

A S S O C I A T E D I N D U S T R I E S O F F L O R I D A

LEGISLATIVE DAILYBRIEF



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SMOKE-FREE WORKPLACE

HB 1757, sponsored by the Business Regulation Committee and Representative Manuel Prieguez (R-Miami), seeks to implement Amendment 6, the anti-smoking amendment of the state Constitution. Today it was considered by the House of Representative on second reading and no amendments were added. It comes up again next week for a formal vote.

The amendment requires the Legislature to enact implementing legislation no later than July 1, 2003. In general, it prohibits smoking in enclosed-indoor workplaces, with a few narrow exceptions, as follows:

- retail tobacco shops
- designated guest rooms at public lodging establishments
- private residences that are not being used commercially to provide child care, adult care, or health care
- stand-alone bars

Under the Florida Clean Indoor Air Act, which was enacted before the anti-smoking amendment, a business owner is required to develop, implement, and post a policy regarding the designation of smoking and nonsmoking areas or smoking rooms. HB 1757 deletes the authorization for these designated smoking areas or rooms. The bill also requires businesses to develop and implement no-smoking policies, which may include procedures to take when a customer violates the no-smoking law and must include a prohibition on employee smoking in the workplace.

The House bill differs from the approach being taken by the Senate, which most notably allows smoking activities in stand-alone bars, and even bars that sell some food.

The road to reconciliation between the two is far from clear. One fact is certain, however: Because indoor smoking is now prohibited everywhere in the Legislature, the final House-Senate compromise will not be crafted in a smoke-filled room.

This is an issue that affects all businesses in Florida, not just restaurants and bars. Although the constitutional amendment leaves little room for doubt as to the ultimate impact on most all workplaces in this state, AIF will continue to monitor Amendment 6 implementation bills to ensure that the final enactment does not place an undue burden on employers and their ability to conduct business.

AMENDING THE STATE CONSTITUTION

Proposed amendments to Florida's Constitution may reach the voters via one of the following methods:

- joint resolution passed by a three-fifths vote of each of the houses of the Legislature
- initiative petition
- proposal by the Constitution Revision Commission
- proposal by the Taxation and Budget Reform Commission
- proposal by a constitutional convention.

Prompted in part by controversies surrounding the bullet train, pregnant pig, and class-size amendments to the state constitution, this year Florida legislators have filed a record number of bills to change the process for getting amendments on the ballot. Two of those bills were heard today in the Legislature, one each in the Senate and House.

Last year, the Legislature enacted a statute that required fiscal impact statement on constitutional amendments that would provide and an estimated cost for implementation of the amendment if it were adopted. Later, however, the Florida Supreme Court held that the law was invalid because it was not authorized by the state constitution. In the 2002 general election Florida voters approved an amendment that effectively reversed the Supreme Court decision, but only with respect to constitutional amendments proposed by initiative.

SB 464, sponsored by Senator Rod Smith (D-Gainesville), expands the application of the fiscal-impact study amendment approved by voters last year by requiring all constitutional amendments or revisions to carry a corresponding statement of probable fiscal impact. In other words, if SB 464 becomes law, a fiscal impact statement would accompany any future constitutional amendment proposed by the Legislature, a constitutional commission, or a citizen initiative. This is a good idea.

The Senate Finance and Taxation Committee passed the bill with a favorable vote of five to zero.

At about the same time HB 1521, sponsored by Representative Will Kendrick (D-Carrabelle) and Representative Mike Hogan (R-Jacksonville), came before the House Subcommittee on Ethics and Elections. This bill is a proposed constitutional amendment that stiffens requirement for constitutional amendments proposed by citizen initiatives.

As filed, HB 1521 contained some useful provisions. Most importantly, the bill required that signatures on petitions for constitutional amendments have to be collected by September 1 of the year preceding the next general election. This would assure at least one intervening session of the Legislature — and one last chance for the Legislature to appropriately address the subject matter — before it appeared on the ballot. Presumably, this additional time would also allow more information to be disseminated, so voters can be made more fully aware of the consequences of measures that interest groups seek to place in our state constitution.

As amended, HB 1521 still contains some provisions that strengthen the integrity of the initiative process but it was watered down in committee. Although it passed without any dissenting votes the bill was better in its original form.

