

ASSOCIATED INDUSTRIES OF FLORIDA

LEGISLATIVE DAILY BRIEF



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FROM JULY 17, 2003

Earlier today Senate President Jim King (R-Jacksonville) held a briefing with the press on the outline of the Senate's proposed legislation that was released last night.

Please go to <http://www.fbnnet.com/2003-Articles/Kingletter.htm> to read the letter from Senator King.

Please go to <http://www.fbnnet.com/2003-Articles/Kingoutline.htm> to read the outline of the Senate proposed legislation.

In the course of the briefing, Senator Rod Smith (D-Gainesville) explained the Senate's new non-economic damage-cap language, which seems to be based on the House approach that evolved from an earlier Senate proposal. There would be two separate sets of caps, one for emergency, one for non-emergency situations. The non-emergency cap divides defendants into three categories, or what the House calls silos. Within each category there is a cap on the award to a single claimant in cases involving ordinary negligence and a cap on total non-economic damages regardless of the number of claimants and defendants. The cap can also be pierced in certain extreme circumstances.

Category	Per Claimant	Multiple Claimants	Pierceable Circumstances
Physicians/Practitioners (Non-Emergency)	\$500,000	\$1 Million	\$1 Million
Hospitals/Facilities/Hospices	\$750,000	\$1.5 Million	\$1.5 Million
Managed-Care Entities, Clinics, Labs, Critical Stabilization Units	\$750,000	\$1.5 Million	\$1.5 Million

The maximum, per incident non-economic damage award under the Senate proposal, therefore, would be \$4 million, which, according to Senator Smith, could only be reached in the limited number of cases in which more than one person is allowed to claim damages under the same incident of malpractice. Senator Smith also cautioned that piercing the cap would be difficult. A claimant would have to satisfy each point of a three pronged test:

- 1) The judge finds that justice can only be served by piercing the cap
- 2) The defendant knew or should have known that his conduct would result in said injury
- 3) The defendant's action resulted in death or severe permanent injury to the patient.

Injuries arising from emergency medical care would be capped at \$250,000 per-incident, per-claimant for all defendant physicians combined, and could not exceed \$1 million regardless of the number of claimants. Non-economic damages for health-care facilities could not exceed \$750,000 per claimant, per incident, with an aggregate cap of \$1 million in cases involving two or more claimants. The emergency room caps could not be pierced under any circumstance.

Among the other significant provisions are the following:

- Replaces rate rollback with freeze at July 1, 2003, levels until new filing as required by the bill; also provides for study of feasibility of allowing public counsel to review rate filings
- Contains the *Villazon* fix by limiting the exposure of HMOs to medical malpractice claims to cases where
- Seems to mirror House approach to bad-faith; maintains third-party cause of action and allows insured to assign a cause of action but contains factors for consideration in determining bad faith, contains time-driven (90 plus 210 days) and information-driven avenues, and prohibits unnecessary and inappropriate delays by both parties. If a plaintiff wants to move faster he can prohibit either side from “tricking” the process.

As a final point, the issue of a state-sponsored insurance fund seems to be off the table, which is good news for doctors specifically, and the general business community in general. Senators Smith and Tom Lee (R-Brandon) deserve credit for listening to the business community’s concerns, as do the House negotiators, Representatives Dudley Goodlette (R-Naples) and Allan Bense (R-Plant City). Both chambers were making a good-faith effort to increase competition and restore stability to the market, but were willing to listen to outside input. Based on what they heard, they decided that a state-sponsored insurance fund would not achieve the intended goal. We applaud them for their professional and open-minded approach to this matter, and we thank House Speaker Johnnie Byrd (R-Plant City) and Senator King for also stepping forward and providing the necessary leadership to take this issue off the table.

Despite all of the action of the week, however, the impasse has not yet been bypassed. The politics surrounding medical-liability reform are complex and in a state of flux.

Please go to <http://www.aif.com/taxmedia.htm> to view comments by Art Simon, AIF’s Senior Vice President for Governmental Affairs.

As we have said all along, the most likely scenario for resolution of the stalemate will begin with an announcement that all three of major players — the House, the Senate, and the governor — have agreed on a bill. Right now how close to or far from that point we are is anyone’s guess.

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.