

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
DAILY BRIEF**



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LEGAL REFORM

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 this afternoon. 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 Tuesday, April 19th.

At the 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.

The Senate Commerce Committee passed three legal reform bills sponsored by Senator Dan Webster (R-Winter Garden) this afternoon. All three bills were met with little or no debate from committee members since all three bills will be heard next by the Senate Judiciary Committee. It is expected that during their next committee stop the bills will be thoroughly debated and considered.

Members from the Trial bar testified against all three bills, but they limited their testimony to only general opposition in consideration of the Committee's long agenda. Several business groups including Associated Industries of Florida were present in support of these three much needed legal reform bills.

SB 2564 Relating to Class Actions is a bill that requires a person who proposes to file an action against a person 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 was passed unanimously by the Committee and will next be heard by the Senate Judiciary Committee.

SB 2566 Relating to Premises Liability provides that, when a person slips and falls on a “transitory foreign substance” (examples) 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 was passed unanimously by the Committee and will next be heard by the Senate Judiciary Committee.

SB 2568 Relating to Limitations on Liability for Products 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.

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.

WORKERS' COMPENSATION

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. 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.

ETHICS AND ELECTIONS

The House Ethics and Elections Committee passed four of the Judiciary Committee's Constitutional amendment reform proposals today. The bills were presented by Judiciary Chairman David Simmons (R-Altamonte Springs) and Representative Joe Pickens (R-Palatka).

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. Representative Tim Ryan (D-Dania Beach) presented an amendment to HB 1723 that would implement a statutory initiative alternative, as a way for Floridians to have an alternative to amending the Constitution. According to Representative Ryan, since the legislature was already making it more difficult to amend the Constitution another route was needed to ensure that the citizens of Florida could still amend their constitution. Under Representative Ryan's statutory alternative, Florida would have an indirect statutory initiative process whereby citizens could propose or amend Florida's statutes by putting these proposals on the general election ballot. The Legislature would be given a period of time to review the proposed statutory initiative and they would be given the right to act upon, amend it, or chose to take no action. If the Legislature fails to take action on the proposal then the statutory initiative would be put to the voters. If passed the Legislature would have two years to amend the proposal. Chairman Simmons, viewed the amendment as unfriendly and after much debate it was defeated by the committee.

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.

Currently, the House version of this subject matter filter is much stricter than its Senate counterpart SB 006. Much of the debate on this proposal centers on the issue of what constitutes a "fundamental" right. The language in the Senate bill is more lenient and could allow for many potential amendments to be considered as "fundamental rights." During the debate on HB 1727 Representative Ryan once again filed an amendment that would put in a statutory initiative process. The amendment was ultimately withdrawn prompting Representative Pickens to state that out of all the different proposal that would implement a statutory initiative process – Representative Ryan's version was by far the most fair and innovative. Yet, he argued against it because if adopted it would be the beginning of Florida's move towards "a California way of doing things."

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. This proposal was the most popular of the four and was passed without much debate.

HB 1721 would require geographic equity. This joint resolution if approved by voters, 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. The present threshold for approval of an amendment by citizen initiative, other than one proposing a new tax or fee, is a simple majority of those voting on the proposal statewide.

It is important to note that there is no Senate counterpart to HB 1721. Chairman Simmons stated that he was currently speaking to several Senators about sponsoring a similar measure in the Senate, but that he had to admit that to this date there was no one in the Senate pushing for this proposal.

If signed into law, all four proposals would still have to be voted on by the citizens of Florida. At that time, the voters may approve all or none of these proposals.

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.

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.