



MARCH 30, 2005

LEGAL REFORM

The House Judiciary Committee approved two Proposed Committee Bills (PCBs) dealing with legal reform today. The first PCB to be discussed was HJD 8 Relating to Class Action Reform. This PCB would make a number of policy changes in the arena of class action lawsuits including:

- Capacity to Sue: Membership in a class action suit filed in a Florida court would be limited only to Florida residents.
- Damages: The measure would require proof of actual damages to obtain any monetary relief, and limit judgment amounts to the total amount of money owed to individual class members.
- Demand to cure: The person or company alleged to have committed a misconduct would be presented with a demand to cure notice 60 days prior to filing a class action and require plaintiffs to please and prove that the party gave the defendant a reasonable opportunity to cure.

Several technical amendments were offered by Chairman David Simmons (R-Altamonte Springs) and Representative Jack Seiler (D-Pompano Beach) in order to make the proposal more palatable for all interested parties. Most of the opposition to the PCB was centered on the fear that if implemented, this bill would allow companies to pick off class representatives by settling with them on an individual basis, thereby, making it impossible for potential members of the class to be involved in the suit. Chairman Simmons assured committee members that it was not his goal to “close the courtroom doors” and he would work with all interested parties on crafting language that would satisfy all and at the same time remain fair.

PCB HJD 8 was passed unanimously by the Committee and is will now be assigned a bill number and reference to the appropriate committees.

Class Action Reform is part of the overall debate on legal reform. As such, AIF is supporting changes to the current tort system that will bring about reasonableness, fairness, and predictability.

PCB HJD 9 Relating to Premises Liability was passed by the Committee with Representatives Dan Gelber (D-Miami Beach), Jack Seiler (D-Pompano Beach), and Kevin Ambler (R-Tampa) as the only members of the committee voting against the bill.

This PCB addresses laws relating to the liability of business owners in slip-and-fall cases and negligent security cases occurring on their premises. The bill repeals existing law in the area of slip-and-fall and provides that a person who is injured due to a foreign object or substance must prove that a retail establishment had actual knowledge of the dangerous condition and that the condition existed for a long enough time that the retail establishment should have know about the dangerous condition. In the area of security the bill allows for damages to be apportioned between a defendant business owner and the intentional tortfeasor or person who committed the criminal act.

During the meeting Representative Ambler offered a “strike everything” amendment which would have done away with the bill as written and would have replaced it with language from a different premises liability bill which was filed during the 2004 session. This language was radically different from the PCB as presented by Chairman Simmons. Members of the business community objected to this “strike everything” amendment and it was ultimately defeated.

The Committee heard testimony from members of the trial bar and the business community. During the course of the meeting, AIF’s Tammy Perdue testified in support of the bill, but pointed out that as written the proposal only offered protection to retailers and that the bill needed to be tweaked in order to include protection for all business establishments not just retailers. AIF has received strong commitment from several key legislators that this issue would be addressed as the bill moves forward through the process.

Premises liability is part of the overall debate on legal reform. As such, AIF is supporting changes to the current tort system that will bring about reasonableness, fairness, and predictability for the business community.

The House Civil Justice Committee passed HB 1019 Relating to the Asbestos & Silica Compensation Act by Representative Joe Pickens (R-Palatka). This bill requires physical impairment as an essential element of an asbestos claim and provides criteria for physical impairment claims.

The bill passed on a 5 to 2 vote with Representatives Irv Slosberg (D-Boca Raton) and Arthenia Joyner (D-Tampa) voting against the bill. Majority Leader Andy Gardiner (R-Orlando) sat on the committee for purposes of this bill.

Anita Pryor, attorney for the Jacksonville based Hogan Law Firm, presented testimony against the bill on behalf of the Florida Academy of Trial Lawyers. She testified that the occupational and exposure criteria in the bill would eliminate many potential claimants who already have cancer. She also pointed out that smokers, as defined in the bill, include those individuals who chew tobacco and thus this would bar these individuals from filing asbestos claims. She further testified that there is not an asbestos claims explosion problem in Florida. She stated that courts in Florida do a very good job in managing cases, and that asbestos cases in Florida have actually decreased. There were several insurance and business interests who submitted cards to testify but waived their time in support of the bill because of time restraints.

HB 1019 will now be heard by the House Judiciary Committee.

To date, 6,000 companies representing 91 percent of the industries in the US have been named as defendants in asbestos related claims. Damages from corporate defendants have cost the business community upwards of \$54 billion dollars.

AIF supports legislation which would require those individuals bring asbestos-related claims to prove prima facie evidence of impairment due to exposure to asbestos. Asbestos litigation is part of the overall debate on legal reform. As such, AIF is supporting changes to the current tort system that will bring about reasonableness, fairness, and predictability.

TAXATION

The Senate Judiciary Committee unanimously passed SB 1056 Relating to Business Entities by Senator Ron Klein (D-Delray Beach). This bill seeks to harmonize many of Florida's existing statutes relating to business entities with provisions found in business friendly states such as Delaware and Nevada. This bill would effect how corporations, limited liability companies, not-for-profit corporations, and partnerships are regulated by the State.

According to the bill's sponsor the goal of this legislation is to make Florida as attractive to new businesses as possible. The Florida Bar along with other interested parties have been working on these vast reforms for almost two years.

AIF supports efforts by the legislature to bring Florida to the forefront of streamlined, business-friendly corporate environments, thereby making it attractive and as easy as possible for companies to do business in our state.

CONSTITUTIONAL AMENDMENTS

The Senate Judiciary Committee passed three Senate Joint Resolutions designed to make amending Florida's Constitution more difficult. All three proposals, if passed by the legislature this year, will still have to be approved by voter

SJR 6 by Senator Jim King (R-Jacksonville) increases the vote threshold for passing an amendment or revision to 60 percent, SJR 4 also by Senator King requires that Constitutional amendments and revisions by initiative pass a subject matter filter, and SJR 2200 by Senator Jeff Atwater (R-North Palm Beach) requires 60 percent voter approval on all proposed amendments or revisions which would impose a significant financial impact on state government in excess of 1/10 of 1 percent of the state's budget (roughly 60 million dollars based on last year's budget).

A late-filed amendment by Senator Skip Campbell (D-Tamarac) to SJR 6 that would have allowed for a statutory initiative process as an alternative for citizens was not allowed to be taken up by the Committee.

AIF supports reforms to the process of 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 Committee on Environmental Regulation discussed PCB ENVR 05-03 which makes changes to the Brownfield's Redevelopment Act. This Act was established by the Florida Legislature in 1997. It was designed to encourage local governments and responsible persons to voluntarily clean up and redevelop abandoned and underused commercial and industrial sites.

Some of the changes proposed include an increase of the percentage of costs for voluntary cleanup activity from 35 percent to 40 percent when obtaining a tax credit against intangible personal property tax or corporate income tax as well as an increase the dollar cap on the 10 percent completion incentive tax credit from \$50,000 dollars to \$250,000 dollars.

AIF supports this proposal because increasing these tax credit provisions will create additional incentives for businesses to voluntarily cleanup eligible contaminated sites. Cleaning up brownfields increases future job opportunities and economic growth for area residents while at the same time restoring a region's environmental integrity.

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.