

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
DAILY BRIEF**



P.O. Box 784 • Tallahassee, FL 32302 • Phone: (850) 224-7173 • Fax: (850) 224-6532 • Internet: <http://aif.com> • fbnnet.com

FROM APRIL 3, 2003

AIF RELEASES PRESS RELEASE IN WORKERS' COMPENSATION

Yesterday, Associated Industries released a press release supporting recent comments by Lt. Governor Jennings on Workers' Compensation. In her comments on Tuesday, April 1, 2003, Lt. Governor Toni Jennings called for workers' compensation legislation which would account for a 15% roll back in rates charged to employers. Associated Industries immediately applauded Jennings' action and joined her in calling for legislation which would result in a 15% roll back of rates.

Please go to <http://www.aif.com/Articles-2003/ToniJenningsPR.htm> to view the Associated Industries' Press Release

MEDICAL MALPRACTICE

This morning the Senate Banking and Insurance Committee heard SB 1154 and SB 1912, both sponsored by Senator Durell Peaden (R-Pensacola), relating to medical malpractice.

Rising medical malpractice insurance premiums and the departure of many medical liability insurers from the Florida market have created a crisis of affordability and availability in this state.

SB 1154 would create the Health Care Professional Liability Insurance Facility, a not-for-profit entity to provide affordable "excess" liability insurance protection for doctors who have policies that only cover small claims (usually \$250,000 or less). The omnibus House of Representatives medical liability bill, HB 1713, sponsored by House Health Care Committee, contains a similar provision.

SB 1912 would revise laws relating to risk management programs in hospitals, ambulatory surgical centers, and mobile surgical facilities. Some of the proposed changes would require these facilities to notify the Agency for Health Care Administration (AHCA) of all medical malpractice lawsuits filed against it or a member of its staff. This bill would permit a licensed facility to apply for a certification of quality improvement with AHCA that would result in the reduction of adverse incidents. As a result of a reduction of adverse incidents, could make them eligible for discounted medical liability insurance.

The committee quickly passed both of these bills with no debate in order for them to be considered in the Senate Judiciary Committee next Monday. At that meeting, the committee is expected to meld several medical liability reform bills that have been approved by the various committees, into an omnibus Senate medical liability reform proposal. This proposal would most likely not include a cap on noneconomic damages.

AIF supports a comprehensive package of measures designed to alleviate Florida's medical liability crisis, including, most notably, a \$250,000 cap on non-economic damages and necessary revisions to Florida's bad-faith insurance law. Vulnerability to large jury awards is why insurers have left the state. Many doctors, especially in the high-risk specialties, are leaving too. Now is the time for the Legislature to act decisively to provide immediate and lasting relief.

AUTOMOBILE INSURANCE: PERSONAL INJURY PROTECTION REFORM

Two weeks ago the Motor Vehicle Insurance bill, SB 1202, sponsored by Senator JD Alexander (R-Winter Haven), was presented to the Senate Banking and Insurance Committee in a public workshop. Today, the sponsor offered a committee substitute, which was passed unanimously by the full committee.

The bill limits the application of contingency fee risk multipliers, sets a medical provider fee schedule at 200 percent of Medicare, and provides for stronger fraud penalties.

Additionally, the bill contains favorable mediation language. Under this language, if mediation is requested by the insurer, then the insurer pays mediation costs. If the claimant requests mediation, then the cost is split. If mediation is unsuccessful, then the mediator selected by the Department of Financial Services or the Office of Insurance Regulation, would recommend an amount (if any) payable by the insurer. An insurer is liable for attorney's fees if it declines mediation or declines to pay the mediator's recommended amount. The insurer is not liable for attorney's fees if the claimant declines to mediate, or declines to settle the matter based upon the mediator's recommendation, or if the insurer pays the amount recommended by the mediator or the amount demanded by the claimant, plus the mediator's fees and interest. An insurer is liable for reasonable attorney's fees of up to \$1000, if the mediator recommends an amount that is more than the insurer has paid. The bill makes no change in the verbal threshold for bringing a tort action for serious personal injury.

Traveling with the committee substitute was an array of 40 separate amendments, mainly by Senator Alexander and Senator Walter Campbell (D-Tamarac). However, as the meeting wore on, it was apparent that these key senators, and others, have met informally between scheduled committee meetings to resolve their differences. Hence, almost all the amendments were either "agreed to" or "withdrawn."

