

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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FROM THE WEEK OF APRIL 11 – APRIL 15, 2005

LEGAL REFORM

On Wednesday, April 13th, Governor Bush sent a memo to the Florida Legislature urging them to pass significant legal reform legislation this session. Associated Industries of Florida and the Florida Coalition for Legal Reform not only applaud the Governor for his request of the legislature to pass legal reform, but also that he specifically mentioned the need for abolishing Joint & Several Liability. We believe that if this is not accomplished then true legal reform can not be achieved. The business community continues to support the Governor 100 percent in his efforts to see major legal reform in Florida. It is time for Florida to catch up with the rest of country.

Go to <http://www.aif.com/2005Articles/bushmemo.htm> here to read the Governor's memo

This was an active week for bills dealing with legal reform. Several of the bills supported by AIF and the Florida Coalition for Legal Reform passed their respective committees of reference and continue their way through the process. Below is review of all the bills by subject matter.

HB 1513 (Comprehensive Legal Reform Bill)

HB 1513 Relating to Civil Justice Reform, the sweeping tort reform package by Representative Don Brown (R-DeFuniak Springs) was scheduled to be heard in the House Judiciary Committee on Wednesday, April 13th. However, at the beginning of the committee meeting Chairman David Simmons (R-Altamonte Springs) announced that the bill would be temporarily postponed and heard by the committee next Monday, April 18th at 2:30 PM in Morris Hall.

At the House Governmental Operations Committee last week, it was clear that there were a few technical issues that needed to be worked out. Representative Brown is continuing to work on these matters with Chairman Simmons. AIF and the Florida Coalition for Legal Reform strongly support this bill as it contains many of the tort reforms needed in this state - particularly the elimination of joint and several liability. We will continue to aggressively advocate its passage through all committees as well as the full House and Senate and continue to keep everyone apprised of its status.

AIF supports HB 1513 and will continue to work to see its passage throughout the entire Florida Legislature. We urge you to contact the members of the House Judiciary Committee and express to them your support for this bill. The time is now to pass significant legal reform in the state of Florida and this will only be accomplished with the total repeal of Joint and Several Liability.

ASBESTOS

On Thursday, April 14th the House Business Regulation Committee considered HB 785 by Representative Dan Gelber (R-Miami Beach) relating to the liability of a successor corporation's asbestos-related liabilities incurred as a result of a merge or consolidation with another company. At this meeting, Representative Gelber presented two amendments; the first of which was technical. The second amendment provides that the limitations on liability do not apply to companies, which after a merger or consolidation, remain in the business of mining, selling, distributing, removing or installing asbestos-containing products which were the same or substantially the same as those manufactured, distributed, removed or installed by the previous company. Both amendments were adopted and the bill received unanimous approval. The bill has one more committee of reference, the House Justice Council.

HB 785's Senate counterpart SB 2228 Relating to Asbestos-Related Claims by Senator Webster was unanimously passed by the Senate Judiciary Committee on Tuesday, April 12th.

Both bills would only apply to the predecessor's wrongdoing, and would not limit the liability for the successor corporation's own torts. The bills are mainly related to the Crown Cork and Seal Company which has faced almost \$500 million dollars in asbestos claims as a result of a 1963 purchase of Mundet Cork a small bottle cap producer who at one point owned an insulation division which used asbestos in their manufacturing process. Crown Cork sold Mundet after only 63 days of purchasing this company. Still the have been liable for thousands of asbestos claims.

SB 2228 and HB 785 seek to protect companies like Crown Cork who became involved with business that may have used asbestos prior to the passage of Occupation Safety and Health Act (OSHA) safety regulations governing 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.

On Thursday, April 14th The House Justice Council considered HB 1019, The Asbestos and Silica Compensation Fairness Act of 2005 by Representative Joe Pickens (R-Palatka). This bill requires that when filing a civil action based on damages related to exposure to asbestos or silica, a plaintiff must make a prima facie showing of actual physical impairment based upon specified medical criteria. The bill also prohibits the awarding of punitive damages in asbestos/silica cases and prohibits the awarding of damages for fear or risk of cancer. The bill also limits the circumstances under which a product seller other than the manufacture can be held liable for an asbestos/silica related claim.

