ASSOCIATED INDUSTRIES OF FLORIDA
LEGISLATIVE WEEKLY UPDATE
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FOR THE WEEK OF FEBRUARY 26 – MARCH 1, 2002

KIDNEY DIALYSIS AND LEGISLATIVE ANTITRUST

SB 726 by Senator Jack Latvala (R-Palm Harbor) was not voted on today by the Council for Healthy Communities. This bill, designed to break up successful health care kidney dialysis clinics which perform their own in-house laboratory work, was defended and promoted today by the sponsor of the House companion, HB 849, by Representative Marco Rubio (R-Miami). Thankfully, the votes weren't there for the bill, although it was close, and Representative Marco Rubio requested the bill be "temporarily passed" which is legislative parlance for, "can we take it up next time if I can get the votes together?" It is unknown at this time if the Council will indeed take up this bill again.

As we have previously reported, one company is simply envious of two or three major kidney dialysis providers, and is pushing legislation that breaks up there ability to both treat kidney dialysis patients and perform the lab work in-house. This smaller and, yes, less competitive, lab work provider has hurled all sorts of half-truths and innuendoes about these companies in an attempt to get the Legislature to enact, by order, what they can't accomplish in the market place.

Representative Marco Rubio was particularly disappointing, slinging mud against the companies and more or less offering to escort them out of the state if the passage of the bill required them to relocate. These companies employ hundreds of employees in Florida with competitive salaries and here are members of the Florida Legislature taking exception with their success and offering to run them out of Florida, if necessary. Is this the message Florida wants to communicate to the business community? We think not.

House Majority Leader Representative Jerry Maygarden (R-Pensacola) attended the meeting and played a key role in shoring up the votes necessary to tangle up this bad bill in the Council.

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.

PROMPT PAY AND MORE BURDENS ON FLORIDA'S EMPLOYERS

Yesterday we reported that the doctors and hospital groups had successfully convinced the Senate to load up SB 362 by Senator Burt Saunders (R-Naples) with provisions that were onerous, punitive and in violation of prior agreements struck with the health care insurance plan industry. We did allow that HB 293 by Representative Holly Benson (R-Pensacola) contained the negotiated language but that it was a great disappointment that those agreements would be dumped in the Senate. Well, today, it got even more interesting. In the House Council for Healthy Communities, Representative Mike Fasano (R-New Port Richey) engineered an amendment to a PCB (unnumbered committee bill) that placed on the bill the HB 293 language plus Certificate of Need provisions that the hospitals are adamantly opposed to.

So now, we have a Senate bill, SB 362; on third reading in the Senate, that's really awful and the docs and hospitals love. A House bill, HB 293 ready for the House floor, that the health plans and the docs have agreed to; and a PCB that is acceptable to the docs and the health plans but which the hospitals cannot accept. Welcome to the Florida Legislature.

Loaded up on SB 362 yesterday were:

- Requires employers to report health benefit plan participants every 30 days
- Health plans must pay claims even if the patient received health services fraudulently (the patient was no longer in an HMO, for example)
- Effectively abolishes "utilization review" by requiring health plans to pay whether or not the care was medically necessary
- The bill does away with "prior authorization review" by a health plan with the obnoxious requirement that a doctor must get a response in four hours on an inquiry.
- Creates a civil cause of action so doctors can sue health plan providers for non-payment.

These provisions would make managed care unmanageable and push employer premiums through the roof.

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.

HEALTH CARE INSURANCE ACCESSIBILITY

Both the House and Senate have devoted a considerable amount of committee time to the consideration of legislation designed reduce the numbers of uninsured in Florida. Florida's employers are the primary providers of health insurance coverage in the State. Unfortunately, as the cost of providing health insurance continues to increase, it is getting less and less practical for employers, small and large, to provide that benefit. This troublesome reality seems to little faze members of the Legislature who every year introduce legislation to throw open the check book of insurance carriers to the trial attorneys.

The Senate took a step on Monday, February 25, in the direction of some substantive policy changes that may assist Florida's employers and citizens at large.

