

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



P.O. Box 784 • Tallahassee, FL 32302 • Phone: (850) 224-7173 • Fax: (850) 224-6532 • Internet: <http://aif.com> • fbnet.com

FROM THE WEEK OF APRIL 19-APRIL 23, 2004

Both the Senate and the House of Representatives had full agendas today as members scrambled to debate and hear a great number of bills. In fact, it is expected that the Senate will be in session on Saturday, April, 24.

HEALTH CARE

HB 1629 relating to Affordable Health Care by Representative Frank Farkas (R-St. Petersburg) was unanimously passed by the full House on Friday, April, 23. This is the health insurance package which came about as a result of the Governor's Task Force on Access to Affordable Health Insurance and the House Select Committee on Affordable Health Care hearings that were held across the state earlier this year. The bill addresses a number of health care issues and expands the Patients Bill of Rights to: provide access to health care facility data including charge estimates, creating the Florida Health Insurance Plan (a high risk pool for uninsurable medical risks), expanding Health Flex Programs statewide, and addressing issues of patient safety.

Several amendments from Democratic members to include mammograms and prostate screenings in the Health Flex portion of the package were defeated on the floor. HB 1629 will now make its way to the Senate for consideration.

Its Senate companion, SB 2910 by Senator Durell Peaden (R-Crestview) will be debated next on the Senate floor after being passed by the Senate Appropriations Committee on Tuesday, April 20. During the Committee meeting a series of amendments were adopted to conform it to the House bill.

AIF supports legislation that allows employers to provide or expand access to high-quality, affordable health benefits for their employees without additional government intrusion or expensive mandates. Programs such as Health Flex provide a way to address the health care needs of Florida's working poor.

WORKERS' COMPENSATION

On Friday, April 23 the Senate and the House were scheduled to hear bills relating to workers' compensation. The Senate heard 2 workers' compensation bills - SB 2268 which is commonly known as the "glitch" bill and SB 2270 relating to the Workers' Compensation Joint Underwriting Association (WCJUA). There was very little discussion or debate on either of these bills. They will be available for final passage in the Senate beginning tomorrow and any subsequent day of the session.

To summarize the bills, SB 2268 was a product of an interim project completed by the Senate Banking and Insurance Committee. It identified several areas which the staff has determined to be unintended consequences of the workers' compensation reform law passed last year. The majority of the measures in the bill are technical but there are a few measures that are controversial. One such issue is the removal of the fraud penalties for presenting false identity information on an employment application. The bill also extends coverage for mental and nervous injury without an accompanying physical injury in cases of sexual battery or robbery arising out of the course and scope of employment. The bill also contains a provision clarifying the calculation of payment for attendant care services rendered by family members of an injured worker. One amendment was added to the bill today which makes it clear that an employee leasing agency is the employer (for purposes of the workers' compensation law).

While some of these measures are well-intentioned, overall AIF does not support this bill as it opens up chapter 440 F.S., the workers' compensation law, which is premature since last year's reform provisions need additional time to work before any changes are made, in order to preserve the significant cost savings accomplished in last year's legislation.

SB 2270 is also sponsored by the Senate Committee on Banking and Insurance and is designed to address the current deficits in Subplan D of the JUA due primarily to the Subplan's artificially capped rates, which are not actuarially sound and which do not yield sufficient premium to cover the plan's losses. This bill as amended on the Senate floor today would provide a \$10 million appropriation to the JUA immediately to address the deficit. It would also hold available an additional \$25 million that the JUA could access in the event of future deficits, subject to approval by the Legislative Budget Commission. The bill also restructures the JUA to allow for three tiers based on an employer's loss history rather than the 4 subplans that are currently in place. The most controversial portion of the bill expresses intent to create a state workers' compensation fund if a study commission does not find the market to be competitive for small employers and charitable organizations by March 1, 2005.

One additional amendment was added to the bill today which is completely unrelated to the JUA. That amendment removes an outdated portion of chapter 440 F.S., which addresses death benefits payable to dependents of deceased workers' who do not reside in the US or Canada. This provision of the law was declared unconstitutional 15 years ago by the Florida Supreme Court, yet the provision has never been removed from the statutes. Because the provision is no longer used or applied, AIF has no objection to the substance of the amendment. However, it is very dangerous for the legislature to make any changes to chapter 400 of the Florida Statutes as this too is the workers' compensation law which saw significant reform only last year and it is too premature to change in any way at this time.

AIF is strongly opposed to this legislation as it would cripple the current workers' compensation system and have significant fiscal impacts on Florida's economy.

The House today heard HB 1241 by Representative Kim Berfield (R-Clearwater) on second reading. The Senate companion, SB 1926 was passed by the Senate a few weeks ago, so the Senate bill was actually taken up in lieu of the House measure. The two bills are identical; however, a technical amendment was added on the House floor today. Therefore, the bill will roll to third reading in the House and be available for final passage by the House next week. The bill will then be sent back to the Senate for a final vote with the technical amendment.