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.

UNEMPLOYMENT COMPENSATION

Another bill that passed the Senate Banking and Insurance Committee today was SB 470, sponsored by Senator Debbie Wasserman Schultz (D-Pembroke Pines) and Senator Alex Diaz de la Portilla (R-Miami).

The bill represents a bi-partisan initiative to redress some of the lingering economic effects of "Nine-Eleven".

As amended by a committee substitute, SB 470 changes unemployment compensation benefits to temporarily increase the weekly benefit amount for an individual receiving unemployment benefits by \$25 or 15 percent, whichever is greater, effective October 1, 2003. For individuals with a weekly benefit from \$32 to \$166, the bill increases the weekly benefit amount by \$25. Individuals with a weekly benefit amount from \$167 to \$275 would have their weekly amount increase by 15 percent. Thus, CS/SB 470 would increase unemployment benefits from the current \$32 minimum and \$275 maximum to a \$57 minimum and \$316 maximum weekly benefit amount. The increased rates expire June 30, 2005.

AIF would oppose any diversion of funds from the unemployment compensation trust fund and any legislation to permanently increase benefits in a manner that negatively affects solvency of the fund. Although SB 470, in its present form, is not so egregious, it still raises concerns for the business community. As such, it will be closely monitored by AIF.

HEALTH CARE

The Senate Banking and Insurance Committee also heard and passed SB 436, sponsored by Senator Walter Campbell (D-Tamarac). This is legislation known as the “any willing provider” bill.

“Any willing provider” (sometimes called “patient choice”) mandates that a subscriber to a managed health care plan can have full, free, and absolute choice in the selection of health care providers. It also prohibits a company from requiring a subscriber to use any provider other than the one the subscriber selects. To achieve this, the law requires that a managed care company allow any health care provider to participate as a service provider if the health care provider agrees to accept reimbursement at rates negotiated with similar health care providers.

“Any willing provider” undermines the ability of managed care companies to negotiate definitive terms with health care providers. As such, the legislation may increase the cost of HMO and PPO plans.

While nobody testified in favor of the bill, a string of insurance and business witnesses testified against it. Senator Bill Posey (R-Rockledge), the Committee Chair, advised members to consider the jobs that will be lost by passage of the bill. Senator Tom Lee (R-Brandon) spoke in favor of the bill on behalf of patients.

Interestingly, in the last 10 days two important appellate court decisions were handed down, which impact directly on the bill. The United States Supreme Court upheld a similar “any willing provider” law in Kentucky. This helps to legitimize the pending legislation in Florida, in the eyes of some senators. However, on the other side of the public policy ledger, the Florida Supreme Court held that managed care organizations may be liable for the medical negligence of their contract physicians. As such, opponents of SB 436 may justly argue that quality control in physician selection is now more important than ever.

The bill passed the committee on a unanimous vote. However, Senator Campbell opined that it was probably dead in the House due to concerted opposition by the insurance industry.

AIF opposes SB 436. Imposing “any willing provider” on the managed care health delivery system would be disastrous to employers’ ability to provide health care coverage to their employees.

IDENTITY THEFT & INTERNET FRAUD

Last week we reported to you that the House Subcommittee on Criminal Justice heard and passed HB 1161, sponsored by Representative Leslie Waters (R-St. Petersburg). HB 1611 would amend Florida law to provide for increased penalties for the criminal use of personal-identification information, also known as identity theft.

Today the Senate Insurance and Banking Committee heard and passed SB 1580, sponsored by Senator Dave Aronberg (D-Ft. Myers) relating to identity theft and fraud.

In recent years, the Internet has been increasingly used for business transactions. However, it has become an appealing place for criminals to obtain personal identifying data, such as passwords, or even banking or other financial information for consumers. The Federal Trade Commission reports national and state-specific data on the crime of identity theft. The number one complaint received was identity theft (43 percent). In 2002, Florida had 12,816 identity theft complaints, which ranked it third in the nation and reported 10,898 victims of this crime, which ranked it fourth in the nation.

SB 1580 expands Florida laws regarding the misrepresentation with intent to deceive another person, unfair trade practice, obtaining personal information for commercial solicitation, and sets into law the criminal penalties for identity theft.

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.

