

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
DAILY BRIEF**



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LEGAL REFORM

Today, the House Judiciary Committee passed an amended version of HB 1513 by Representative Don Brown (R-DeFuniak Springs) relating to legal reform. As originally filed, this bill addressed twelve different subject areas of civil reform. However, due to significant negotiations with all interested parties and other legislators, Representative Brown offered a strike-all amendment that brought the bill to three issues: the repeal of joint and several liability, liability protection for product sellers and venue reform.

Representative Brown explained that the tort system was costing Florida's consumers and businesses millions of dollars each year but returns only pennies on the dollar in awards to plaintiffs. He gave two examples of an amusement park being sued for emotional distress by a woman who knowingly went into a haunted house but brought suit because she was so scared by the attraction. Another frivolous suit he highlighted involved a drunken man who climbed over a locked fence and climbed up a utility tower, but later brought suit for his injuries against the utility and several liquor stores and bars that had sold him the alcohol he had consumed.

(These two examples are also part of the DVD recently released by AIF and the Florida Coalition for Legal Reform titled: Unbalanced Justice - A Case For Legal Reform in Florida. Go to <http://wms4.streamhoster.com/aif/tortdvd2.wmv> view the 10 minutes DVD)

Representative Brown discussed the individual sections of the bill. He stated that the repeal of joint and several liability in Florida must occur now. It is a simple matter of fairness and no person or business should pay for the wrong that someone else commits.

He explained that venue reform is needed to eliminate forum shopping in the state. Forum shopping is the practice of allowing cases to be brought in Florida state courts in certain districts that are viewed as more liberal or plaintiff friendly. This reform is needed to alleviate the burden of cases and more evenly spread the case load among the courts where the injury occurred, where the plaintiff resides or where a corporation has its principal place of business.

The product seller liability portion of the bill requires manufacturers of defective products – and not sellers - to be responsible for the injuries defective products cause. However, if the seller manufactured, produced or designed the product; altered, modified, assembled or failed to properly maintain the product; or knew or should have known that the defective product had been recalled by the manufacturer but sold the product anyway they can still be found liable by the courts.

At the outset of the questions and debate, Chairman David Simmons (R-Altamonte Springs) requested that all amendments that were previously filed to the bill be withdrawn, and all members complied. However, Representatives Jack Seiler (D-Pompano), Curtis Richardson (D-Tallahassee), Dan Gelber (D-Miami Beach) and Kevin Ambler (R-Tampa) filed and supported amendments that sought to entirely gut the bill's remaining provisions. Even though they had all participated in several prior committee meetings and workshops, received volumes of literature and written materials, engaged in many conversations with representatives of the business community related to legal reform issues, and were aware that the proposal was an agreed compromise between the sponsor and many other legislators and interested parties, these legislators tried as much as they could to completely kill the bill and end the legal reform efforts today.

Representative Richardson and Seiler jointly filed the first amendment that would have entirely removed the venue reform portion of the bill. Representative Gelber commented that the section should not be in the bill at all because it would change current venue law in Florida. Representative Brown responded that the section may need additional word-smithing at the next committee stop, but that the entire provision should not be deleted.

A trial attorney testified and gave an example of a plane crash and claimed that those victims would not have recourse. However, Vice-Chairman J.C. Planas (R-Miami) quickly corrected him and pointed out that the hypothetical victims would have proper recourse in federal court and could locate a corporate defendant's principal place of business through its articles of incorporation. Representative Seiler also complained that the committee had not been given ample time to review the strike all, yet Representative Planas again responded that the bill was reduced from 29 pages to 4 pages and the committee meeting time allotted was sufficient for review. Further, 3/4's of the bill was the elimination of joint and several, which has been around for a while this session. Ultimately, the Richardson and Seiler's amendment failed by a tie vote of 6-6. Representatives voting for the unfriendly amendment and opposing the business community on this issue were Representatives Ambler, Gelber, Jeff Kottkamp (R-Cape Coral), Sheri McInvale (D-Orlando), Seiler and Richardson. Those representatives voting against the bad amendment and in favor of the business community's position were Representatives Dennis Baxley (R-Ocala), Fred Brummer (R-Apopka), Michael Grant (R-Port Charlotte), Joe Pickens (R-Palatka), Dennis Ross (R-Lakeland), and Chairman Simmons.

Later in the committee meeting, an amendment passed which deleted the second paragraph of the venue reform provision. Representative Gelber commented during debate that this paragraph needed additional technical changes to make sure that the venue laws applied to the cause of action rather than to the persons bringing the lawsuit. This bad amendment passed by a vote of 7-6. The representatives who voted for this unfriendly amendment and in opposition to the business community were Ambler, Gelber, Kottkamp, McInvale, Planas, Richardson, and Seiler. Those representatives voting against the unfriendly amendment and with the business community were Chairman Simmons, Baxley, Brummer, Grant, Pickens, and Ross.

The next amendment considered was filed by Representative Seiler and was also a complete deletion of the product seller liability provision. Representative Seiler primarily led this effort by stating that there was no crisis. However, such assertions completely ignore the business community's united efforts to bring about fairness to the state's legal system. If a company plays no part in creating harm or injury then it should not be responsible for the harm caused by a manufacturing defect of which it had no knowledge or control. This unfriendly amendment failed by an 8-5 vote. The representatives who voted for the amendment and against the business community were Ambler, Gelber, McInvale, Richardson, and Seiler. Those voting against the bad amendment and with the business community's position were Chairman Simmons, Planas, Baxley, Brummer, Grant, Kottkamp, Pickens, and Ross.

Representative Seiler also filed an amendment that would completely eliminate the joint and several liability repeal portion of the bill. However, it also contained new language that would take away fault from any person or entity who was not a named defendant in the lawsuit. None of the debate on this amendment mentioned the repeal of joint and several liability, but centered on the multiple defendant language that Seiler wanted added. This unfriendly amendment also failed by a vote of 9-4. It was supported only by Representatives Ambler, Gelber, Richardson and Seiler. Voting for the business community were Representatives Simmons, Planas, Baxley, Brummer, Grant, Kottkamp, McInvale, Pickens, and Ross.

Representative Ambler then filed an amendment that would take out the portion of the bill that completely eliminates joint and several liability. However, he offered language that would create a completely new system of fault apportionment for legal actions in Florida. As with the other amendments, the actual language of this was not available to the public at the time of the committee meeting and was provided to the committee members only at the time of the meeting. Representative Ambler asserted, though, that he offered this amendment because he felt like the committee members were not capable of fully analyzing the ramifications of this bill. This bad amendment also failed by a vote of 9-4 and was only supported by Representatives Ambler, Gelber, Richardson and Seiler. Voting for the business community were Representatives Simmons, Planas, Baxley, Brummer, Grant, Kottkamp, McInvale, Pickens, and Ross.

There were very few comments in overall debate over the bill, primarily because the committee meeting time had almost expired. Representative Gelber outrageously proclaimed that the committee process – despite the long hours devoted by the members, staff and the business community for legal reform efforts – was held in a manner more secret than the selection of a new pope. In response Representative Fred Brummer (R-Apopka) shared his support for the bill with Representative Brown and encouraged him to not work with the opposing side in future negotiations. The bill was voted favorably out of the committee with a 9-4 vote, with only Representatives Ambler, Gelber, Seiler and Richardson voting against the bill and against the business community. Voting with the business community were Representatives Simmons, Planas, Baxley, Brummer, Grant, Kottkamp, McInvale, Pickens, and Ross.

The bill will next be heard in the State Administration Council.

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.