit to Florida's overall economic growth.

WORKERS' COMPENSATION REFORM – *Coalition bill survives first committee stop with one major snag*

The House Insurance Committee met February 20th primarily to consider PCB 02-02a on workers' compensation reform. The Committee Bill was largely comprised of provisions recommended by the Coalition of Business and Industry (Coalition), which AIF is a part of, but was not as sweeping as the Coalition would have liked. In any event, the PCB is a strong piece of legislation and the Coalition supported it as introduced.

As usual in workers compensation, every other interest group in the state tried to use the amendatory process to thwart the good work of the Committee Chair, Representative Leslie Waters (R-Largo), and the Coalition.

Under the leadership of Representative Waters and thanks to the persistent efforts of the Coalition, a series of bad amendments were beat back and defeated on close votes.

Clearly, the most contentious group of amendments debated today involved the issue of construction exemptions. The PCB, as written, would eliminate all coverage exemptions in the construction industry with the exception of up to 3 corporate officers owning at least 10% of a corporation. Unfortunately, Representative Berfield sponsored a group of 3 amendments that totally nullified the bill's exemption provisions and savings in this area. There was very little debate among the committee members, which seems to indicate that the Florida Homebuilders Association had more lobbying influence than the Coalition, the FMA, the labor unions, and the FWA combined. All of these groups support the elimination of exemptions without any amendments on this issue. The Homebuilders are the only people who supported Representative Berfield's amendments, but they were able to convince many other committee members that her approach was preferable. If the elimination of the construction exemptions are not a major part of reform, then the Coalition will have to reconsider its support of the entire bill.

The amendment on construction exemptions passed by an 11-4 vote.

FOR the Amendments: Representatives Baker, Berfield, Kallinger, Lee, McGriff, Negron, Ross, Simmons, Sobel, and Wiles

AGAINST the Amendments: Representatives Brown, Clarke, Melvin, Waters

As to the medical fee schedule, Representative Ross offered a substitute amendment that allows Employers and Carriers to negotiate with health care providers above or below the fee schedules when coordinating medical services to injured workers. This amendment passed unanimously. While the Coalition was opposed to the amendment as written, the Coalition is working very hard on an amendment that will better balance costs paid to physicians as part of the 60% pie portion that overall medical benefits consume.

Chair Leslie Waters (R-Largo) worked extremely hard to guide this legislation through committee. Please email, call or visit her and express your appreciation for her fine leadership and diligent efforts. Also, be sure to thank all the other Representatives listed above who supported and protected the Coalition's positions.

AIF supports PCB 02 IN -02a by Chairman Waters. Florida's Workers' Compensation system is slowly unwinding into a completely unworkable, unaffordable process that neither serves the employer or the employee. The bill represents real, substantive reform - the only reform that will repair the system and insure adequate care and benefits for injured workers. Half-baked attempts to protect the financial interests of attorneys and fraudulent business operations that refuse to cover their employees only corrupt any real reform. Now is the time to enact reforms before the system is in complete collapse. The system was designed to be self-executing. The system was designed to make sure an injured employee received the speedy and necessary care in order to return to their rightful place in the workplace. It was not designed to provide a career path for bureaucrats and attorneys."

ALL CONTRACTORS ARE NOT ON BOARD WITH EXEMPTIONS SUPPORTED BY HOMEBUILDERS ASSOCIATION

AIF has received word on Thursday, February 21, that an emergency meeting of construction contractors in the areas from Collier County to Hillsborough County to address the actions of the House Insurance Committee on Wednesday related to workers' compensation reform. Apparently, many of the homebuilders – yes the ones that do residential construction, are upset that the Florida Homebuilders Association successfully convinced the House Insurance Committee to gut the "exemptions" language in the House bill yesterday. Law- abiding contractors are tired of competing against contractors who through fraud and cunning are ducking providing workers' compensation coverage to their employees and enjoying the cost advantage on bids. The contractors that contacted AIF advised that the Homebuilders group in Tallahassee does not speak for *all* of the state homebuilders.

