

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
INTERIM BRIEF**



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DAILY INTERIM LEGISLATIVE BRIEF FOR FEBRUARY 18, 2003
SOURCE: ASSOCIATED INDUSTRIES OF FLORIDA

MEDICAL MALPRACTICE

Today, the House Insurance Committee heard testimony on the report of the governor's medical malpractice task force. William Large, the task force's staff director, described how the group arrived at its sixty recommendations. A panel of representatives of the insurance industry, health-care professionals, and trial lawyers then critiqued the findings. (The task force's report can be accessed at <http://www.doh.state.fl.us/>)

Of particular interest was a statement by Harvey Rosenfield, a Naderite consumer advocate from California. He attributed reduced liability insurance rates in California to Proposition 103, not the cap on non-economic damages. Prop 103 was a California citizen's initiative enacted in 1988 that, among other things, mandated a rollback in insurance rates.

Several committee members voiced concern that they need assurances from the insurance companies that they will quickly roll back rates if a cap on damages were enacted. The committee's chair, Representative Kim Berfield (R-Clearwater), affirmed that her committee would consider a medical malpractice bill during the upcoming session.

This meeting revealed a portion of the trial bar's strategy for fending off caps: it will try to shift the focus of the debate from doctor versus lawyer, a face-off they know they cannot win, to one that makes insurance carriers the bad guys. Trial lawyers would prefer that legislators enact a rate rollback rather than caps. If lawmakers concur they will only succeed in prolonging the agony. Malpractice insurance is not just expensive; it's not available. If they artificially suppress rates, they will be forcing insurers to sell policies at an even greater loss, which will just make the insurance less available.

Vulnerability to large jury awards is why insurers have not returned to the Florida market. Therefore, AIF supports caps on non-economic damages for medical malpractice cases to improve the accessibility to and availability of high-quality health care.

WORKERS' COMPENSATION

The workers' compensation debate in the House Insurance Committee got interesting today when Representative Dennis Ross (R-Lakeland) — who is also chair of the Select Committee on Workers' Compensation — questioned panelists about restructuring the workers' compensation JUA to allow it to be used as a second tier of coverage and also about creating a state fund for the purchase of workers' compensation insurance to make it more affordable.

Mary Ann Stiles, AIF's general counsel, expressed the business community's opposition to the creation of a state fund that would compete against private insurance carriers. She argued that even if the state could run an insurance company better than the private sector, it would still need reforms to make it work.

The meeting also featured testimony from Kevin McCarty, director of the Office of Insurance Regulation and member of the Governor's Commission on Workers' Compensation Reform. He presented the findings and recommendations of the commission, the gist which was: The system needs fixing and it needs fixing this year.

At an evening meeting of the House Select Committee on Workers' Compensation, a number of small construction contractors testified about the difficulty they faced in obtaining workers' compensation coverage. Citing the high costs they asked the committee to continue the exclusions from workers' compensation coverage that they now enjoy. As part of the Coalition of Business and Insurance Industry, AIF is advocating complete repeal of the construction exclusions, although the coalition's legislative proposal includes protections for small construction companies.

The only solution to the crisis in the availability and affordability of workers' compensation insurance is adoption of the full menu of reforms that will return the system to its proper function, which is to serve employers and their employees who get injured on the job.

WATER RESOURCES

“Water, water everywhere, but not a drop to drink.” That seems to be the theme for the House Committee on Natural Resources.

Today the Subcommittee on Public Land and Water Resources heard testimony from the David Struhs, secretary of the Florida Department of Environmental Protection, regarding proposed changes to “Chapter 62-40, Water Resources Implementing Rule.” The rule has not undergone review in six years, despite its own requirement that it be reviewed every four years. In addition, amendments enacted by the Legislature in 1997, 1998, and 1999 have rendered portions of the rule obsolete. The rule now needs to be updated to address pressing water management issues such as increases in demand, water shortages, and problems with water quality.

The effective date for the Chapter 62-40 rule is unique from rules promulgated by other state agencies. If the rule challenges to Chapter 62-40 are resolved in time, the proposed amendment would become effective following the 2003 Legislative Session. If not resolved, the rule would not become effective until the end of the 2004 Legislative Session, which will give lawmakers time to address any lingering controversies.

The department's problems in adopting a new rule are mostly centered on the issue of water reservation, which reserves water from use by permit. The law already allows the department to use water reservation as a tool to protect fish and wildlife as well as the public health safety. It is a power that the department will use in the Everglades restoration project. The business community, however, is concerned with the extent of the department's water-reservation powers, which would hinder economic development.

Treatment of water resources is shaping up as a major issue for the 2003 Session, as manifested in legislation that would impose water concurrency requirements on new residential and commercial developments. This would have a chilling effect on economic growth and would remove the incentive for governmental entities to properly plan for expanding water resources through technology such as desalination.

AIF opposes all burdensome growth management provisions, including making new developments contingent on available water resources through a concurrency requirement. Government is responsible for providing sufficient infrastructure, not private enterprise.

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.