Representative Pickens offered 4 amendments to the bill. The first amendment allows exposure to be determined by the use of an x-ray and a cat-scan. The amendment also allows a plaintiff filing a case for secondary exposure to maintain an action, provided that the action, if it had been filed by the other exposed person, would have met the requirements for bringing a cause of action under the act. The second amendment was technical. The third and fourth amendments provide requirements for determining radiological or pathological evidence of asbestosis or diffuse pleural thickening. Each amendment was adopted favorably.

HB 1019 passed on a 7-3 vote with Representatives Joyner, Mark Mahon (R-Jacksonville), and Irv Slosberg (D-Boca Raton) voting against the bill. The bill will now be heard on the House floor.

On Tuesday, April 12th the Senate Health Care Committee unanimously passed SB 2562 by Senator Dan Webster (R-Winter Garden), the Senate companion to HB 1019. This bill requires physical impairment as an essential element of an asbestos claim and provides criteria for physical impairment claims.

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 bringing 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.

STREET LIGHTS

On Thursday, April 14th the House Justice Council considered CS/HB 135 Relating to Liability for Street Light Providers by Representative Dwight Stansel (R-Live Oak). The committee substitute provides that a streetlight provider will receive protection from liability if it has designated procedures in place to respond to a notice that a streetlight is not working and informed its customers and the general public of those procedures. Additionally, a streetlight provider must repair the streetlight within 60 days of receipt of actual notice that the streetlight is not working, except in instances where repair is not possible due to circumstances beyond the provider's control, such as a natural disaster. Finally, the committee substitute differs from the original bill in that it provides that a street light provider is not liable if the street light is not working because service had been disconnected due to non-payment, termination of the contract, or at the request of the customer.

Representative Irv Slosberg (D-Boca Raton) wanted to know the differences between the bill filed this year and the bill filed last year. Representative Stansel explained that last year's bill provided total immunity with no standards.

The bill received a favorable vote, with Representatives Joyner and Slosberg voting against the bill. The bill is now headed to the floor.

On Tuesday, April 12th the Senate Judiciary Committee unanimously passed SB 1790, the Senate counterpart to HB 135. This bill provides immunity from lawsuits to the state, local governments, and electric utilities as the result of accidents caused by the failure to provide, operate, or maintain streetlights, security lights, or similar illumination. Liability for the failure to provide, operate, or maintain lighting, however, may be assumed by written contract.

The bill also includes a provision that would prohibit a jury from attributing fault in an accident to an entity responsible for streetlight maintenance if the entity is not a party to the case. As such, a plaintiff's judgment will not be diminished by fault, assuming any exists, by an entity responsible for streetlight maintenance.

SB 1790 will now be heard by the Senate Communications and Public Utility Committee.

AIF supports the concept of providing protection to utility companies that show strong corporate responsibility by repairing street lights within a reasonable time frame. The street light issue 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.

CLASS ACTION

On Wednesday, April 13th the Senate Commerce & Consumer Services Committee unanimously passed SB 2564 Relating to Class Actions by Senator Dan Webster. This bill requires a person who proposes to file an action against another person/corporation based on a violation of the Deceptive and Unfair Trade Practices Act to give 60 days written notice before filing a claim, and the alleged violator is also permitted an opportunity to cure the violation. This bill also provides that it is an “absolute defense” if the defendant did not receive the required written notice. More importantly, this bill also requires notice if the claim is a class action, and requires the class action to be limited to Florida residents. Further, this bill provides that a class action plaintiff’s attorney is responsible for the defendant’s reasonable costs and attorney’s fees that are otherwise payable by the plaintiff.

SB 2564 will next be heard by the Senate Judiciary Committee.

On April 15, 2005, the State Administration Council considered HB 1925 by Representative David Simmons (R-Altamonte Springs) Relating to Class Action Lawsuits.

During the meeting Representative Jeff Kottkamp (R-Cape Coral) offered a strike-all amendment which would have replaced the original language of the bill. The strike-all amendment only addressed attorney’s fees in cases where the class receives a coupon settlement. Representative Kottkamp explained the strike-all addressed the primary concern regarding class action lawsuits, as it limits attorney’s fees in coupon-settlements to the time that the attorneys actually spent on the case. Representative Simmons noted that strike-all amendment, while a good idea for an addition to the bill, was an unfriendly amendment because it stripped the most important aspects from the bill. Chairman Don Brown (R-DeFuniak Springs) and Representative Stan Jordan (R-Jacksonville) also observed that the strike-all removed most of the substance of the bill. Representative Kottkamp countered, stating that the bill as currently drafted effectively eliminates class action lawsuits in Florida. Representative Kottkamp also stated that he believes that the Legislature should wait to see the effects of the Federal Class Action Act before enacting new legislation. Representative Kottkamp further stated that he believes that the federal and state courts would frown upon the portions of the bill which allow a defendant to “pick off” plaintiffs by settling the case during the right cure period. Ultimately, the amendment was not approved by the Committee.