The Senate Banking and Insurance Committee took three bills related to this subject and cobbled them together into one bill. They are the following:

> SB 1286 by Senator Jack Latvala (R-Palm Harbor) provides a pilot project "health flex plan" insurance program. The bill specifies three pilot service areas where the highest number of uninsured citizens live, as identified in Florida Health Insurance Studies conducted by the Agency for Health Care Administration. To qualify for the pilot program, an insured must make less than 200% of the poverty level income and must not be covered by private insurance or public assistance. Carriers will be allowed to market an insurance product to these uninsureds and hopefully will be providing affordable health care coverage. There are approximately 1.2 million uninsured in Florida that would qualify for this type of health plan. These pilot projects will sunset July 1, 2004, unless specifically reenacted by the legislature. The companion is HB 111 by Representative Sandra Murman (R-Tampa).
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> SB 1008 by Senator Durell Peaden (R-Crestview) is similarly crafted like SB 1286.
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> SB 1134 by Senator Jim King (R-Jacksonville), companion to HB 913 by Representative Frank Farkas (R-St. Petersburg), provides changes to the Employee Health Care Access Act. The Act was enacted in 1992 to promote the availability of health insurance coverage to small employers regardless of their claim experience or their employees' health status. The bill is an attempt to streamline law that is burdensome to both health insurance carriers and the insured. The bill attempts to provide a stripped-down health insurance product that provides health care insurance without the expensive, mandated bells and whistles that so many consumers do not want, need or can afford.

The Committee passed the newly created CS/SB 1286/1008/1134 by a vote of 10 yeas and 0 nays. The bill's next stop is Senate Health, Aging and Long Term Care.

AIF supports any efforts legislatively that would limit the bureaucratic micro-management of Florida's health insurance market place. By experimenting with these changes, the legislation provides the hope that Florida's employers and citizens may be able to avail themselves to health insurance that is currently simply unaffordable.

BROWNFIELDS REDEVELOPMENT

CS/SB 2168 by Senator Jack Latvala (R-Palm Harbor) was passed on Tuesday, February 26, 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.

After little debated, the House Fiscal Policy and Resources Committee passed HB 1281 by Representative Bob Allen (R-Merritt Island) on Wednesday, February 27. The bill eliminates a local participation requirement for qualified, targeted business participation in "brownfields redevelopment bonus refunds." The bill also reduces from 80 percent to 60 percent the required threshold average annual payment for participation in brownfields redevelopment bonus refunds.

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 on Tuesday, February 26 and passed SB 1832 by Senator Durell Peaden (R-Crestview). The bill basically provides that if a retailer, such as one of 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) on Tuesday, February 26. 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) on Tuesday, February 26. 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. *Please go to http://www/fbnnet.com to view AIF's position on CS/SB 662/232.*

FOOD SERVICE TRAINING "REFORM?"

SB 1450 by Senator Lee Constantine (R-Orlando) was amended on Tuesday, February 26 and passed by the Senate Regulated Industries Committee. With regards to the controversial Hospitality Education Program (HEP), the Committee adopted language that allowed the Department of Professional and Business Regulation to raise the current HEP fee from $6 to $10. The weird part is that the Committee pursued and adopted language that would privatize the HEP and send it, solely and by statute, to a "nonprofit hospitality organization," precluding for profit companies in Florida. 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!

Common sense asserted itself today in the House Council for Smarter Government. HB 155, the House Companion by Representative Allen Trovillion (R-Winter Park) was just as ill gotten as the Senate bill until today.

AIF was successful in winning the adoption of a "strike everything" amendment that took out the whole ugly mess related to the HEP. In addition, the amendment simply raised the statutory caps on the fees the Department can charge to solve the budget deficit problem that currently jeopardizes the Department's ability to conduct necessary restaurant inspections.

AIF now has no problem with HB 155, but is opposed to SB 1450 as it is currently written.

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.

TAX REFORM

Billed as a tax increase to "fund education" a new $1.1 billion tax increase was unveiled by Senators Jack Latvala (R-Palm Harbor), Don Sullivan (R-St. Petersburg) and Senator Ken Pruitt (R-Port St. Lucie) and simply tucked in the Senate Appropriations budget bill on Thursday, February 28. Senate President John McKay (R-Bradenton), the three Senators, and whomever else is cooperating with them in this endeavor, sat down and simply started crossing out sales tax exemptions until they got to the number they wanted. The $1.1 billion is earmarked for public schools, community colleges, the State university system and FRAG. If enacted for this fiscal year alone, the total tax increase would be roughly $800 million. This increase, if enacted, is supposed to only last one year and then the next Legislature would decide what to do with it.

The plan lifts out exemptions that are supposedly for the privileged or well heeled. It also strikes sales tax exemptions for management, management consulting and public relations services. Added to the list are the exemptions for computer programming, systems design and data processing. Those last two groups alone total roughly $800 million.

As reminder, the sales tax is a fiercely precise consumption tax. Businesses do not operate on an island far off the Florida Coast. Real people who actually employ real people own them. Any tax on businesses effectively is a tax on the end consumer – all of Florida's citizens. Either the tax can be passed along through the service rendered or the business must eat the tax by reducing salaries, employees, whatever it has to do to stay competitive..or it simply leaves.

AIF is opposed to this new proposal that arbitrarily zeroes out sales tax exemptions for a $1.1 billion tax increase on Florida's citizens. 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.

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.