WORKERS COMPENSATION

SOURCE: Mary Ann Stiles and Tamela I. Perdue, of Stiles, Taylor , and Grace, P.A

This afternoon, the House Insurance Committee met and was scheduled to vote on a proposed committee bill (PCB) that was drafted from the report of the House Select Committee on Workers' Compensation. Prior to the meeting, though, leadership decided that the bill would not be voted on, because it did not result in enough savings.

The PCB is estimated to yield 3 percent cost savings. However, there were over 40 amendments filed for the PCB, by several representatives, many of which drastically increased costs.

One amendment filed by Chairman Kim Berfield (R-Tampa) along with Representatives Dennis Ross (R-Lakeland), Joe Negron (R-Stuart), and David Simmons (R-Altamonte Springs) would increase contingency fees to 22.5 percent of all benefits, left in the hourly rate language plus an additional \$5,000 fee per accident for medical only claim. This measure increases costs on every claim, and continues to encourage litigation which is one of the system's major cost drivers. The business community will not be able to support any bill that does not eliminate the hourly rate and limit a one-time, medical only fee to only \$1,000 per accident. If such a bill passes committee, the business community will work to kill that bill through the end of session.

Representative Dan Gelber (D-Miami Beach) filed several amendments which would thwart the PCB's cost savings, including leaving the social security criteria for statutory in the statutory definition of permanent total disability benefits, which would increase costs at least 5 percent. He also filed amendments that would increase temporary indemnity benefits to 728 weeks, up from the current 104 weeks, which results in at least a 5 percent cost increase. He also filed amendments that would keep current law on major contributing cause and continue to require employers to provide benefits for cases in which an employee's work is less than 50 percent responsible for their condition or disability. Representative Gelber also filed an amendment which would subject workers compensation carriers to bad faith provision, which essentially opens up every workers' compensation case to be tried in civil court and voids the employer's tort immunity.

Representative John Carassas (R-Largo) filed two amendments which would allow PTD benefits to continue for life rather than end at age 70 and continue supplemental benefits for life rather than through age 62. These amendments result in a 6 percent cost increase and operate to turn the workers' compensation system into a retirement system. These amendments would allow claimants to "double dip" and collect social security retirement benefits at the same time they receive workers compensation benefits, which are only intended to be wage replacement – not an enhanced retirement.

Representative Bill Galvano (R- Bradenton) filed an amendment which removes the tort immunity provided to employers in the PCB and allows more employer's to be sued civilly, even when workers' compensation benefits are provided.

Representative Marcelo Llorente (R-Miami) filed an amendment which removes the PCB's provisions for calculating average weekly wage which is one of the most frequently litigated issues today, because the current law is too vague for an accurate calculation to be determined. This too is a cost driving amendment because it provides another opportunity for attorney's to generate litigation and increase fees.

Representative Stacy Ritter (D-Coral Springs) filed an amendment that would delete the PCB's changes to the JUA, which appears to open the road for creation of a state fund.

Representatives Nancy Deter (R-Venice) and Jim Kallinger (R-Winter Park) filed an amendment which advocates open rating based on prospective loss costs. Such measures in other states, like California, have contributed to the complete collapse and disaster of those workers' compensation systems.

Representatives Jeff Kottkamp (R-Cape Coral) and Joe Negron (R-Stuart) filed two amendments which would remove provisions creating a Workers' Compensation Appeals Commission, which is desperately needed to correct the current appellate system which practically eliminates the Supreme Court ever having jurisdiction over any workers' compensation case, because only the First District Court of Appeals decides those cases, and no conflict among the districts develops, even though the First DCA frequently contradicts itself and creates its own conflicting rulings.

There was also an amendment initially filed to revise the current medical reimbursement schedule for physicians to 150 percent of Medicare and surgeons to 200 percent of Medicare. The cost of these measures is a 14 percent increase and a 22 percent increase, respectively. However, these amendments were withdrawn prior to the committee meeting.

Without these amendments, the PCB would provide about a 3 percent cost reduction, but the House leaders clearly are working to find even greater savings. The Coalition Bill is the only bill filed that has been priced to reduce costs between 5-12 percent while at the same time increasing benefits to injured workers. This is the bill which both the House and the Senate should pass to improve Florida's economy, help injured workers, and end the workers' compensation crisis.

AIF supports legislation that controls medical expense, reduces litigation, and corrects inefficiency in the workers' compensation system. Above all, AIF supports remedial legislation that will provide fairer benefits to workers and lower costs to employers.

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.