The people retain the ultimate right to alter or revise the state constitution in accordance with fundamental precepts of democratic rule. AIF supports measures that strengthen the integrity of the constitutional amending process, especially with respect to citizen initiatives. The subject matter of proposed amendments should be constitutional in character, and clearly understood by an informed electorate.

TAXATION

The Senate Finance and Taxation considered SB 1776, the streamlined sales and use tax bill, sponsored jointly by the committee and a number of different senators.

The streamlined sales tax project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The project proposes that states change their sales and use tax laws to conform to a simplification method that would apply to all sellers. There are 39 states, including Florida, and the District of Columbia involved in the project.

Florida relies heavily on its six percent sales and use tax, which accounted for 73 percent of general revenue in fiscal year 2001-2002 and over 40 percent of all tax revenues. The sales tax is imposed primarily on tangible personal property at the time of purchase. To provide a level playing field between in-state retailers and out-of-state vendors, states impose use taxes. Use taxes require residents who purchase taxable goods in another state to pay the equivalent of a sales tax in their home state. The use tax preserves a key principle of the sale tax — that the tax is due in the state where the product is used and consumed, not necessarily where it is purchased. Payment of use taxes is difficult for states to enforce because they have no jurisdiction over out-of-state vendors with whom the transactions originate.

It is fundamentally unfair that brick-and-mortar retailers in the state of Florida are placed at a competitive disadvantage, simply because they comply with the law by collecting and remitting sales tax. Likewise, it is unfair that lower income and elderly Floridians pay full sales tax when they shop in local stores whereas higher income Floridians often pay no tax at all when they purchase big-ticket items over the internet. And, at a time when state government is facing increased fiscal pressures, it makes no sense at all for Florida to forgo much needed dollar and cents that are otherwise due and owing – but virtually uncollectible – under current Florida law.

This is a tax compliance issue. It is also a fairness issue. And it is an issue that is very important to retail businesses in our state. The committee passed this bill without any dissenting votes.

AIF believes that the State of Florida could equalize the treatment of all retail vendors regarding the assessment and collection of state sales tax if a uniform national collection system is developed. Furthermore, the state treasury would benefit since the use tax currently levied, but not collected on catalog and Internet sales, would be collected and remitted to the state treasury.

The Senate Finance and Taxation Committee also heard and passed SB 2062, an important bill sponsored by Senator Tom Lee (R-Brandon). This is the Scholarship Funding Tax Credit bill.

Currently, Florida law provides a 100-percent corporate income tax credit for contributions to eligible nonprofit scholarship funding organizations. Total credits are capped at \$50 million per state fiscal year, and five percent of the total amount authorized must be reserved for small business contributions. The amount of the scholarship provided to any child for a single school year is limited to \$3,500 for a student enrolled in an eligible nonpublic school, and \$500 for a student enrolled in a Florida public school that is located outside the district in which the student resides. The scholarships are provided to students who are eligible for free or reduced-price lunches under the National School Lunch Act.

This bill increases the total amount of corporate income tax credits that may be granted each state fiscal year from \$50 million to \$75 million. Five percent of the total credits would still be reserved for small businesses. It also indexes scholarship amounts awarded per enrollee to inflation for years after the 2003-04 school year. The additional credits available can provide approximately 6,700 additional scholarships to private schools, and at the same time reduce the number of students in Florida public schools by the same number.

Businesses in Florida have a vested interest in the state's education system. An educated populace is essential to a market-based economy and a democratic society. School choice can improve the quality of education in the state of Florida. AIF supports legislation, such as SB 2060, which fosters school choice in a cost-efficient manner for business and government alike.

IDENTITY THEFT & INTERNET FRAUD

Today the House Subcommittee on Criminal Justice heard HB 1161, sponsored by Representative Leslie Waters (R-St. Petersburg). HB 1161 would amend Florida law to provide for increased penalties for the criminal use of personal-identification information, also known as identity theft.

Currently, if the amount of fraud perpetrated is \$75,000 or more, the offense is a second degree felony. Under the provisions of the bill, if the amount of fraud perpetrated is \$20,000 or more, the offense will be a second degree felony. If the amount of fraud perpetrated is \$100,000 or more, the offense will be a first degree felony. The bill also enhances penalties for identity theft if the offense was committed using the personal identification information of a child, and further enhances penalties if the offense was committed using the personal identification information of the offender's child.

