

ASSOCIATED INDUSTRIES OF FLORIDA  
**LEGISLATIVE  
DAILY BRIEF**



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**LEGAL REFORM**

The House Committee on Governmental Operations passed HB 1513 by Representative Don Brown (R-DeFuniak Springs) relating to civil justice reform. The bill is strongly supported by AIF and the Florida Coalition for Legal Reform and contains many of the important tort reform provisions we have been diligently advocating the past several months – most importantly the elimination of joint and several liability.

Representative Brown started his presentation by acknowledging that Committee Chairman Jeff Kottkamp (R-Cape Coral) had also been instrumental in providing suggestions to improve the bill and that they would continue working together through the upcoming committee process. He also explained that this cause was very important to him since Florida currently ranks 42<sup>nd</sup> in legal fairness. He believes that our state's continued economic prosperity depends on true tort reform now.

There were many speakers on both sides of the issues presented. The business community put forth a coordinated effort and provided expert testimony on the legal and practical aspects of the bill from various speakers. The trial bar, on the other hand, told "horror stories" of how this bill could affect individuals in different cases – yet none of the stories they shared would be impacted in the manner they claimed before the committee.

Representative Brown explained each section of the bill, and the committee then heard testimony from all interested parties before a brief period of discussion.

The most important aspect of the bill is Section Twelve which abolishes joint and several liability. Representative Brown explained that true tort reform cannot be achieved without this most element. Former House Speaker James Harold Thompson gave a detailed history of how joint and several liability came to be the law through court rulings. He explained that the Legislature in previous years has acknowledged that this concept could visit on one defendant the damages of an entire lawsuit. From that point, subsequent Legislatures have tried to make the system more equitable for small businesses and have made some limitations. However, the doctrine is simply unfair and now is the time for it to be completely abolished. He urged the committee to support the bill in its entirety and leave this important reform to the judicial system as the legacy of this Legislature.

Randy Ball testified on behalf of Governor Jeb Bush and stated that the Governor fully supports passage of HB 1513. He testified that even if the economy is good right now the legal system still must be changed to insure that prosperity to continue. He stated that a fair system of tort law should be based on a party's fault – which means that joint and several liability must be abolished.

Section One of the bill addresses the concept of dismissal due to fraud. The way the bill is drafted, a defendant would be allowed to file a motion to dismiss if the plaintiff engaged in fraud in the action. Representative Brown explained that a different approach to this problem – mirroring the rules of federal procedure – would likely be amended at the next committee stop and that he would continue to work on this provision to make it more balanced and equitable.

Section Two of the bill repeals the doctrine of dangerous instrumentality that is applied to rental car companies and clarifies that a car owner is only responsible for damages that they caused. When this doctrine is repealed, the theory of negligent entrustment will be the rule in these areas. Such an approach is fairer because it bases responsibility in someone's fault or wrongdoing – not simply on what they own.

Section Three deals with third-party excess liability. Representative Brown explained that the situation in Florida is unique because fear of an excess judgment forces insurance companies to settle many cases that they should not settle, which drives up rates for everyone. Both Gerald Wester and Mark Delegal testified on behalf of the business community on this issue. Mr. Wester explained that this bill will prevent plaintiff attorneys from using a fast demand letter as legal blackmail forcing insurance companies to settle cases that probably should not be settled. This ultimately results in increased rates for every person and business in the state that purchases insurance.

Premises liability is the subject of Section Four. The provisions state that a business owner is not responsible for the criminal or intentional acts of another person that they did not control. This issue is really a matter of fairness in only holding people or businesses responsible for the harm or damages they actually cause.

The next three sections of the bill address products liability. First, product sellers should not be liable for harm or damages caused by manufacturing defects. The bill is very clear that no shield from liability is provided if the seller knew or should have known that the product was defective and likely to cause injury, manufactured or assembled the product, altered the design of the product, or made an express warranty of the product's safety. The trial bar attempted to sway the committee against this provision by citing an example of defective tires that were recalled by the manufacturer but sold anyway to a consumer, ultimately resulting in a car crash. However, Tamela Perdue testified on behalf of AIF that under this bill, such a product seller would not be provided immunity from liability because it ignored a recall notice and knowingly sold a defective product to a consumer or possibly because it installed the tires on the vehicle. The intent of this section of the legislation is to protect retailers from liability for damages caused of which they had no control or knowledge. This is another fairness issue that is an integral part of the bill. Also, the bill amends the government rules defense and takes away the rebuttable presumption that a product is defective if certain conditions are met by the producer.

Section Eight of the bill addresses utility liability for streetlights. Representative Brown acknowledged that the House Judiciary Committee has already passed out a committee bill relative to this topic and he anticipates that committee will amend its work into his bill as they have already discussed.