SB 1926 is the result of the Joint Select Committee on Workers' Compensation Rate Reform. The bills are sponsored by Senator Jeff Atwater (R-North Palm Beach) and Representative Berfield. Representative Berfield explained that the bill will allow the Office of Insurance Regulation (OIR) more latitude in approving deviations to workers' compensation insurance rates which will enhance competition in the market. The amendment today clarified that an insurer may offer the traditionally approved rate or the deviation to an employer based on its underwriting criteria. The bill also requires insurers to notify the OIR of any upcoming changes it expects in its writing that will materially affect the workers' compensation market in the state. Another measure in the bill allows insurance carriers to offer coverage to employers in the JUA at the JUA rates, without those policies counting towards the carrier's excess rate limit. The bill also required OIR to submit a study to the Legislature evaluating competition in Florida's workers' compensation market.

AIF supports legislation addressing the concerns outlined by SB 1926 and HB 1241, but will continue to closely monitor these bills.

On Monday, April 19th the House Insurance Committee considered and passed PCB IN-04-06, relating to workers' compensation issues for first responders. The committee passed the bill by a vote of 14-3. Representative Sandy Adams (R-Oviedo) presented the bill since she was the Chairman of the House Select Committee on First Responders. Representative Adams is a former law enforcement officer and has a particular interest in this legislation.

The bill provides several issues in which any first responders would be provided preferential treatment in the handling of their workers' compensation claims. First responders is defined in the bill as any law enforcement officer, firefighter or EMT/paramedic defined in statute or any volunteer firefighter engaged by a city or county.

The bill is not referenced to any other House committees and will be available for a full floor vote in the House once leadership decides to place it on the Special Order calendar. There is no companion measure in the Senate.

AIF is cautiously watching this legislation. While we respect the work of our first responders, AIF is opposed to any legislation that increases costs to the workers' compensation system and provides a mechanism to thwart the reforms enacted last year.

CONSTITUTIONAL AMENDMENT REFORM

Today, the constitutional initiative reform effort took another giant step forward. The House substituted their initiative reform resolutions (HJR 1947, HJR 1949, HJR 1951 and HJR 1971) with their Senate counterparts thus creating a starting point for negotiations. The House will still have one more pass at the resolutions before they are sent back to the Senate, this will most likely occur early next week. The acceptance of the Senate resolutions today does not necessarily indicate a final move by the House. They will have another attempt to amend the resolutions during third reading next week. Below we have outlined the resolutions and the amendments adopted thus far in the House.

HJR 1974 replaced by SJR 2394 – This resolution addresses the deadline to submit petition signatures to the Secretary of State. The Senate position of Feb. 1 was approved by the House without amendment. It was rolled over to third reading.

HJR 1949 replaced by SJR 2392 – SJR 2392 increases the ratification threshold of ALL initiatives to three fifths or 60%. Initially the House applied the increase only to those initiatives proposed by citizens. As reported in the daily brief for Thursday, April 22nd the House has accepted the Senate's position on this proposal and in return they have eliminated the Senate's July 16th implementation date. By eliminating the July 16th language a higher ratification threshold would apply to this November's initiative elections if the initiatives were ratified during the August 31st special election.

HJR 1951 replaced by SJR 2396 - SJR 2396 addresses the judicial review or filter. In accepting the Senate's resolution the House applied some of its own language. This particular resolution will experience some more manipulation as it is moved between the chambers.

HJR 1979 – This particular initiative reform measure was not substituted with the Senate's version. HJR 1979 addresses the "No Hidden Taxes" logic requiring initiative proponents to identify a new tax or user fee to pay for initiatives that carry a "significant" fiscal impact. The definition of the "significant fiscal impact" was amended by the House today to include those initiatives that would cost the state more than \$10 million.

The implementation of an August 31 special election to address each of these issues still has not been discussed or proposed in the House.

AIF supports politically viable initiative reforms aimed at facilitating a more responsible process and at protecting the sanctity and supremacy of the state's Constitution.

TAXATION

On Thursday, April 22nd the Senate passed SB 1072 relating to the Streamlined Sales & Use Tax by Senator Skip Campbell (D-Tamarac). This bill adopts definitions and procedures to streamline Florida's sales tax system as it relates to e-commerce. Thirty-nine states and the District of Columbia have already adopted such legislation. This legislation will put Florida businesses on a level-playing field with out-of-state companies who are selling products to Florida's resident via the internet, mail order, etc. by requiring these entities to collect and remit Florida sales tax to the Department of Revenue. Currently, Florida businesses are losing customers to these businesses because consumers are not being assessed sales tax on e-commerce purchases. Although Florida law requires consumers to pay such taxes, it is not currently enforced, and few are aware that they are required to pay, or that there is a penalty for not paying sales tax at the time of purchase.

Senator Campbell presented the bill and was faced with opposition immediately from Senator Mike Haridopolos (R-Melbourne) who voiced his concern about Florida joining with other states in an interstate compact dealing with this issue. His position was that we would be giving up our power and ability to make decisions on future tax issues. Senator Haridopolos also felt we would be succumbing to the power of the federal government. Senator Campbell tried to calm his concerns by assuring him that this would not in any way be forcing us to give up any power over Florida taxing authority to the Federal Government and that, in fact, it would be giving us an upper hand. He went on to explain that if at any time Florida felt that it was unsatisfied with the interstate compact we could withdraw.

