

A S S O C I A T E D I N D U S T R I E S O F F L O R I D A

LEGISLATIVE DAILYBRIEF



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Day two of testimony under oath in the Senate Judiciary Committee demonstrates, once again, how tough it is for lawmakers to resolve the medical liability crisis. The more committee members delve into the underlying facts, the more problematic the issue appears.

Please go to <http://www.aif.com/taxmedia.htm> to view Senator Rod Smith's comments.

Yesterday's witnesses might have wished they had brought defense counsel as a counterbalance to the combative questioning of some anti-reform committee members. Indeed, if yesterday's hearing was a football game, the Senate panel would have been penalized for piling on. Fortunately, today's meeting was a little more balanced, as both sides scored some points.

Statistics are malleable things that can be interpreted differently. In the liability-insurance arena the base of data is poor and incomplete. Unambiguous conclusions can rarely be drawn from unreliable data. In the end, the strongest evidence for reform is sometimes anecdotal, which is never enough to sway those who are hardest to convince. When shaping public policy, strong evidence is often required for lawmakers to reject a deeply held belief, such as a conviction that capping jury awards robs citizens of their rights.

Nevertheless, the personal stories we hear from physicians and patients across the state remain a compelling witness to the depth and breadth of this crisis. Moreover, skyrocketing increases in medical malpractice insurance premiums – that have been approved by state regulators as necessary and proper – cannot possibly be denied. Facts are stubborn things.

Please go to <http://www.fbnnet.com/2003-Articles/reporterosionhealthcare.htm> to view reports from the Coalition to Help Heal Florida's Health Care on the erosion of health-care services

Much of Tuesday's questioning centered on the issues that remain in dispute, mainly non-economic damage caps and bad-faith reform. William Large, general counsel of the Florida Department of Health and executive director of the governor's medical-liability-insurance task force, explained the rationale for that group's proposed \$250,000 cap on non-economic damages. Large explained that the task force members concluded that a cap was the only tort reform left untried by Florida, and was therefore necessary to alleviate the current crisis. The members were also convinced by California's two-decade track record with a cap of \$250,000. The Judiciary Committee members, however, were less than enthralled by the task force's conclusions and its mode of deliberation.

Senator Alex Villalobos (R-Miami) announced that he will prepare a report for Senate President Jim King (R-Jacksonville) on the testimony gathered. The conclusions drawn in the report will be eagerly awaited by all the interested parties because Senator Villalobos has been one of the committee's most consistent skeptics of arguments advanced by doctors, hospitals, insurance companies, and business associations, such as AIF, that are backing medical-liability reform.

The bad news from the committee meeting is that it may have solidified the Senate's opposition to certain elements of reform, which could have a chilling effect on negotiations to bring an end to the stalemate. Even if an agreement with the House and the governor is reached, some senators may feel that they lack the political footing to vote for reform after this week's hearings. It's like rolling a huge rock up a steep hill. The closer negotiators get to the top, the harder it is to make any progress.

Fortunately the primary negotiators for the House and Senate have built a bond of trust and mutual respect.

Please go to <http://www.aif.com/taxmedia.htm> to view Senator Tom Lee's comments.

The relationship among Senators Lee and Smith, and their House counterparts, Representatives Dudley Goodlette (R-Naples) and Allan Bense (R-Panama City), is the best hope that a successful conclusion can be reached soon.

Quite clearly House and Senate negotiators are trying hard on a very trying issue. The smart money, however, is laying odds that legislators will have to come back to Tallahassee next week for the start of Special Session D.

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