Section Nine provides protection from liability for law enforcement officers engaged in pursuit of someone they reasonably believe has committed a felony. Volusia County Sheriff Ben Johnson testified that the Florida Association of Sheriff's supported the bill. He reminded the committee that each individual sheriff's office still would be responsible for injuries caused to members of the public if an officer acted in disregard of the public safety. Representatives from the Florida Sheriff's Association were present to provide support for the bill overall and particularly for this portion. They testified that this bill is needed so that law enforcement officers can do their jobs without pressure of wondering if doing their jobs will end up getting them sued. Contrary to the trial bar's testimony, the bill would not provide immunity for a police officer to unnecessarily chase someone who has a broken tail light or expired license tag. Such hysterical testimony is just an attempt to confuse the legislators without telling them the full details of the bill's contents.

The collateral source rule is address in Section Ten of the bill and provides a layer of transparency to jury trials. The bill provides that a jury must be informed of additional sources of benefits that an injured party is receiving as a result of the same accident. There is no requirement that the jury change its decision, only that the sources be revealed to the jury.

Section Eleven of the bill protects the rights of parties involved in litigation to settle their cases without the assistance of the lawyers from either side. As the bill is currently written, attorney's fees are capped at 25% if the parties settle on their own. However, Representative Brown explained to the committee members that this portion of the section was likely problematic and he would continue to work on this section to craft a more equitable way to address this issue.

Following the public testimony, Representative Frank Attkisson (R-Kissimmee) pledged his support to the bill and noted that he wanted to work with Representative Brown in the future to remedy the provisions of the bill placing the cap on attorney fees for the settlement cases. Representative Ken Gottlieb (D-Miramar) raised some concerns about the introductory language or "Whereas" clauses contained in the beginning of the bill. He also expressed disagreement with the third party excess liability provisions. Representative Loranne Ausley(D-Tallahassee) indicated that she would not support the bill because it addressed so many complex legal issues that may give rise to whether the bill met the single subject requirements.

The bill passed the committee 5-2 as noted below and will next be heard in the House Judiciary Committee.

Chairman Jeff Kottkamp – YES  
Vice Chairman Dave Meador - YES  
Representative Frank Attkisson – YES  
Representative Loranne Ausley – NO  
Representative Holly Benson – YES  
Representative Ken Gottlieb – NO  
Representative Ray Sansom – YES

**AIF supports HB 1513 and will continue to work to see its passage throughout the entire Florida Legislature. We urge you to contact the Representative Brown and the committee members who voted in favor of this bill today and thank them for their leadership on this important legislation.**

## WORKERS' COMPENSATION

The House Judiciary Committee passed HB 775 Relating to Child Support Enforcement by Representative Bill Galvano (R-Bradenton). The bill reforms current child support enforcement and collection rules to make collection of child support more efficient. The bill affects the area of workers compensation as it provides that once a settlement agreement is reached related to a workers' compensation claim, no proceeds of the settlement or attorney's fees can be disbursed until after a judge reviews the disbursement proposal and enters an order finding that the settlement provides for appropriate recovery of any existing child support arrearage.

The bill also requires the employee or the employee's attorney to obtain a written statement from the Department of Revenue as to whether the employee owes unpaid support and, if so, what amount. The bill allows a compensation claims judge to prevent the distribution of the settlement if the judge finds that the proposed percentage allocation of the settlement agreement is insufficient to pay the support arrearage. The judge may prevent disbursement until the parties' voluntarily amend the settlement agreement to make the allocation of the settlement more sufficient to pay off some or all of the outstanding arrearage. Finally, the bill requires the Office of Judges of Compensation Claims to adopt procedural rules to implement this section of the bill.

Representative Galvano presented an amendment to the bill which ensures that parties cannot go back and undo a workers' compensation settlement. Specifically, this amendment provides that if a judge finds the proposed allocation of support recovery insufficient, the parties may amend only the allocation of support recovery within the settlement agreement to make the allocation of proceeds sufficient. There was no public testimony or debate.

HB 775 will now be debated on the House floor.

<p><b>AIF is closely monitoring this bill to determine what impact it will have on workers' compensation settlements.</b></p>
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## ENVIRONMENT

The Contamination Notification legislation moved forward in both House and Senate Committees today. First, the House Water and Natural Resources Committee passed HB 937 Relating to by Representative Bill Galvano (R-Bradenton) after adopting a strike everything amendment. This bill provides for contamination notification requirements when contamination has migrated beyond the property boundary of the originally contaminated site. Once a property owner or the person providing site rehabilitation finds that contamination has reasonably migrated into any area beyond the boundaries of the property, they must give notice to the Division of Waste Management - Department of Environmental Protection (DEP) no less than 10 days after the discovery of contamination. Notice must be given via certified mail, and on a form adopted by DEP. Within 30 days after receiving the written notice, DEP is required to send a copy of the notice to all record property owners stating that contamination was discovered. DEP may collaborate with the Department of Health to develop a source of information and to establish procedures for responding to public inquiries about health risks associated with contaminated site.

