

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
INTERIM BRIEF**



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WEEKLY INTERIM LEGISLATIVE BRIEF FROM NOVEMBER 17, 2003

Workers' Compensation

At its final meeting, the Joint Select Committee on Workers' Compensation Rate Reform reviewed and approved the draft of its report to the Legislature.

As expected, the select committee members opted against making recommendations for radical change in Florida's rate-making process and recognized that the recent workers' comp reforms must be given time to bear their anticipated fruit. The select committee's report will, however, include the following six recommendations:

Repeal regulations that set arbitrary barriers against the approval of rate deviations, which allow insurers to offer policies at decreased prices for certain underwriting classes.

Help employers move out of the Florida Workers' Compensation Joint Underwriting Association (FWCJUA), which is the insurer of last resort for businesses that can't get coverage elsewhere. FWCJUA participants typically pay rates that are three to four times higher than those charged in the voluntary market and they are liable for assessments to cover any funding shortfalls in the risk pool. The select committee wants to help employers escape high rates and liability for assessment by allowing insurers to offer more businesses coverage in the voluntary market at rates that are higher than filed rates, if the employer agrees to accept the higher rate.

- Grant financial incentives to carriers that participate in a program to help remove employers from the FWCJUA.
- Require carriers to give the Office of Insurance Regulation (OIR) prior notice of decisions that could disrupt the market — such as discontinuing lines of business or declining to renew a significant number of policies.
- Require the OIR to implement an existing state law that provides for a greater degree of oversight of filings by the National Council on Compensation Insurance (NCCI), which collects data from carriers and uses it to recommend rates for workers' comp policies.
- Require OIR to submit an annual report to the Legislature on the level and quality of competition in Florida's workers' comp market.

Representative Kim Berfield (R-Clearwater) asked committee members to consider including a recommendation that would require automatic approval of loss-cost rating — the alternative rating methodology investigated in previous meetings (see November 7, 2003 Special Notice) — should a future OIR annual report indicate that a desirable level of stability and competition existed in the Florida market. Select committee members rejected the recommendation on the grounds that one Legislature could not

bind a future Legislature to a particular course of action and, more importantly, because much of the earlier evidence showed that a rating methodology had less impact on premium costs than did the substantive law and judicial climate underlying the system.

Efforts to reduce the burden that workers' compensation premiums place on employers must attack the underlying cost drivers, rather than impose mask those drivers by artificial deflationary measures.

Amending the Constitution

The House Select Committee on Constitutional Amendments held its inaugural meeting and outlined a plan to proceed with its mission, including a series of meetings throughout the state, the first of which will be held on Friday, December 12 in Pensacola. House Speaker Johnnie Byrd (R-Plant City) created the committee in response to concerns that the state constitution is vulnerable to hasty and ill-considered change. Senate President Jim King (R-Jacksonville), echoing that concern, has announced that he will soon create a parallel committee in the Senate.

Representative Joe Pickens (R-Palatka), chairman of the select committee, distributed copies of the National Conference of State Legislature's Initiative and Referendum Task Force report (available at <http://www.ncsl.org/programs/legman/irtaskfc/irreport.htm>), and asked the members to familiarize themselves with its overview of the initiative processes that exist in the 50 states. Representative Jim Kallinger (R-Winter Park) passed out copies of Federalist Paper No. 10, the classic treatise on the virtues of representative government, which is invaluable at controlling the harmful affects of factions, or what we might today call special interests. Kallinger reminded the members of their duty as elected lawmakers to "refine and enlarge the public view," and noted that factions in Florida circumvent representative government through the initiative process.

The select committee staff outlined the different avenues the Legislature could pursue to make the process of amending the constitution through initiatives more difficult. Potential reforms could enhance legislative authority over the process, increase approval or signature requirements, limit the subject matter of petitions, implement a statutory initiative process, or abolish the process all together.

Partisan cleavages are already surfacing, both with respect to what kind of reform is best and whether reform is necessary at all. During the meeting, the different factions marked out their territory in a candid, wide-ranging, and often illuminating discussion.

AIF will be closely and carefully monitoring the debate over amending the citizen initiative process. Economic interests are too easily attacked through the constitution, yet the people cannot lose their right to alter their fundamental contract of governance.

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