

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
DAILY BRIEF**



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LEGAL REFORM

Today was an historical day for the business community and its legal reform efforts. The abolishment of joint and several liability cleared its final committee of reference- the House State Administration Council. With the tremendous efforts of Representative Don Brown (R-DeFuniak Springs), not only did the abolishment of joint and several liability pass, so did eliminating some of the abuses in Florida for venue shopping. Florida's venue law has caused South Florida courts to be declared one of the country's worst "judicial hellholes" in the country. The bill also limits a product seller's liability in a lawsuit when a business puts a product on the shelf, which it does not manufacture, alter, or know the product was defective. However, the bill still protects injured persons and allows the product seller to be sued if the manufacturer who was the cause of the defective product is not subject to jurisdiction in the United States.

The passage of this bill through the committee is another significant step towards true legal reform in Florida. This could not have happened without Representative Brown and the support of leadership, specifically Governor Bush and Speaker Allan Bense (R-Panama City). The bill passed by a vote of 6-2 with Representatives Don Brown, Ellyn Bogdanoff (R-Ft. Lauderdale), Tee Holloway (D-Miami Gardens), Jeff Kottkamp (R-Cape Coral), and Ron Reagan (R-Sarasota). Those voting against the bill and against the business community were Representatives Mary Brandenburg (D-West Palm Beach) and Audrey Gibson (D-Jacksonville).

On the Senate side, Senator Dan Webster (R-Winter Garden) worked tirelessly to get meaningful legal reform bills out of the Senate Judiciary Committee. Senator Webster successfully got out two significant legal reform bills on premises liability and on asbestos claims.

The primary opposition to the legal reform bills came from Senators Steve Geller (D-Hallandale) and Skip Campbell (D-Tamarac). Senator Campbell presented several amendments to the asbestos bill, SB 2562, which would have significantly diminished the bill's impact and taken away the protections the business community desperately needs on this subject. Several business experts in this field testified that over 70 companies across the country have filed for bankruptcy because of these rampant asbestos lawsuits. Yet, Senator Geller and Senator Campbell ignored this appalling statistic and went to great lengths to try to derail this very good bill.

Ultimately, the bill passed out of the committee by a vote of 6-2. Voting with the business community were Senators Dan Webster, Alex Villalobos (R-Miami), Dave Aronberg (D-Greenacres), Carey Baker (R-Eustis), Charlie Clary (R-Destin), and Bill Posey (R-Rockledge). Voting against the bill were Senators Skip Campbell, and Steve Geller.

The committee also considered, SB 2566 Relating to Premises Liability and Negligence. Although an amendment was adopted to the bill that may represent a small set back on this issue, Chairman Webster told the committee how businesses need a fair playing field in this area to keep them from having to pay more than the damages caused by their own actions. Chairman Webster pledged that he will continue to work with the business community as this bill moves through the committee process. The bill as amended passed the committee unanimously.

The product seller liability bill, SB 2568, that the committee considered also had significant debate and received a tie vote (a tie vote defeats the bill). However, thanks to a procedural move by Senator Posey, the bill was retained in committee and will be heard again in their next meeting on Friday.

There is a misconception surrounding this bill that product sellers can never be liable and injured persons will have no one to sue if this bill passes. However this is NOT the case. The bill specifically provides that if the manufacturer cannot be sued in the United States then the product seller can be sued. This bill insures that there is always somebody from whom an injured person can recover. ALWAYS. Usually it will be the manufacturer, but if for some reason the manufacturer cannot be sued in Florida, then the product seller can be sued. Voting in favor of the bill and with the business community were Senators Dan Webster, Alex Villalobos, Carey Baker, and Charlie Clary. Voting against the business community's position were Senators Dave Aronberg, Skip Campbell, Steve Geller and Bill Posey.

Since this bill will be considered again by the committee on Friday – please contact your senator and urge them to support passage of SB 2568 to provide this important protection to the business community.

The committee ran out of time before it was able to hear the class action reform bill, SB 2564 by Chairman Webster. Therefore, this bill will also be heard by the committee at their next meeting Friday morning. Even though Congress recently passed federal legislation on this general subject, this bill is still desperately needed by Florida businesses. The federal legislation will NOT impact cases which are under \$5 million dollars or have fewer than 5,000 class members. Many frivolous and unnecessary lawsuits are brought in Florida that do not rise to this level and must be fixed by the state legislature through this bill. Please contact your senator today and tell them to support SB 2564 in the Senate Judiciary Committee on Friday.

AIF supports legislation aimed at increasing fairness and predictability for Florida's business community. Asbestos litigation, Premises liability, Product Seller Liability are part of the debate on legal reform, as such AIF will continue to support legislation aimed at improving Florida's judicial environment.

The Senate Governmental Oversight and Productivity Committee passed SB 460 Relating to Transportation by Senator Jim Sebesta (R-St. Petersburg). This is the Transportation Department's yearly omnibus bill which addresses a myriad of transportation-related issues. One of the bill's provision provides that private road construction contractors are not liable to a claimant for personal injury, property damage or death arising from the performance of the contract work if at the time of the accident, the contractor was in compliance with Florida Department of Transportation (FDOT) contract documents material to the condition and/or defect that was the cause of the accident.

During the meeting, Chairwoman Nancy Argenziano (R-Crystal River) offered an amendment that would undo the provision which extends immunity to FDOT contractors and would only provide immunity to contractors after a project was completed.