Representative Simmons offered four amendments to the bill. The first amendment clarifies that plaintiffs in a class may include residents outside of the state of Florida, if such non-residents are affected by injurious conduct occurring within the state. The second amendment is editorial in nature as it changes the phrase “shall present notice” to “shall provide notice.” The third amendment clarifies the definition of class representative. The fourth amendment clarifies the purpose of the provisions which require that a plaintiff provide 60-day notice to the defendant prior to filing suit. Each amendment was favorably adopted.

During debate, Representatives Stan Jordan, Sandy Adams (R-Oviedo) and Jeff Kottkamp urged Representative Simmons to continue to work on the bill to address the concerns presented during public testimony. House Bill 1925 received a favorable vote, with Representatives Audrey Gibson (D-Jacksonville) and Tee Holloway (D-Miami Gardens) voting against the bill.

PREMISES LIABILITY

On Wednesday, April 13th the Senate Commerce & Consumer Services Committee unanimously passed SB 2566 by Senator Webster. The bill provides that, when a person slips and falls on a “transitory foreign substance” such as a liquid, food, or other substance in a retail establishment, the injured person must prove the retail establishment had knowledge of the condition and that the condition existed for a sufficient time for the retail establishment to have taken action to remedy the condition. This bill also provides for the apportionment of damages if an unnamed person commits an intentional tort or a criminal act from which the litigation arises.

According to the Committee’s staff analysis the term “premises liability” refers to a situation where an individual is injured on property, or “premises” owned or maintained by someone else. The property owner or party responsible for maintaining the property may be held legally responsible for that person’s injuries if the injuries were the result of a dangerous condition that existed on the property.

AIF and the Florida Coalition for Legal Reform will be working with Senator Webster on an amendment to SB 2566 which would expand the protection to include all “business establishments” not just retailers.

SB 2566 will next be heard by the Senate Judiciary Committee.

On Friday, April 15th the House State Administration Council considered House HB 1931 Relating to Premises Liability by Representative David Simmons (R-Altamonte Springs). The bill’s sponsor explained that the bill restores Florida law to its pre-Owens v. Publix state. He further explained that the bill address the problem associated with negligent security. Representative Ron Regan (R-Sarasota) offered an amendment to the bill which changes the term retail establishment to commercial establishment. The amendment was adopted favorably. Representative Audrey Gibson (D-Jacksonville) presented an amendment which contained language “encouraging” business to adopt certain security measures. Representative Simmons noted that the amendment was unfriendly, as it removed most of the portions of the bill relating to negligent security. The amendment was not adopted.

Public testimony by opponents to the bill urged the Committee not to vote in favor of the bill because there is no evidence that current law is ineffective. Opponents also feel that the negligent security portions of the bill provide a disincentive for business to take adequate security measures. Proponents of the bill noted that the bill only reestablishes the common law; which provides that if a premises owner had actual knowledge of transitory substance, the owner is liable for damages. Additionally, the common law requires a business owner to protect customers from foreseeable damages. Proponents also pointed out that the Committee should be careful in adopting security measures, as 80-90% of businesses in Florida, are small operations, employing 5 or fewer employees.

Representative Kottkamp expressed support for House Bill 1931; he noted that the bill was a leadership priority. Representative Kottkamp also observed that it is impossible for a business to obtain summary judgment under the current law. HB 1931 received a favorable vote, with Representatives Mary Brandenburg (D-West Palm Beach), Audrey Gibson and Tee Holloway voting against the bill.

PRODUCT LIABILITY

The Senate Commerce & Consumer Services Committee passed SB 2568 Relating to Limitations on Liability for Products by Senator Webster on Wednesday, April 13th. The bill provides that a person may not commence or maintain a civil action against a seller of a product based on any legal theory that the product caused harm unless the seller manufactured, produced, or designed the product; or altered, modified, assembled, or failed to maintain the product in that it caused harm to the claimant. There is an exception if the manufacturer of the product is not subject to personal jurisdiction in Florida.