SB 1072 was passed on third reading but not without opposition; the final vote was 26 Yeas and 10 Nays.

AIF supports implementation of the statutory mechanisms needed to allow Florida to enter into the Streamlined Sales and Use Tax Agreement with other states. If a uniform national collection system is developed, Florida could equalize the treatment of all retail and e-commerce vendors regarding the assessment and collection of state sales tax.

SUBSTITUTE COMMUNICATIONS TAX

On Tuesday, April 20th the Senate Committee on Finance & Tax adopted an amendment offered by Senator Bill Posey (R-Rockledge) which substantially changed the nature of SB 2302's original language. Before being amended, the bill would have repealed a sales tax on substitute communication systems that could cost businesses millions of dollars in Florida. According to Florida Statutes, a *substitute communications system* is a stand alone system providing its own exclusive communications service rather than having those services provided through a third party communications service dealer. Examples include: two-way radios, two or more computers networked together in an office or household environment, an intercom system, and PDAs if administered through a company rather than a third party service provider.

The bill is now titled the “Florida Substitute Communication Relief Act” and suspends the collection of the substitute communications tax until December 31, 2005. The bill was also expanded to create the Florida Communications Policy Task Force which will be housed within the Public Service Commission for administrative purposes. This task force will have nine members, equally appointed by the Governor, the Senate President and the House Speaker. The qualification for the appointees is “any non-legislative member shall possess expertise in state or national telecommunications policy, taxation, law or technology.” However a person who works directly for or who performs contract work for a telecommunications company or any entity or agency that has appeared before the Commission on a docketed telecommunications matter in the past two years may not be appointed. The task force shall hold its organizational meeting by July 15, 2004 and will be dissolved by June 30, 2005.

Now, instead of just looking at the substitute communications tax, the task force will review and evaluate existing national and state regulatory and tax policies relating to the communications industry and make recommendations to the legislature on other areas such as the impact of the Tele-Competition and Innovation Act of 2003 along with Lifeline Assistance. The task force will also look at the impact on competition by emerging technologies including Voice Over Internet Protocol (VOIP), wireless and any other developing technology that provides similar end-to-end communications service. Their report is due to the Governor, Senate President and House Speaker by January 15, 2005.

AIF supports legislation to repeal this “new” tax which would harm the ability of businesses in Florida to compete. AIF will keep looking at other options and amendments to permanently do away with this unnecessary tax.

CIVIL JUSTICE

The Senate Committee on Banking and Insurance passed SB 2092 relating to the Financial Protection for Elderly Act by Senator Alex Villalobos (R-Miami) on Tuesday, April 20th. This bill would create a civil cause of action against banks, insurers and other financial institutions for so called financial exploitation of any person over 60 years old. Punitive damages would be capped at \$1 million and half of this award shall be deposited into the Elder Victims Trust Fund.

Linked to SB 2092 is SB 2090, also by Senator Villalobos, which creates the Elder Victims Trust Fund within the Department of Elder Affairs to be used to investigate, prosecute and educate against financial exploitation of elderly persons. Both bills passed the committee uncontested and will be heard next by the Senate Appropriations Subcommittee on Criminal Justice. Its House companion, HB 1287 by Representative Marco Rubio (R-Miami) was temporarily postponed last week at the request of the sponsor thereby killing the proposal in the House.

AIF is always in favor of providing the maximum protection by law for Florida’s elderly population, however, AIF opposes this legislation at this time because of its overly broad language which encourages speculative lawsuits against financial institutions that do business with the elderly.

ECONOMIC DEVELOPMENT

The Senate Committee on Governmental Oversight and Productivity unanimously passed SB 1174 by Senator Mike Bennett (R-Bradenton) on Monday, April 19th. This bill began as an attempt to amend the burdensome DRI (development of regional impact) process. In an order to bring the business community, government, and the environmental community together, Senator Bennett filed SB 1174 and had all sides work on a product that would become good public policy. Since all sides could not agree on a program for the DRI process, Senator Bennett has amended his bill to create a study commission which will consist of appointees by the Governor, Speaker of the House and the President of the Senate. The appointees must include representatives from the business community (including development and real estate), agriculture, local governments, environmental interest, and citizen organizations. The Commission is required to provide a report to the Governor, Speaker of the House and President of the Senate by January 1, 2006 on growth management and the DRI process.

SB 2554 by Senator Steven Geller (D-Hallandale Beach) was also considered by the Committee and received a “strike everything amendment” that made it identical to SB 1174. Senator Lee Constantine (R-Altamonte Springs) amended both bills to remove the title of “Smart Growth Study Commission” and changed it to the “Planning and Development Study Commission.” Senator Constantine believes that it is an oxymoron to use the term “Smart Growth” and considered the “Planning and Development Study Commission” as a better title.

AIF supports legislation that cuts red tape, streamlines the permitting process, and keeps the cost reasonable for developments that bring responsible growth, infrastructure, and the goods and services that come with it.

- 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.