



FROM MARCH 19, 2003

MEDICAL MALPRACTICE

Lately the House of Representative has been focused on the medical liability crisis. A select committee chaired by Rep. Dudley Goodlette (R-Naples) recommended a comprehensive approach to the issue through improved patient protection, tort reform and insurance reform. This resulted in HB 1713, relating to medical malpractice. Last week it cleared the House Insurance Committee, albeit with some ill advised provisions. Today, the House of Representatives took up the bill on second reading. House members spent about four hours debating a series of amendments to the bill. Overall the amendments improved the bill.

Highlights of the amendatory process include:

- Rejection of an amendment to remove a \$250,000 aggregate cap on non-economic damages.
- Passage of Rep. Don Brown's (R-DeFuniak Springs) amendment to fix the current insurance "bad faith" law in medical liability actions.
- Passage of Rep. Ed Homan's (R-Tampa) amendment to delete a provision that, if enacted into law, would have expanded medical liability claims under the wrongful death statute.
- Passage of a Rep. Carole Green's (R-Ft. Myers) amendment to maintain the current makeup of the Board of Medicine.
- Rejection of amendments to require arbitrary insurance rates for medical liability insurance (without regard to claims experience or other relevant rating factors).

The cap on non-economic damages and "bad faith" insurance reform are both critical for insurance rate relief for health care providers in Florida. Conversely, bad provisions, such as an expansion of damages in "wrongful death" cases – which the House wisely rejected – would increase rather than decrease the cost of medical liability insurance.

The House is making progress on this all-important issue. HB 1713, as amended on second reading, contains appropriate language to assure that insurance premiums for doctors are properly reviewed by the Office of Insurance Regulation and adjusted to reflect the actuarial benefits of insurance reform and tort reform embodied in the bill.

The bill now sits for a mandatory 48 hour waiting period before being voted on for final passage in the House on Friday. It is expected to pass the House by a comfortable margin. Passage in the Senate, however, is much less certain.

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. AIF supports a \$250,000 cap on non-economic damages as necessary for meaningful and lasting relief.

AUTOMOBILE/PIP REFORM

SB 1202, sponsored by Senator J.D. Alexander (R-Winter Haven), which is the bill relating to Motor Vehicle Insurance, was before the Senate Banking and Insurance Committee today. Specifically, the bill will:

- Increase the threshold to move from the PIP system to the tort system.
- Remove the contingency fee multiplier, which allows judges to award inflated attorney fees in PIP cases.
- Allow for optional PPO-type coverage for first-person medical expense.
- Establish a mediation provision for expeditious resolution of disputed PIP claims.
- Establish a medical fee schedule of 150 percent of Medicare.
- Impose harsher penalties for all kinds of automobile insurance fraud.

Today's action on the bill was a workshop. No votes were taken. However, committee members engaged in a lively discussion on the merits of the bill. Also, some underlying disagreement was revealed regarding the Senate President, Jim King's (R-Jacksonville) position on this issue. Senator Walter G. "Skip" Campbell (D-Tamarac) said that Senator King wants a bill that is limited to anti-fraud provisions, whereas Senator Alexander asserts that he received no such instructions from the Senate President.

Meanwhile, committee chairman, Senator Bill Posey (R-Rockledge), summed up the bill as follows: "Senator Alexander, you have a bill that should offend everyone." Intended as a compliment, Senator Posey meant that Senator Alexander had endeavored to be fair. But Senator Campbell did not agree. In his words, SB 1202 is simply "an insurer protection act."

"Fix it or flush it" is the rallying cry for PIP reform in the Florida Senate. One of the legislature's most accomplished trial attorneys, Senator Campbell opines that PIP is broken but, in his view, the no-fault insurance plan can not be fixed.

The committee plans to vote on the bill next week. Amendments will surely be proposed.

AIF supports legislation to restore the original intent of Florida's no-fault automobile insurance law, which will reduce costs motor vehicle insurance in the Sunshine State.

ENVIRONMENTAL PROTECTION

The House Subcommittee on Environmental Protection considered HB 1123, sponsored by Rep. Donna Clarke (R-Sarasota) today. This bill deals with contaminated site rehabilitation.

