



FOR MARCH 5, 2003

#### MEDICAL MALPRACTICE INSURANCE

The House Select Committee on Medical Liability Insurance met today to review and approve the report prepared by the committee staff.

The document covers much of the same ground as the governor's task force. It does not contain recommendations but does provide extensive background material on the crisis and lists proposals that the House can consider, most importantly the \$250,000 cap on non-economic damages.

Those in attendance were surprised at how smoothly the proceedings progressed, with little discussion and no debate on the report before it was unanimously accepted by the committee members.

The audience was treated to another revelation when it was revealed that the House Health Care Committee would use the report to draft a bill for consideration next Wednesday. There had been rumors of a pitched battle among the chairmen of the Judiciary, Insurance, and Health Care committees over the honor of being the committee of reference, with some observers placing the Insurance Committee as the frontrunner. Nevertheless Representative Frank Farkas (R-St. Petersburg), chairman of the Health Care Committee, was the speaker's final choice to shepherd this bill over the rocky terrain ahead.

**Health care providers in Florida are facing a medical liability crisis. Vulnerability to large jury awards is why insurers have left the state. Many doctors, especially in the high risk specialties, are leaving too, and employers and employees alike will face increased costs and lost access unless action is taken soon.**

#### AUTO INSURANCE: PERSONAL INJURY PROTECTION

The House Insurance Committee focused today on the problem of escalating automobile insurance rates, especially for no fault personal injury protection (PIP). The general consensus is that PIP is broken, but substantial disagreement exists as to the proper fix. Some critics contend that PIP ought to be abandoned altogether on favor of common-law, tort-based remedies but most legislators are more inclined to revise rather than repeal PIP.

Vince Rio, an attorney for State Farm Insurance Company, speaking on behalf of a coalition of auto insurers, said that extraordinary remedies in the insurance code are driving up the cost of automobile insurance. These include one-way attorney fees (i.e., when the insured wins the carrier pays but when the carrier wins the insured does not pay), contingency multipliers that drive up plaintiffs' attorney fees beyond standard hourly rates, and other civil remedies permitted by the bad-faith statute.

Paul Jess, general counsel to the Florida Academy of Trial Lawyers, testified in opposition to further PIP reforms, especially with respect to attorney fees. He argued that PIP costs have been leveling off since 2001, and therefore further reforms are unnecessary at this time. Moreover, he argued that extraordinary attorney fees in PIP cases are warranted to ensure that attorneys will accept PIP cases on behalf of clients who would not otherwise be able to afford representation. Instead of litigation reforms to lower costs, Mr. Jess advocated support for new antifraud measures being advanced by the Office of Insurance Regulation.

Mr. Rio countered that the litigation environment in Florida is so one-sided in favor of insureds that carriers have to pay almost every PIP claim, no matter how inflated, thereby driving premiums. The industry favors mandatory mediation with statutory incentives and penalties to accept mediation results and forego litigation.

**AIF favors reform of Florida's automobile-insurance law to return stability to the no-fault insurance market by reducing unnecessary litigation over medical and lost-wage benefits.**

#### **SALES TAX MODERNIZATION: INTERNET/CATALOG SALES**

The House Finance and Tax Committee devoted its entire meeting this morning to the Streamlined Sales Tax Project (SSTP), an initiative designed to harmonize sales-tax structures in different states and, most importantly, to provide an efficient mechanism for the collection and remittance of sales taxes from remote sellers, such as Internet and catalog retailers.

Goods purchased from out-of-state retailers are subject to Florida's sales and use tax but revenue collections are nominal, due mainly to the fact that compliance is voluntary. As a result, Florida is losing about \$1 billion a year in much needed sales-tax revenue and, given the growth rate of Internet sales in particular, this number is likely to exceed \$3 billion a year in lost tax revenues unless the state takes action.

Both the House and Senate are considering legislation to implement the terms of the SSTP. At today's meeting Art Simon, AIF's senior vice president for government affairs, told the House committee members, "It is fundamentally unfair that retail businesses in Florida are placed at a competitive disadvantage, simply because they comply with Florida law by collecting and remitting state sales tax." Likewise, he said, "it is fundamentally unfair that lower income Floridians pay the full sales tax on purchases at stores like Wal-Mart and Target when higher income Floridians pay no tax at all on high-ticket goods they buy over the Internet." Simon also pointed out the conflict inherent in the Legislature's consideration of any new taxes when Florida is not effectively enforcing its current tax law.

