



**FROM APRIL 15, 2003**

## **WORKERS' COMPENSATION**

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

Today, the Senate Banking and Insurance Committee handed the business community a blow on workers' compensation reform. The committee took up a strike-all amendment that replaced all previously filed bills, and was not available for public review until about an hour before the committee meeting. The committee then considered 24 amendments drafted to that strike all amendment, five of which were not available until the meeting was more than half way over.

If the delay in allowing public access to the proposed committee bill and amendments were not enough, those in attendance were further shocked when Senator Skip Campbell (D-Tamarac) revealed that sometime in recent days he and several other committee members had all met and agreed to several of the bill's more controversial provisions. Senator Tom Lee (R-Brandon) asked whether such a meeting had been properly noticed but he did not receive a straight answer. Chairman Bill Posey (R-Rockledge) also acknowledged that the subject of several amendments had been discussed in "the meeting that never happened."

What ultimately passed the committee as CS/SB 1132, sponsored by Senators Charles Clary (R-Destin) and Jeff Atwater (R-Palm Beach Gardens) will most likely diminish any savings the original bill might have generated by increasing most categories of indemnity benefits and implementing Fair Care, a completely untested system of unknown cost for delivery of medical care to injured workers.

The bill increases permanent total disability benefits by extending eligibility to age 75; the bill's original language stopped those benefits at age 65. The bill also increases an employee's potential eligibility for temporary partial and temporary-total disability benefits to 260 weeks each, up from the current level of 104 weeks combined. Senator Clary claimed this amendment would only increase costs by 1.4 percent, and that the savings to offset the cost would come in other areas. None of the other amendments that passed, however, were classified as cost savers. In fact, most of them will drive costs up.

The committee members passed an attorney-fee provision that does not eliminate hourly attorney fees, and will increase the current contingency fee schedule to 20 percent of the first \$10,000 and 15 percent of all benefits secured thereafter. In addition, an hourly fee of \$5,000 would apply to each petition, with \$20,000 applying to compensability cases. The bill also removed important provisions clarifying employer immunity from civil liability necessary to correct the case of *Turner v. P.C.R., Inc.*, which opened employers to double liability through workers' compensation and the civil justice system.

Although the official costing of the bill is not yet available, it is highly unlikely that it will generate the 15-percent savings that the committee indicated was its goal.

Chairman Posey strictly limited the amount of public testimony and member discussion on each amendment and the bill in its entirety. Mary Ann Stiles, general counsel to Associated Industries of Florida, testified against amendments that increased costs and did not eliminate hourly attorney fees, the largest cost driver in the system. Her testimony, as well as that from others in the Coalition of Business and Insurance Industry, seemed to fall on deaf ears. She was not permitted to speak to other important amendments or about the bill as a whole.

All amendments were passed by voice votes, not roll calls. Chairman Posey and the bill's sponsors, Senators Clary and Atwater, were joined by Senators Lee, Campbell, JD Alexander (R-Winter Haven), Alex Diaz de la Portilla (R-Miami), Paula Dockery (R-Lakeland), Durell Peaden (R-Crestview), Mandy Dawson (D-Ft. Lauderdale), Al Lawson (D-Tallahassee), and Gwen Margolis (D-Miami Beach) voting in favor of CS/SB 1132. These were all votes against the business community's interest in reducing workers' compensation premiums for Florida's employers.

The Senate is not scheduled to hold any other committee meetings this week due to the upcoming holidays, but the workers' compensation issue will continue to be debated through both the House and the Senate, and likely in a conference between the chambers.

Please let your legislators know that the House bill (CS/HB 1837) is a much better way to achieve workers' compensation reform. It increases benefits to injured workers and will render significant cost savings in order to improve the business climate in the State of Florida.

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

## MEDICAL MALPRACTICE

Last Wednesday, we reported to you that the Senate Judiciary Committee combined seven medical malpractice bills into three bills: CS/CS/SB 560 & 280, CS/CS/SB 562 & 1912, and CS/CS/SB 564 & 2120 & 2620. Joint sponsors of these bills are Senators Durell Peaden (R-Pensacola) and Burt Saunders (R-Naples). None of the bills contain a cap on general damages, which is the key to reducing controlling the costs of malpractice insurance.

Today, all three of the medical malpractice bills came before the Senate Appropriations Committee. The first bill considered, CS/CS/SB 560 & 280, mandates an insurance rate rollback and creates a state insurance fund to provide coverage to health-care providers. After the committee approved a series of amendments to refine the proposed insurance pool, it unanimously approved the bill.

The committee then heard CS/CS/SB 562 & 1912. This bill strengthens reporting and disciplinary actions against health-care providers. The committee approved an amendment that added five administrative-law judges to handle physician-discipline issues. This amendment is inspired by the senators' lack of confidence by in the Board of Medicine's ability to discipline physicians. The bill passed unanimously.