A seller is defined as a person who sells a product as a retailer, distributor, or wholesaler, or who otherwise transfers a product to another for compensation.

Senator Ron Klein (D-Delray Beach) was the only committee member who voted against SB 2568 citing concerns that the bill could have the unintended consequence of making manufacturers less likely to set up their operations in Florida. According to Senator Klein, this bill would make it easier for manufacturers in Florida to be sued therefore scaring them away from our State. Senator Webster responded to this concern by saying that manufacturers had many other concerns that were more important to them when making the decision to settle in Florida.

Language on products liability can also be found in Representative Don Brown's HB 1513, the landmark legal reform bill currently making its way through the House of Representatives.

AIF supports legislation that addresses Class Action Reform, Premises Liability, and Limitations on Liability for Products. These three proposals are 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.

ROAD BUILDERS IMMUNITY

On Tuesday, April 12th the House State Infrastructure Council unanimously passed HB 1681 Relating to Transportation by Representative Ray Sansom (R-Ft. Walton Beach). This is the Transportation Department's yearly omnibus bill which addresses a myriad of transportation-related issues. One of the bill's provision states 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.

HB 1681 will now be taken up by the full House; its Senate companion SB 460 by Senator Jim Sebesta (R-St. Petersburg) has passed its first committee of reference (Senate Transportation) and will be taken up next by the Senate Governmental Oversight and Productivity 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 tort system that will bring about reasonableness, fairness, and predictability.

WORKERS' COMPENSATION

On Wednesday, April 13th the Senate Banking and Insurance Committee unanimously passed SB 1744 Relating to Workers' Compensation for First Responders by Senator JD Alexander (R-Lake Wales) after adopting a strike-all amendment offered by the bill's sponsor. First responders include: law enforcement officers, firefighters, emergency medical technicians, paramedics and volunteer firefighter.

There are several problems with this bill; most important of which is that the bill provides for the beginning of a separate workers compensation system for first responders. Under the bill as it is currently written, volunteer firefighters are considered first responders when engaged by state or local governments. The other provision which is of great concern is proposed language which would amend current law regarding to mental or nervous injury. This provision allows for a mental or nervous injury to be compensable even absent a physical injury. There is also a provision exempting first responders from the provisions of chapter 440 of the Florida Statutes which would limit the amount of temporary benefits that a claimant can receive for a mental injury and also exempts them from the limitation in impairment benefits for a psychiatric rating.

Craig Kohn, on behalf of the Florida League of Cities, spoke against the bill raising the point that the bill as amended would have an upward fiscal impact of \$10.5 million dollars. In addition, Mr. Kohn testified that the bill retreats from the reforms accomplished in the 2003 session and it begins to create a subsystem for first responders when it comes to workers compensation benefits.

Ginger Delegal, on behalf of the Florida Association of Counties, also spoke out against the bill. She echoed the concern about the \$10.5 million dollar impact of the bill on the counties and the unknown impact on the counties that are self-insured.

Randy Touchton, on behalf of the Fire Fighters, spoke in favor of the bill and stated that there would be a 14% savings the first year and a 5% saving the second year. However, this statement is completely contrary to anything that the National Council on Compensation Insurance (NCCI) has reported.

Based on the very nature of the bill, which is to extend workers' compensation benefits beyond those currently allowed by law, it would seem counterintuitive that there would be any costs savings. Also, the NCCI has indicated it will instead cause a rate increase in workers' compensation insurance.

AIF strongly opposes legislation that would create a separate workers' compensation system for first responders. AIF recognizes the great job performed by our state's first responders but is opposed to re-opening chapter 440 of Florida's statutes – the chapter which deals with Workers' Compensation. The workers' compensation reforms of 2003 have produced significant rate decreases and should be left as is.

SUBSTITUTE COMMUNICATIONS SYSTEM TAX

On Tuesday, April 12th the Senate Committee on Communications and Public Utilities approved SB 2070 by Senator Lee Constantine after adopting a "strike everything" amendment. Now instead of a bill that would repeal the substitute communications system tax, the new legislation places a moratorium on the tax until October 31, 2007. A substitute communications system includes everyday items such as two-way radio communications; business and home computer networks, PDAs, and intercom systems.