The Senate Governmental Oversight and Productivity Committee passed HB 937's Senate Companion SB 330 by Senator Paula Dockery (R-Lakeland). The bill was presented by Representative Galvano during the committee because Senator Dockery was not able to attend the meeting. AIF was successful in defeating a series of bad amendments by Senator Al Lawson (D-Tallahassee) which would have required that contamination notices be given to schoolchildren and any employees in the contaminated area. This practice could have the potential of creating unnecessary panic in the community. SB 330's next stop is the Senate Rules and Calendar Committee.

**AIF supports Contamination Notification legislation. Surrounding property owners and businesses will directly benefit from this notification by having more timely and comprehensive information on the progress of the cleanup of nearby properties. AIF thanks Representative Galvano for his cooperation with this legislation. What was a bad bill in the beginning, has now turned into a product the business community can support.**

## HEALTH CARE

The House Health and Families Council passed Proposed Committee Bill HHF1 Relating to Medicaid Reform which creates Medicaid pilot programs in rural and urban counties. The Long Term Care pilot program will be conducted in Pinellas, Hillsborough, Orange, Osceola and Seminole counties if this legislation is signed into law. An amendment by Representative Eleanor Sobel (D-Hollywood) which would have moved the acute care pilot program out of Broward County was rejected. Also during the meeting, an amendment by Representative Gayle Harrell (R-Port St. Lucie) was withdrawn which would have shifted responsibility to collect the Medicaid co-payment from providers to HMOs. Representative Harrell said that she will have a revised amendment on this subject later in the process.

HHF1 will now be assigned a bill number and it is expected to be debated on the House floor.

The Senate Health Care Committee debated its broad Medicaid reform plan, SB 838 by Senator Durell Peaden (R-Crestview). Among its provisions is an authorization for the Agency for Health Care Administration (AHCA) to develop two pilot programs. This first program is designed for the over-60 population and would include long term care services. Unless AHCA can justify how managed care will improve nursing home care, nursing homes will be excluded from this pilot program which will be conducted in two undesignated counties, one rural and one urban. The second pilot would create capitated fee arrangements to apply to all services for beneficiaries in a Broward, Baker, Clay, Duval and Nassau counties. Capitated long-term care is an alternative whereby the provider is paid a fixed amount per person.

Unlike the House plan, AHCA can implement the Long Term Care program once it receives the Federal waivers. For the second pilot, AHCA must bring these pilots back to the Legislature for approval before moving forward. The bill continues the moratorium on nursing home beds and only allows new Certificates of Needs when a rural area's occupancy rate is 95% or greater. Other provisions in the bill would lock-in Medipass beneficiaries to their primary care providers and explore Medicaid Buy-In programs.

The Committee allowed members to ask questions about the bill but ultimately temporarily passed the bill. The Committee will take extensive public testimony next week.

**AIF supports market based reforms to the Medicaid program so long as they continue to ensure that the truly needy have access to quality care.**

### **OTHER BILLS OF INTEREST:**

#### **HB 423**

House Commerce Council passed HB 423, by Representative Dennis Ross (R-Lakeland). HB 423 redefines term "employee" under existing workers' compensation law to revise exemption regarding owner-operators of motor vehicles. There was no debate or public testimony taken at the meeting, as John Long of the Florida Trucking Association waived his time in support of the bill. The Committee passed the bill with a favorable vote.

A similar bill, Senate Bill 2118, by Senator Jeff Atwater (R-North Palm Beach) was referred to the Senate Banking and Insurance and Judiciary Committees on March 16, 2005. To date, this bill has not been placed on the calendar for consideration.

#### **HB 1693**

The House Criminal Justice Committee passed HB1693, sponsored by the House Economic Development, Trade & Banking Committee and co-sponsored by Representative Gus Bilirakis (R-Palm Harbor). The bill enacts federally mandated changes to state unemployment compensation tax law required by the "SUTA Dumping Prevention Act of 2004." Conforming to the new federal law will ensure that Florida does not jeopardize its federal grant for the administration of the program, which annually provides \$64 million to the state.

The unemployment tax rate charged to a business is based on the unemployment claims related to the business. SUTA dumping occurs when a business uses mergers, transfers, shell entities, and other schemes to dump employees from a high rate business entity to a low rate entity. The bill discourages SUTA dumping by altering the formula, and by providing civil and criminal penalties for SUTA dumping. This bill creates a third degree felony related to SUTA dumping.

The bill also creates new provisions designed to combat fraud in the unemployment compensation system, including the creation of a third degree felony related to certain fraudulent activities that defraud the unemployment claims system. This bill also improves program administration in unemployment claim appeals and benefit payment control. The bill extends from 2 years to 3 years the repayment period applicable to an individual who has received benefits that he or she was not entitled to. The bill provides that in proceedings relating to the administration of the Unemployment Compensation Law, special deputies of the Agency for Workforce Innovation are exempt from the uniform rules of procedure in the same manner that the Unemployment Appeals Commission and the agency's appeals referee's are currently excluded.

Please send your comments or suggestions to us at [aif@aif.com](mailto: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.