In the past 5 years, the Florida Legislature adopted Risk-based Corrective Action (RBCA) principles to apply to cleanup conducted at petroleum-contaminated sites, brownfield sites, and dry-cleaning-solvent-contaminated sites. Currently, when sites fall outside the three program areas in which RBCA has been adopted, they are subject to one of two cleanup processes.

HB 1123 establishes RBCA principles to all contaminated sites throughout the State. The Secretary of DEP must adopt rules by July 1, 2004 to develop site rehabilitation program tasks that include applying RBCA principles. These principles include establishing cleanup target levels for groundwater, surface water, and soil; providing for alternative cleanup levels based on the applicant's risk assessment studies; issuance of "No Further Action" by DEP based on the applicant meeting cleanup target levels using the best available technology. "Global RBCA" is good for businesses. It will give flexibility to businesses to clean up contaminated sites while preserving the environment at an appropriate level.

Today the House Natural Resources Committee voted and passed HB 741, sponsored by Rep. Dennis Ross (R-Lakeland). Currently, the Dry-cleaning Solvent Cleanup Program provides to eligible dry-cleaning facilities and wholesale supply facilities an exemption from liability for cleanup costs, provided that the facilities meet the requirements of the law and regulations. HB 741 eliminates, by statute, a common law cause of action for a property owner to sue a responsible party for causing pollution by the release of dry-cleaning solvents that has migrated beneath the property, and thereby diminishes the value of his property.

AIF supports this legislation to stop the double dipping that has occurred with property owners receiving damages for the lost value of the contaminated property and rehabilitation of the property to its pre-contamination status.

MINING

Yesterday, we reported on SB 472, relating to Mining Activities. This is the bill that creates a streamlined administrative hearing and procedures process for allegations of property damage caused by the use of explosives and blasting associated with construction-materials mining. Today the Senate passed this bill with a vote of 37 to 1.

The House companion, HB 673, was scheduled to be heard in the House Insurance Committee; however, due to extending Session, the Committee did not meet.

AIF supports this bill because it reduces waste by, among other things, giving both the plaintiff and the defendant incentives to avoid frivolous lawsuits.

EDUCATION

The Senate also passed today, SB 1436, relating to Class Size Reduction Act by a vote of 38-0. The bill establishes:

- Constitutional class size maximum.
- Accountability for class size reduction measures.
- A Class Size Reduction Lottery Revenue Bond Program.
- Authority for instructional personnel who retire to extend participation in DROP (a special retirement program) under specified circumstances.
- The Florida Business & Education in School Together (Florida BEST) Program.

Funding remains an open issue, however, with regard to the class size amendment to the state constitution. The funding issue will not be resolved until the House and Senate take up appropriation bills (and perhaps new revenue bills) in earnest later in the session.

AIF supports legislation to implement the class-size amendment in a manner that relies on efficiency and flexibility, allowing districts to use their money in ways that do the most to improve the quality of education in the state.

PUBLIC LANDS AND WATER RESOURCES

The House Subcommittee on Public Lands and Water Resources this afternoon unanimously approved HB 1005, sponsored by Rep Baxter Troutman (R-Winter Haven). This is the Water Management and Inter-district Project Bill. The legislation:

- Requires that amendments to Rule 62-40 (the Florida Water Plan) be adopted by the Legislature,
- Allows the use of water reservations in conjunction with the Everglades Restoration Plan, but repeal further water reservations. (The authority to adopt a water reservation by rule places restrictions on that area and limits use of water in those boundaries to enhance the natural ecosystem.); and
- Prohibits a water management district from requiring a permit for use of reclaimed water.

Several members raised concerns about the bill. Those members voted for the bill with assurances that the parties would get together and work on compromise language.

It appears that the League of Cities, Florida homebuilders, and certain pro-development interests favor the bill. Conversely, in its present form the Department of Environmental Protection, the water management districts and some environmental groups oppose the bill.

AIF supports reasonable measures to protect and improve public lands and water resources in Florida, provided that such measures do not impose unwarranted restrictions on developmental activities that support and maintain Florida's economy.

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.