MORE BURDENS ON EMPLOYER'S HEALTH INSURANCE CARRIERS

HB 293 by Representative Holly Benson (R-Pensacola) was passed on Thursday, February 21, in the House Committee on Judicial Oversight. The Committee adopted a "strike everything" amendment that effectively rewrote the entire bill in an attempt to address the concerns with the legislation. However, after adopting this amendment, the bill was further amended, restoring language that creates a civil cause of action for non-payment by an insurance company. This, of course, is a typical move by the trial attorneys who wonder every day how they can change the law and make it easier to sue HMO's.

The medical profession claims that they need a civil cause of action as a "hammer" to make insurance companies pay in a timelier manner. However, if this bill were passed, it would unquestionably cause insurance premiums to rise as a result of costly, debilitating litigation. In addition, insurance companies would have to pay bills even if they are not submitted properly.

AIF opposed to this bill in any form. 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.

TRIAL ATTORNEYS WANT TO SUE RETAILERS FOR PROVIDING POWER SHOPPING CARTS TO THE DISABLED

Thankfully, the House Judicial Oversight Committee saw fit to pass HB 345 by Representative Jeff Kottkamp (R-Cape Coral) on Thursday, February 21. 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. Of course, the Academy of Florida Trial Lawyers testified in opposition to this. The Academy even suggested the notion that 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! The Committee, largely made up of attorneys, including Representative Kottkamp, was actually incredulous. Doing something that is all too rare in a Capitol saturated in otherworldly legal nuances, the Committee fell back on commons sense and passed the bill.

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.

CAUTION: BANANA PEEL AHEAD!

The House Judicial Oversight Committee passed HB 1545 by Representative David Simmons (R-Altamonte Springs) on Thursday, February 21. The topic of the bill is slipping on 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 banana 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. The defendant must now show that its actions were reasonable both with regards to inspection and maintenance procedures.

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 judgment 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.

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. This bill (HB 1545), that passed, 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.

LOCAL GOVERNMENTS & MINIMUM WAGE

The Senate Commerce and Economic Opportunities Committee passed SB 1902 by Senator Durell Peaden (R-Crestview) on Tuesday, February 19. The bill restricts local governments from arbitrarily mandating that local employers pay a minimum wage in excess of the federal minimum wage.

Such local government action is part of a larger "movement" characterized as providing a "living wage," the idea originally gained momentum in California where local governments began mandating employers holding a local government contract pay wages in excess of the minimum wage. However, this idea accelerated into local governments requiring local employers, under contract or not, to pay an excessive wage. The bill does nothing to inhibit local government contracts with employers, but it does prohibit the arbitrary mandate of an exorbitant minimum wage on employers who have no contractual relationship with a local government.

AIF supports the bill. A "living wage mandate" would have an extraordinarily damaging effect on the hospitality business community, violating every principle of Economics 101. Artificially increasing the level of wages paid will cause businesses to shut down, reduce hours, reduce staff and increase prices. Discretionary dollars, typically spent in the hospitality sector, would simply go somewhere else, decreasing the level of business activity indefinitely. Finally, such a skewed wage increase will attract more qualified applicants, moving aside the very employees the wage increase was designed to assist.

PRESCRIPTION INSURANCE AND CONTRACEPTIVES

On Monday, February 18, SB-920 by Senator Debbie Wasserman-Schultz (D-Pembroke Pines) was heard and approved in the Senate Banking and Insurance Committee. Basically, the bill requires any health insurer that provides prescription drug coverage must also provide coverage for oral contraceptives.

The bill would require insurance policies to be in compliance with a ruling by the U. S. Equal Employment Opportunity Commission (EEOC) which held that it was unlawful to exclude prescription contraceptive drugs and devices from health insurance plans because such exclusion violated Title VII and the Pregnancy Discrimination Act (PDA). The EEOC decision was issued in December of 2000 and found that excluding prescription contraceptive drugs and devices from employee health insurance plans constituted sex and pregnancy discrimination.

The bill feigns "compliance" with an EEOC decision; however, the decision applies only to the two women whose complaints the EEOC considered. The EEOC decision is not binding on the courts, but such courts may give the decision due deference. Under the guise of this EEOC decision, the bill plainly establishes a new, mandated coverage under prescription drug benefits, whether the employer wants it or not.

