

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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OPENING DAY AND THE RITES OF SPRING

Here in Florida the rites of spring beckon baseball players from around the country to spring training. A day replete with pomp and ceremony, a time of congeniality and warm feeling. When spring is in the air, each player is a potential All-Star. Each team dreams of the World Series.

For baseball players the hopes of spring training Day soon give way to reality of Opening Day. For many players, the rites of spring culminate in another lackluster season.

So too in Tallahassee legislative players engage in the rites of spring and, after a long off-season, the legislative session is finally here. Spirits are high. Partisanship is subdued. The evening before Opening Day, Associated Industries of Florida (AIF) holds its annual legislative reception, a gala outdoor event that kicks off the Legislature's social season. AIF sends out thousands of invitations but it's still the toughest ticket in town.

The following morning freshly cut flowers adorn the House and Senate chambers for the Opening Day ceremonies. The governor, House speaker, and Senate president convey assurances of cooperation and conciliation. This, too, is a time of congeniality and warm feeling. Each senator and representative thinks that maybe he or she can be a political star. Each political party, and each team of warring lobbyists, thinks that maybe, this year, it can emerge victorious in the legislative process.

But in lawmaking as in baseball, hope is subservient to reality. Many bills are introduced but most will die. Some bills that pass will be burdened with bad amendments or relieved of good provisions. For many legislative players, the rites of spring culminate in another lackluster session.

Tuesday morning Gov. Jeb Bush delivered his State of the State address, which was met with quiet applause by lawmakers on several key points, most notably his call for a

\$250,000 cap on non-economic damages in medical malpractice lawsuits. House and Senate leaders have already begun posturing on the budget and the need to raise new revenue to implement provisions of certain constitutional amendments. Democrats, joined by a few Republicans, are circling their wagons around the class-size initiative to shield it against a repeal attempt by the governor and Republican-controlled Legislature.

At its essence, the Legislature is a large tribunal that legitimates issues and arbitrates disputes. Lawmakers thrive on issues and disputes. The biggest issue is a perennial bloomer: the state budget. The annual rites of spring include an almost obligatory chorus of “It’s going to be a tough budget year,” joined by the common refrain, “It will all work out.” And, in fact, it usually does.

This week, however, the weather in Tallahassee was unseasonably bleak and dreary, as was the general mood among returning legislators. Few lawmakers are still smiling, particularly in the House where a freshly harvested crop of post-term-limit representatives encounters for the first time the onslaught of lobbyist and constituent pressures that follow in the wake of crises such as medical malpractice, workers’ compensation, and a billion-dollar shortfall in the state budget. By Day Two members were already talking about the inevitability of a special session later in the year. That is not a good sign.

It will all work out — but maybe not within the time frame of a 60-day regular session, and certainly not without a lot of pain, anguish and political discord.

Thus ends Week One.

— by Arthur M. Simon, JD, PhD, Senior Vice President for Governmental Affairs

[To read the full text of the Governor’s State of the State, click here](#)

[To read the Democratic Rebuttal, click here](#)

WORKERS’ COMPENSATION

The House Select Committee on Workers’ Compensation met on Tuesday and Thursday nights. The first meeting was devoted to presentations from representatives of the Division of Workers’ Compensation and the Office of Judges of Compensation Claims. The first speaker explained his agency’s proposals to improve administration of the system through improved compliance and enforcement authority. The second speaker outlined provisions to advance the efficient and timely adjudication of disputes over benefits.

Mary Ann Stiles, general counsel for Associated Industries of Florida (AIF), expressed to committee members the support of the employer community for any compliance measures that will create a level-playing field by requiring all eligible employers to secure coverage and comply with the law.

On Thursday, the committee members heard two presentations on the factors that are driving up costs, the first made by an economist with the Workers' Compensation Research Institute (WCRI), a non-profit, non-partisan think tank.

The next speaker was an actuary from the National Council for Compensation Insurance (NCCI) a not-for-profit rating, statistical, and data-management services organization. In his presentation he reviewed various statistics comparing costs in Florida to the rest of the nation. Florida's average loss costs, for example, are twice as high as those in other southeastern states, and about 80 percent higher than those in the rest of the nation.