The bill also creates a Communications Services Tax Task Force which will consist of nine members - 3 appointed by Governor, 3 members appointed by the President of the Senate and 3 members appointed by the Speaker of the House. Non-legislative members shall possess expertise in state or national telecommunications policy, taxation, law, or technology. The Task Force will hold its first meeting by July 15, 2005 and shall submit report of its findings and recommendations to the Governor, President of the Senate and Speaker of the House by January 15, 2006.

AIF will continue our fight for a total repeal of this unnecessary and unfair tax. Every Senator on the Committee told Chairman Lee Constantine (R-Altamonte Springs) that they could not vote for this bill again unless it had a total repeal.

AIF supports repeal of the substitute communications system tax because as the law is now written, any business with a computer network or an in-house telephone system may become subject to the communications services tax.

GROWTH MANAGEMENT

On Tuesday, April 12th the Senate Regulated Industries Committee heard SB 2302 related to Local Government Land Development Requirements by Senator Mike Bennett (R-Bradenton). This bill codifies case law as it relates to local government collection of impact fees. This bill establishes a uniform standard for the collection of impact fees in an effort to rein in the excessive assessments by local governments which drive up the cost of new development in our state. The bill requires local governments to assess impact fees based on the most recent accurate and relevant data available; the lack of consistent criteria to determine the collection of fees results in unfair and inappropriate fees. Often times local governments collect impact fees to pay for capital improvements based on the impacts of the new development and, then tax these same homeowners via ad valorem taxes to pay twice for the same capital improvements.

The Committee adopted several amendments to satisfy municipalities. Senator Bill Posey (R-Rockledge) raised concerns with the measure requiring local governments change the way they currently assess fees and stated that these local governments should be held harmless from the assessment provisions within the bill. After much debate, Senator Posey and Senator Dave Aronberg (D-Greenacres) offered a late filed handwritten amendment which would provide some relief to local governments by grandfathering all existing fee ordinances; local governments will still have to adhere to the credit provisions within the bill. The Posey-Aronberg amendment passed unanimously. Several committee members expressed concerns with the bill, but agreed that new development projects should not be forced to pay for the existing backlog of infrastructure needs on top of the impacts they are currently required to pay in exchange for building new developments across the state. Senator Bennett agreed to continue working with opponents of the measure; he should be commended for his willingness to work with all stakeholders on this issue without losing sight of his goal to provide financial relief for new home buyers and a fair and equitable method of collecting impact fees. The bill passed the committee as amended with Senator Burt Saunders (R-Naples) as the only member voting against the bill.

SB 2302 will now be heard by the Senate Government Efficiency Appropriations Committee.

AIF supports many of the concepts in SB 2302. As Florida continues to grow by nearly 1000 people per day, we must ensure that developers in our state are treated fairly so as to encourage smart, affordable growth for all Floridians.

TAXATION

On Thursday, April 14th the Senate General Government Efficiency Committee passed SB 1056 by Senator Ron Klein (D-Delray Beach). This bill affects corporate merges and replaces the Florida Revised Uniform Limited Partnership Act (1986) with the Florida Revised Uniform Limited Partnership Act (2005). The bill contains several changes to Chapter 607 of the Florida Statutes.

Senate Bill 1056 provides many changes as it relates to conversion of a domestic corporation into another business entity such as limited liability company, a common law or business trust or association, a real estate investment trust, a general partnership, a limited liability partnership, a limited partnership, a limited liability limited partnership, or any other domestic or foreign entity that is organized under a governing law. A corporation may not convert into another corporation or a non-profit entity. Senate Bill 1056 also has provisions which allow the conversion of business entities from one form to another in a one-step process.

Senate Bill 1056 also amends and creates various sections of the Florida Statutes relating to limited liability companies. These provisions among other things provide for appraisals of interest in certain limited liability companies and require limited partnerships to maintain certain required information. The bill also clarifies the duty of loyalty for manager and managing members contained in section 608.4225, Florida Statutes.

Senate Bill 1056 represents an effort to incorporate reforms from the model act developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) as modified by the Florida Bar. Senate Bill 1056 has been placed on the calendar.

The companion bill to Senate Bill 1056, HB 595 by Representative Dudley Goodlette (R-Naples) has been passed by all its committees of reference and is on the way to the House floor.

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.

- 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.