Currently, the State of Florida has 51 mandates or requirements placed on health insurers. These 51 mandates are a list of things that health carriers must insure or cover, by law. Seemingly lost on people such as Senator Wasserman-Schultz is the fact that only 40% of Florida's population has private insurance at this time and the numbers are dropping as costs of the insurance continue to spiral. Such a mandate as requiring oral contraceptive coverage is yet another, simple, increase in the cost to the carrier and Florida's employers. We are disappointed the committee passed the bill and AIF will continue its opposition to this well-intentioned, but bad bill.

Some of the 51 mandated health benefits actually represent smart policy decisions and, arguably, reduce long-term costs to the carriers and to the employers buying the coverage. But many are burdensome and drive up prices beyond the reach of employers who would like to purchase basic health-care coverage for their employees. Until a system is established for the objective cost-benefit evaluation of current and proposed mandates, AIF is opposed.

COMMUNITY COLLEGE FUNDING

The House Colleges and Universities Committee passed HB 1227 by Representative Ralph Arza (R-Hialeah) on Tuesday, February 19, by a unanimous vote. The bill establishes funding distribution model for the State's community colleges.

Florida's community colleges have had a series of different allocation schemes and methodologies over the last decade, changing almost annually. This inconsistency wreaks havoc with the community colleges' ability to plan operations, develop academic programs, or make long-term fiscal plans. The uncertainties of this improvised funding methodology used to allocate resources from year to year is no better than guesswork. In fact, the statute governing funding—that has been in effect since 1991— has not been executed even once by the Legislature.

This distribution model looks at a number of standards in instruction: including faculty salaries, full to part-time ratios, and instructional support; academic support: with a rational a basis for

small college funding, as well as for larger multi-campus colleges. The formula covers libraries, including the number of holdings and their replacement every 20 years, to meet accreditation standards and student support: including funding to provide the support for student success at both small and large institutions, student financial aid and other areas. The bill also takes into consideration annual enrollment growth—or decline—in each college's academic program mix, number and size of campuses and other considerations that are different and similar at all 28 community college.

The Senate companion, SB 1542 by Senator Alex Villalobos (R-Miami), has not been considered at this date.

AIF support this legislation. The budgetary funding process for Florida's community colleges has been inconsistent and at times inequitable. An already excellent system for higher learning would benefit immensely by the implementation of a funding formula that brought predictability, equity and reason to the process. Florida's community colleges are hamstrung by a current funding approach that compromises planning, asset allocation and operating revenue administration. Ultimately, it is Florida's students that suffer. Florida's employers can only benefit from a first class education system. Adopting a statutory distribution formula is a critical step in making both Florida's education system and its graduate's first class.

BROWNFIELDS REDEVELOPMENT

The Senate Committee on Commerce and Economic Opportunities gave a favorable vote to SB 2168 by Senator Jack Latvala (R-Palm Harbor) on Tuesday, February 19. This "Brownfield Redevelopment" bill will increase the number of businesses potentially eligible for Brownfield redevelopment. Brownfield 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 Brownfield Redevelopment Program, which is a voluntary program through which the cleanup of Brownfield sites is initiated by landowners and developers rather than government regulators. By broadening the eligibility requirements, more businesses can locate to Brownfield areas and therefore, more Brownfield redevelopment could occur.

The House companion, HB 2181 by Representative Bob Allen (R-Merritt Island) was heard last week and passed by the House Natural Resources and Environmental Protection Committee.

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

FOOD SERVICE INSPECTIONS

Senate bill 1450 by Senator Lee Constantine (R-Orlando) thankfully went in the ditch in the Senate Regulated Industries Committee. A certain "hospitality" organization tried to get the Committee to put the same bad amendment on SB 1450 that it successfully placed

on HB 155 by Representative Allen Trovillion (R-Winter Park) last week. As you may recall, on HB 155, a "strike everything" amendment was adopted that raised substantially the fees on food service establishments, privatized food service training and steered the certification training, education and state money to only one, possible provider(the very "certain hospitality organization" mentioned above) , cutting out a true, private sector competitive bid process. While the House Committee Chairman and members of the committee may have been unaware of the true intent of the amendment, it was "inside baseball" and ugly policy at its worst.