Committee members agreed to move forward and develop a committee bill dealing with this subject.

**AIF supports the implementation of the Streamlined Sales Tax Project because it will correct an imbalance in the application of the current sales-tax law that punishes so-called brick-and-mortar retailers, who must collect sales taxes from Florida customers, and benefits out-of-state Internet and catalog companies, who don't.**

## WORKERS' COMPENSATION

Tuesday, the House Select Committee on Workers' Compensation, heard two presentations.

Dan Sumner, assistant director of the Division of Workers' Compensation outlined the following proposals to boost his agency's compliance and enforcement authority:

- provide authority to impose sanctions for material misclassification of payroll
- require carriers to perform employer audits immediately upon the division's discovery of improper payroll reporting, with penalties for non-compliance
- provide statutory authority to issue stop-work orders to or assess unpaid penalties on new corporations that are formed by principals seeking to avoid those penalties levied on a similar enterprise
- require out-of-state employers to obtain coverage in this state for their Florida workers
- create statutory authority to assess penalties against employers who fail to abide by stop-work orders
- enact statutory authority to assess penalties against employers who fail to maintain required business records relating to workers' compensation coverage

Several committee members questioned Mr. Sumner about potential constitutional concerns, additional division staffing needs, costs involved, carrier regulations, and estimated effect of the recommendations.

Judge S. Scott Stephens, deputy chief judge, Office of Judges of Compensation Claims, described the movement through the system of a litigated workers' compensation claim. He outlined five provisions intended to improve the functioning of judges of compensation claims (JCCs) and to speed the resolution of disputes over benefits.

When questioned about his opinion on attorney involvement, Judge Stephens cited statistics showing that Florida's claim costs were significantly higher than comparable states, particularly when attorneys are involved. When questioned whether this was an indicator that attorneys purposely try to avoid mediation in order to increase the number of hours they spend working on a case, Judge Stephens agreed without hesitation or additional comment.

Mary Ann Stiles, general counsel for Associated Industries of Florida (AIF), expressed to committee members the support of the employer community for any compliance measures that will create a level playing field by requiring all eligible employers to secure coverage and comply with the law.

**AIF supports legislation that will bring more employers into compliance with the workers' comp law. Promoting greater fairness and efficiency in the system is necessary to curtail escalating costs for the business community.**

## TRUCKING

The House Subcommittee on Transportation Systems met today to consider HB 503 sponsored by Representative Ed Jennings (D-Gainesville), which would increase the current penalty of five cents per pound for vehicles that exceed weight restrictions. The fine would increase to 7.5 cents per pound for those vehicles that are 6,001 to 10,000 pounds over weight; it would then jump to 10 cents per pound for any amount over 10,000 pounds. After many questions by committee members and testimony from the industry, Representative Ron Reagan (R-Sarasota) moved that the bill be "temporarily passed."

The Florida Department of Transportation assured committee members that the five-cent fine in current law is enough to repair road damaged by overweight trucks.

If you live in the district of any of the following committee members, please contact them and ask them to vote *no* on HB 503 when it comes back before the subcommittee next week.

Representative Andy Gardiner (R-Orlando), Chair  
Representative Ron Reagan (R-Sarasota), Vice Chair  
Representative Dorothy Bendross-Mindingall (D-Miami)  
Representative Ed Bullard (D-Miami)  
Representative Donna Clarke (R-Sarasota)  
Representative Faye Culp (R-Tampa)  
Representative Anne Gannon (D-Delray Beach)  
Representative Dick Kravitz (R-Orange Park)  
Representative Pat Patterson (R-Deland).

**It would be folly in this day and age of rising gas prices and economic uncertainty to increase fines on the transportation of products into this state. This bill would harm the state's economy and raise the price of goods shipped by truck through Florida.**

## TRADITION LIVES ON

Today, the House Subcommittee on Public Lands and Water Resources introduced Representative Charles Dean (R-Inverness) to the legislative version of hazing.

After grilling Representative Dean with question after question about his first bill, the members killed the bill on a five-to-five vote. Representative David Russell (R-Brooksville) then moved to reconsider and the committee finally decided to pass the bill nine to one. Defeating and then passing a freshman lawmaker's first piece of legislation is a longstanding tradition in the Florida House of Representatives.

Stay tuned to our daily brief and to our web site at [www.fbnet.com](http://www.fbnet.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.

Please send your comments or suggestions to us at [aif@aif.com](mailto: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://fbnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.