Representatives from the Florida Transportation Builders Association testified that a great majority of the law suits against contractors occur before a project is completed and that only providing immunity after a project was completed, essentially undermined the very reason they supported the bill. The amendment by Senator Argenziano was ultimately defeated by a 3-2 vote. Voting for the amendment were Senators Al Lawson (D-Tallahassee) and Nancy Argenziano. Voting with the business community were Senators JD Alexander (R-Lake Wales), Gwen Margolis (D-Miami Beach), and Jim Sebesta (R-St. Petersburg).

Following the vote on the amendment, the bill's sponsor assured Senator Argenziano that he was willing to work with her before the bill's next stop in order to address some of her concerns. The bill ultimately passed by a 3-1 margin. SB 460 will now be heard by the Senate Transportation and Economic Development Appropriations Committee

AIF supports the concept of protecting our state's road builders from onerous lawsuits and this issue is part of the overall debate on legal reform. As such, AIF is supporting changes to the current legal system that will bring about reasonableness, fairness, and predictability.

TAXATION

The House of Representatives passed HB 1803 Relating to Alcoholic Beverages and Taxation by Representative Fred Brummer (R-Apopka) on a vote of 94 - 23. The bill eliminates the tax on the retail sale of alcoholic beverages sold for consumption on the premises of a vendor.

Since 1990, Florida has imposed a tax on the retail sale of alcoholic beverages sold for consumption in a commercial establishment. The tax rate was reduced by one-third in 1999, and again by one-half in 2000. Current tax rates are: 3.34 cents per 1 ounce of spirits or 4 ounces of wine, 1.34 cents per 12 ounces of beer, and 2 cents per 12 ounces of cider.

The repeal of this inventory tax will reduce the burdensome record-keeping and taxation required of business that sell alcoholic beverages. This so-called "sin tax" is poor public policy originally adopted as a "quick fix" for the then-perceived needs of the state for additional revenue.

AIF supports the final repeal of this tax to eliminate a cumbersome, expensive, and regressive burden on both Florida's hospitality establishments and Florida's consumers.

CONSTITUTIONAL AMENDMENT REFORM

The House Justice Council passed three proposed Constitutional amendments designed to make the process of amending Florida's Constitution more difficult. Florida's Constitution is one of the easiest Constitutions in the country to amend. In 1968, lawmakers provided Floridians with a citizen's initiative process which would allow Constitutional amendments to be placed on the ballot. Lawmakers laid out a series of requirements that needed to be met before a proposed amendment could reach the ballot including the gathering of signatures. Since 1968, Florida's Constitution has been amended a number of times. In recent years, the number and type of amendments being added to our state's document have been troubling.

Representative David Simmons (R-Altamonte Springs) presented all three proposals on behalf of the Judiciary Committee. HB 1723 would increase the margin of approval for a proposed Constitutional amendment to 60 percent instead of the current simple majority of 50 percent plus 1. HB 1727 would institute a subject matter “filter” that would limit the subject matter of any proposed Constitutional amendment to include only those provisions or proposals that amend or repeal an existing section of the Constitution on the same subject and matter; address a right of a citizen of the state related to Article I of the Florida Constitution; or change the basic structure of state government as established in Articles II through V of the Florida Constitution. HB 1741 would require that any amendment or revision proposed by the citizen initiative process that imposes a cost on the state, municipal or local government greater than one-tenth of one percent of the state budget must pass by at least 2/3 of those electors voting on the proposal, which is the same vote margin required by the legislature.

During the meeting two technical amendments were passed that would bring the language in the House bills closer to the language of their Senate companions (SB 004, SB 006, and SB 2200). The Senate proposals have all passed their committees of reference and have made their way to Senate Floor.

A fourth House proposal, HB 1721, was not taken up by the committee. This bill would require that an amendment to or revision of the Florida Constitution proposed by citizen initiative, in addition to being approved by a majority of the electors voting on the amendment must also be approved by a majority of those voting on the amendment or revision in at least half of the Congressional districts of the state. This proposal did not have a Senate counterpart, and it is our understanding that the House has decided to back off from this proposal because of the low interest in the Senate.

AIF supports reforms to the process for amending the state Constitution by citizen initiative. Florida’s Constitution is too easily manipulated by special interests, subverting the deliberation of public policy decisions and threatening the business community with the enactment of economically destructive programs and mandates.

ENVIRONMENT

The House State Resources Council unanimously approved CS/HB 937 by Representative Bill Galvano (R-Bradenton). This bill provides for contamination notification requirements when contamination has migrated beyond the property boundary of the originally contaminated site, and provides specific criteria associated with each notice provided by the Department of Environmental Protection (DEP) and the site rehabilitator.

During the meeting some technical amendments were adopted as well as one that would require DEP to send a notice to the chair of the school board of the district in which the property is located if contamination is discovered. The school board will then have the responsibility to notify teachers and parents in a way prescribed by DEP rule.

AIF supports this bill and would like to thank Representative Galvano for his commitment to work with the business community. With this proposed legislation in place, surrounding property owners and businesses will benefit by having more timely and comprehensive information on the progress of the cleanup of nearby properties. In addition, it will aid them in making better informed decisions regarding their potential risks of exposure and appropriate ways to reduce or eliminate risk.

The House State Resource Council unanimously passed HB 137 by Representative Dwight Stansel (R-Live Oak). This bill would give incentives to businesses that have a good compliance record with the Department of Environmental Protection (DEP). Some of the incentives include: longer duration of permits, less inspections and expedited renewal process.

To obtain the compliance incentives, an applicant must affirmatively request them as part of the permit application.

HB 137 will now be taken up on the floor of House.

AIF supports legislation that considers a businesses' past performance in the permitting process. AIF believes that regulated entities should receive some benefit for past good behavior and should not be subject to arbitrary or uncertain punishment.

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.