The last bill passed by the committee, CS/CS/SB 564 & 2120 & 2620, contained the Senate's litigation reform recommendations. The committee passed a series of amendments that merely tinkered with its current recommendations, which health-care providers consider ineffective.

The committee took testimony from a physician, who claims to lead a group of 400 physicians that support the Senate bill. Despite this group's praise, the health-care community overall is extremely disappointed with the Senate's proposal.

**AIF supports a comprehensive package of measures designed to alleviate Florida's medical liability crisis, most notably, a \$250,000 cap on noneconomic damages and necessary revisions to Florida's bad-faith insurance law. Now is the time for the Legislature to act decisively to provide immediate and lasting relief.**

#### CONSTITUTIONAL AMENDMENTS

Last week we reported to you that HB 437, sponsored by Representatives Randy Johnson (R-Winter Garden) and Ken Littlefield (R-Zephyrhills), had passed through the House Procedures Committee. Yesterday, the House Finance and Taxation Committee also reported the bill favorably.

This bill would amend the state constitution to require that ballot language for citizen initiatives include a calculation of the cost of the amendment and identify a specific funding source for the program being created. Today, the House Procedures Committee heard and unanimously passed a proposed committee bill, PCB PC-03-11, which also relates to the adoption and repeal of constitutional amendments. This PCB increases the number of signatures required for citizen initiatives to place an amendment or revision to the ballot, and requires a two-thirds vote, rather than a simple majority, to ratify any new constitutional amendment.

The House Procedures Committee also voted in favor of HB 1521, sponsored by Representative Will Kendrick (D-Carrabelle). This bill addresses the requirements for a petition drive leading to a constitutional amendment, such as, the percentage of names collected, the date due to the supervisor of elections, review of the initiative by the Supreme Court, and the period of time during which the petitioner's signature remains valid.

**AIF supports legislation that strengthens the integrity of the constitutional amending process, especially with respect to citizen initiatives. The people retain the ultimate right to alter or revise the state constitution in accordance with fundamental precepts of democratic rule.**

#### CIVIL RIGHTS VIOLATION/DAMAGE

Today, the Senate Appropriations Committee heard SB 1214, sponsored by Senators Alex Villalobos (R-Miami) and Lesley Miller (D-Tampa). This bill, which amends the Florida Civil Rights Act, mirrors HB 215, sponsored by Representative Jeff Kottkamp (R-Cape Coral), which has passed favorably through several House committees.

Currently, complaints alleging violations of state civil rights laws are filed with the Commission on Human Relations, which may take appropriate action. This bill gives the attorney general independent authority to commence a civil action for damages, injunctive relief, civil penalties up to \$10,000 per violation, and other appropriate relief against any person or group for patterns or practices of discrimination or for discrimination that raises "an issue of general public importance."

The committee passed, with little debate, SB 1214, after approving an amendment by Senator Debbie Wasserman-Schultz (D-Pembroke Pines), to include pregnancy as a cause of discrimination covered by the proposed law. The bill next goes to the Senate floor.

**Although the bill is well-intended, AIF does not support this legislation because it undermines the jurisdiction and authority of the Commission on Human Relations and creates another layer of litigation in an area already well protected by a myriad of state and federal laws and causes of action.**

## ENVIRONMENT

Today, the House Natural Resources Committee heard the bill relating to the environmental permitting system, HB 1525, sponsored by Representative Dudley Goodlette (R-Naples).

This bill establishes a performance-based permitting system, setting up incentive tiers for violation-free permit holders and implementing certain consequences, up to and including denial of new permits, to punish those who have been charged with violations in the past. This legislation has been pushed by the Department of Environmental Protection for many years and is opposed by the business community.

Recognizing the amount of opposition, Representative Goodlette asked that his bill be temporarily postponed, thereby, for all practical purposes, killing the legislation this year. Representative Dwight Stansel (D-Live Oak) also asked that his legislation, HB 1531, a much more business-friendly approach to permitting be temporarily passed and agreed to work with Representative Goodlette on a new approach.

**AIF opposes legislation that imposes burdensome growth management restrictions of Florida business and industry. A healthy economy is the most important factor to ensuring a health environment.**

## TAXATION

Today, the Senate Finance and Taxation Committee took care of a bit of housekeeping with the passage of SB 1002, the corporate income tax piggy-back bill, which was sponsored by Senator Walter Campbell (D-Tamarac),

This bill updates the Florida Income Tax Code to reflect changes in the U.S. Internal Revenue code enacted by Congress on January 1, 2002. This bill ensures that corporations that are subject to Florida corporate income tax can base their tax calculations on current IRS rules. Florida can rely on the efforts of the IRS to ensure the accuracy of the starting point for determining tax liability. Passage of this bill is necessary to maintain this relationship, which significantly decreases the cost of enforcing Florida's income tax law.

**AIF supports "piggybacking" on state income tax laws on the Federal IRS Code, as it simplifies compliance costs for corporations doing business in Florida.**

Please send your comments or suggestions to us at [aif@aif.com](mailto: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.