


ASSOCIATED INDUSTRIES OF FLORIDA

LEGISLATIVE DAILY BRIEF



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SPECIAL SESSION EXTENDED

Much happened at the Capitol today — and nothing happened.

Most significant in the long term is that both chambers agreed to extend the special session until next Friday, June 26. If the mood in the Senate today is any indication, the road to reform will be rocky.

After spending a little more than four hours debating the bill, the Florida Senate passed its medical-liability reform bill, SB 2B, on a 32 to 6 vote. The margin of error suggests overwhelming approval, but senators made plain that passing the bill was like taking out the trash. Nobody wants to do it but it has to be done.

In fact, no one likes the Senate bill, neither the people who voted for it nor the members who rejected it — nor the governor's office and the House of Representatives. It will put some limits on plaintiff lawyers, but not enough to make rates go down. According to the state's largest medical-liability carrier, the Senate bill will actually cause an *increase* in rates of up to 20 percent. Unfortunately, members of the Senate seem unwilling to back down on the stand they've taken.

The remaining dilemma is: How will all of the parties agree on language that will make a significant impression on the current crisis? A broad gap exists between the House and Senate bills and neither contains the strong bad-faith provisions from the governor's package that promise to bring immediate, significant relief. Unfortunately, the chances of enacting meaningful bad-faith reforms are diminishing, which will diminish the importance of anything else the Legislature accomplishes on the reform front.

Much of the debate in the Senate today centered on the non-economic damages cap, to the surprise of no one. Melodrama is the first word that comes to mind to describe the arguments against the cap, most of which rely on the impossibility of putting a price on a lost limb or a lost life. Facing a victim of medical malpractice and trying to justify a cap raises an understandable depth of moral discomfort, but laws are not written for the person whose pain lawmakers are forced to confront. Rather, they are written for all the people, including those whose pain we can't predict, including those who have lost or may lose access to medical care.

The primary argument for the cap is that insurers need to be able to inject certainty into the process of setting rates, a process that can be simply described as looking at trends today and projecting them into the future. Rate-setting will always involve guesswork but taking some of the volatility out of the process will result in more conservative estimates of future costs, which will exert a stabilizing pressure on premiums.

The majority of senators consider caps as distasteful, viewing them as a seizure of a plaintiff's rights, rather than a practical and perfectly legitimate action taken in the public interest. Nevertheless, the Senate bill includes language that imposes a cap of \$500,000 on non-economic damages imposed on facilities that are defendants to the suit, and another \$500,000 on any other negligent defendants, allowing for a total, possible non-economic damage award of \$500,000. Non-economic damages in cases involving catastrophic losses — which are defined as ranging from death to the loss of a breast through negligence — are capped at \$2 million, but can expand to \$6 million.

Now the issue will move back into negotiations between the two deeply divided chambers. AIF will continue its efforts to move both sides toward a bill that implements meaningful reform, thereby protecting access to affordable, high-quality insurance.

While the Senate leadership hopes Floridians will view Governor Bush as inflexible on this issue, the business community applauds the governor for standing firm on the issue and refusing to bow to pressure from plaintiff lawyers.

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>
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