Based on a recommendation of the statewide grand jury on identity theft, this bill will require the following:

- consumer reporting agencies must provide, free of charge, upon the request of any person, up to two consumer reports each calendar year, including explanations of the codes contained therein
- out-of-state corporations that provide electronic communication services or remote computing services must comply with subpoenas or other court order issued by a Florida court

- Florida providers of electronic communication services or remote computing services must comply with subpoenas or other court orders issued by a court of another state.
- a new hearsay exemption in the Florida evidence code so that, in a criminal court proceeding, out-of-state records of regularly conducted business activity or a copy of such a record shall not be excluded as hearsay evidence if accompanied by a certification that the records meet specified qualifications.

A strike-everything amendment was introduced and adopted by the committee today. The original bill dealt with the requirement of financial institutions to provide two free copies of credit reports to consumers each calendar year. The strike all addressed the issue by removing the requirement completely. No other significant substantive changes were included in the amendment. The amendment was adopted and the bill was passed.

Identity theft and internet fraud cost businesses in Florida hundreds of millions of dollars a year. AIF supports legislation that will protect consumers and businesses by promoting prevention and prosecution of these crimes, but will monitor any bills to ensure that they do not impose wasteful or punitive burdens on businesses.

PRIVATE PROPERTY RIGHTS PROTECTION

Today the House Subcommittee on Local Affairs heard HB 113, sponsored by Representative Jeff Kottkamp (R-Cape Coral), which amends the Bert J. Harris Private Property Rights Protection Act (Harris Act).

In 1995, the Harris Act was enacted to create a cause of action providing for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state unfairly affects real property.

The bill is designed to correct a circuit court decision that undermined the original intent of the law, while dealing with certain issues relating to the statute of limitations and sovereign immunity.

At the subcommittee meeting today, there were six amendments filed, of which three were withdrawn. The amendment provided the controversy by deleting the sovereign-immunity provision and restoring it to the original intent of the Bert Harris Act, which was subsequently nullified by the court decision. The amendment, which passed on a five-to-four vote, gutted Representative Kottkamp's bill.

At that time, every business group that supported the bill then opposed it. Some were encouraging passage to keep the issue alive for negotiation further down the line when time ran out and the bill was temporarily passed.

The Harris Act provides an avenue for a property owner against government overreaching on property rights. Legislative action is necessary to ensure that the Harris Act continues to work to protect Florida citizens and businesses from government over-regulation. AIF will continue to support legislation that protects private property rights.

MINING

Today, HB 673, sponsored by Representative Gustavo Barreiro, relating to Mining Activities passed unanimously out of the House Insurance Committee.

This bill 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.

Three amendments were adopted: two were technical in nature and the third related to attorneys fees. The original bill rewarded attorneys' fees to the prevailing party not to exceed \$15,000. The amendment awards attorneys' fees to the prevailing party if the suit is ruled a frivolous suit under current law.

The Senate companion bill, SB 472, sponsored by Senator Rod Smith (D-Gainesville) and the Senate Banking and Insurance Committee, has already passed the Senate by a vote of 37 to 1 and is in Messages.

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

AUTOMOBILE INSURANCE: PERSONAL INJURY PROTECTION REFORM

PCB 1A of House Insurance committee

Today the House Insurance Committee took up PCB IN 03-01a, its version of auto (personal injury protection) reform. The members discussed the issue thoroughly — and at times heatedly — concentrating mostly on concerns over the future of automobile no-fault insurance in Florida.

The general consensus of the members was that if the system cannot be fixed it needs to be repealed. Representative Don Brown (R-DeFuniak Springs) offered an amendment to the bill mandating a cost-benefit study of the no-fault system by the Office of Insurance Regulation. The report would be due next year, in time for the Legislature to take action on the amendment's other provision that calls for the sunset repeal of no-fault next year. That amendment, one of 60 amendments that came up during the meeting, passed on a voice vote.

There are some constructive provisions in the bill, mostly those that pertain to prevention of fraud. The bill was significantly and unacceptably weakened, however, when the members rejected a strong provision for alternative dispute resolution in favor of a more costly alternative favored by the trial lawyers and some health-care providers.

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.

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.