AIF and other hospitality interests were successful in letting the Senate Committee know what was afoot and the amendment had a very cold reception in the Senate committee. After some harsh questioning, Senate Vice Chair Jim King (R-Jacksonville) stepped in and moved that consideration of the bill be deferred.

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. AIF is opposed to the bill and the Senate amendment because it is arguably unethical, increases fees and costs to the hospitality industry and is largely unnecessary.

AIF opposes playing games with the Florida Statutes by passing a law solely intended to benefit a few who are unable to compete in the current, well-tested market system. As an added inefficiency in the health care marketplace, this proposal would serve as a cost-driver to the costs of health care and Florida's employers.

PATIENT SELF-REFERRAL ACT – KIDNEY DIALYSIS

The Senate voted 26-11 on final passage to adopt SB 726 by Senator Jack Latvala (R-Palm Harbor) on Thursday, February 21. The bill amends current "Patient Self-Referral" law, prohibiting kidney dialysis care providers from "self-referring" and performing their own "in-house" diagnostic lab work.

Two of the world's largest kidney dialysis companies have a major presence in Florida. In fact, one of these companies recently moved their North American headquarters to Ft. Lauderdale. Together, these companies employee hundreds of Floridians in high paying, high-tech, bio-medical jobs.

The analysis and lab work necessary for life-saving kidney dialysis treatment is extremely time sensitive and must be accomplished under extraordinarily rigid quality controls. It is very beneficial to the patient and the attending physician to have the lab work handled and coordinated by the center already performing the dialysis. The feedback is almost immediate, allowing the physician to monitor status and alter the care plan as needed.

This system has performed so well for patients - whose very existence is inextricably tied to proper dialysis and lab diagnosis - that a very small faction of competitors are seeking to pass SB 726 mandating what kind of labs the dialysis centers can make use of. This tinkering with the free market system would not only cost the state hundreds of high-end jobs but, much more importantly, put thousands of kidney dialysis patients at enormous risk.

The Florida Senate sent a message today to the Florida Business Community: "If you are too successful, we're coming after you." What this bill amounts to is statutory anti-trust action.

AIF opposes playing games with the Florida Statutes by passing a law solely intended to benefit a few who are unable to compete in the current, well-tested market system. As an added inefficiency in the health care marketplace, this proposal would serve as a cost-driver to the costs of health care and Florida's employers.

ALCOHOLIC BEVERAGE ATTORNEY'S RELIEF ACT

Under a barrage of skeptical questioning by the House Judicial Oversight Committee Representative Dan Gelber (D-Miami Beach) was forced to defer consideration of his bill, HB 1309. Representative Gelber sought to change the liability standard for retailers or any person who sells or furnishes alcoholic beverages from "willfully and unlawfully" to "recklessly" as set forth by law.

Current law specifies that someone who sells or furnishes alcoholic beverages to a person under 21 years of age is not exposed to potential civil liability for any damages resulting from the underage drinker's intoxication, unless the seller or supplier provides the alcohol "willfully and unlawfully." This bill eliminated the "willfully and unlawfully" standard, and provided that someone supplying alcoholic beverages need only fail to request and check one of a list of identification documents in order to be exposed to potential liability for an underage drinker's torts.

Under intense opposition, Mr. Gelber offered the amendment providing the "reckless" standard, but the Committee was not pleased with that alternative, either. The Committee members, particularly Representative Dudley Goodlette (R-Naples) and Representative Allan Bense (R-Panama City), peppered Representative Gelber with scenarios whereby someone could get sued under this new standard. The deal breaker for the Committee was when on of the hypothetical situations was presented to a Florida Academy of Trial Lawyers lobbyist ("if a kid breaks into *my* liquor cabinet, gets drunk, wrecks a car and people get hurt, do I get sued because the cabinet wasn't locked?") and she smiled, saying, "It would be up to the judge." Representative Gelber seemed genuinely astonished that anyone would be opposed to the bill.

While the bill was "deferred" at the request of the sponsor, given that this is the last week of House Committee meetings, it is likely that the bill is dead for the 2002 Regular Session.

What this bill amounted to was a blatant attempt by the Florida Academy of Trial Lawyers to broaden the law so more lawsuits could be brought as a result of the decisions and actions of a law-breaking, drunken underage drinker. AIF opposes this bill.

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.