In Florida medical costs comprise 63.6 percent of the budgetary pie while they consume an average 47.1 percent of the system's costs nationwide. Permanent-total costs in Florida are 22 percent of total costs compared to eight percent throughout the rest of the country.

The statistics presented by both WCRI and NCCI provide compelling evidence that the cornerstone of workers' comp reform must be provisions to reduce attorney involvement in the system.

AIF supports legislation that will bring more employers into compliance with the workers' comp law. Promoting greater fairness and efficiency in the system is necessary to curtail escalating costs for the business community.

MEDICAL MALPRACTICE

Wednesday, the House Select Committee on Medical Liability Insurance unanimously approved the report prepared by the committee staff, with little discussion and no debate.

The document covers much of the same ground as the governor's task force. It does not contain recommendations but does provide extensive background material on the crisis and lists proposals that the House can consider, most importantly the \$250,000 cap on non-economic damages.

The report will next move to the House Health Care Committee where it will be used to draft legislation. There had been rumors of a pitched battle among the chairmen of the Judiciary, Insurance, and Health Care committees over the honor of being the committee of reference, with some observers placing the Insurance Committee as the frontrunner. Nevertheless Representative Frank Farkas (R-St. Petersburg) chairman of the Health Care Committee, was the speaker's final choice to shepherd this bill over the rocky terrain ahead.

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 is necessary for meaningful and lasting relief.

AUTOMOBILE INSURANCE: PERSONAL INJURY PROTECTION REFORM

The House Insurance Committee focused on the problem of escalating automobile insurance rates, especially for no-fault personal injury protection (PIP). The general consensus is that PIP is broken, but substantial disagreement exists as to the proper fix. Some critics contend that PIP ought to be abandoned altogether on favor of common-law, tort-based remedies but most legislators are more inclined to revise rather than repeal PIP.

Vince Rio, an attorney for State Farm Insurance Company, speaking on behalf of a coalition of auto insurers, said that extraordinary remedies in the insurance code are driving up the cost of automobile insurance. Paul Jess, general counsel to the Florida Academy of Trial Lawyers, testified in opposition to further PIP reforms, especially with respect to attorney fees. He argued that PIP costs have been leveling off since 2001, and therefore further reforms are unnecessary at this time. Mr. Rio countered that the litigation environment in Florida is so one sided in favor of insureds that carriers have to pay almost every PIP claim, no matter how inflated, thereby driving up premiums. The industry favors mandatory mediation with statutory incentives and penalties designed to motivate parties to forego litigation.

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.

SALES TAX MODERNIZATION: INTERNET/CATALOG SALES

The House Finance and Tax Committee devoted its entire meeting Wednesday morning to the Streamlined Sales Tax Project (SSTP), an initiative designed to harmonize sales-tax structures in different states and, most importantly, to provide an efficient mechanism for the collection and remittance of sales taxes from remote sellers, such as Internet and catalog retailers.

Goods purchased from out-of-state retailers are subject to Florida's sales and use tax but revenue collections are nominal, due mainly to the fact that compliance is voluntary. As a result, Florida is losing about \$1 billion a year in much needed sales-tax revenue and, given the growth rate of Internet sales in particular, this number is likely to exceed \$3 billion a year in lost tax revenues unless the state takes action.

Art Simon, AIF's senior vice president for government affairs, told the House committee members, "It is fundamentally unfair that retail businesses in Florida are placed at a competitive disadvantage, simply because they comply with Florida law by collecting and remitting state sales tax." Likewise, he said, "it is fundamentally unfair that lower income Floridians pay the full sales tax on purchases at stores like Wal-Mart and Target when higher income Floridians pay no tax at all on high-ticket goods they buy over the Internet." Simon also pointed out the conflict inherent in the Legislature's consideration of any new taxes when Florida is not effectively enforcing its current tax law.

AIF supports the implementation of the Streamlined Sales Tax Project because it will correct an imbalance in the application of the current sales-tax law that punishes so-called brick-and-mortar retailers, who must collect sales taxes from Florida customers, and benefits out-of-state Internet and catalog companies, who don't.

Stay tuned to our daily brief and to our web site at www.fbnet.com as the legislature makes some very important decisions on the state's economy. These decisions will have a major impact on the business community and AIF will be reporting to you everything that happens.

- 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://fbnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.