

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
INTERIM BRIEF**



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WEEKLY INTERIM LEGISLATIVE BRIEF FOR THE WEEK OF JANUARY 9-13, 2006

LEGAL REFORM

On Wednesday January 25th, the House Judiciary Committee heard HB 145 by Representative Don Brown (R-DeFuniak Springs) relating to apportionment of civil damages. This bill is the premier tort reform legislation of the 2006 session. It repeals the unfair doctrine of joint and several liability. Representative Brown provided the committee with an eloquent history of the development of our current fault system from the early days of contributory negligence to the comparative system that we have now which is completely incongruent with the doctrine of joint and several liability. Representative Brown's stated goal is to create a more level playing field in which a defendant's level of liability is equated with that defendant's level of fault. He also referred to at least two economic studies which show that the enactment of liability reform legislation actually increases employment and productivity in the economy. The rising costs of goods and services in our state are impacted by the increasing litigation costs that companies face each day, partly because of unfair doctrines like joint and several liability.

During the debate and questions relating to the bill, Representative Dennis Ross (R-Lakeland) clarified that the abolition of joint and several liability from HB 145 will only apply to negligence cases and will not impact the treatment of intentional tortfeasors. Judiciary Committee Chairman Representative David Simmons (R-Altamonte Springs) also clarified that the intentional tortfeasor's activities are governed under a different section of the law that is not being changed by HB 145. Representative Ross also made it clear that the bill does not diminish the responsibility of parties who are responsible for damages awards by virtue of vicarious liability.

There were three amendments to the bill filed by Representative Jack Seiler (D-Pompano Beach). The first amendment discussed would have changed the ruling of the Florida Supreme Court in the *Fabre v. Marin* decision and prohibited the allocation of fault to parties that are not named in the lawsuit. Representative Seiler argued that the case allows defendants to point a finger at other entities who are not parties to a lawsuit which allegedly "forces" plaintiff's lawyers to sue more people. Representative Ross countered, however, that any change to the *Fabre* holding would create a situation where even a minor offender in a negligence case could be the only person that the plaintiff's lawyer chose to sue, thereby still allowing a minor actor to be responsible for all of the damages in a negligence case. Representative Ross argued that such an amendment would in reality be the "evil twin" of the doctrine of joint and several liability that the bill was abolishing and would in essence negate the achievement of the bill itself. The amendment was defeated by a vote of 8-2. Representatives Kevin Ambler (R-Tampa), Dennis Baxley (R-Ocala), Fred Brummer (R-Apopka), Jeff Kottkamp (R-Naples), Sherri McInvale (R-Orlando), Joe Pickens (R-Palatka), Dennis Ross and Chairman Simmons voting against the amendment, while Representative Seiler and Representative Dan Gelber (D-Miami Beach) were in favor of the amendment.

The other two amendments were withdrawn by Representative Seiler but were explained. One was to eliminate the damage caps in medical malpractice cases and the other would have removed every immunity from litigation in any instance except for sovereign immunity.

Chairman Simmons asked that each side limit their comments to one or two speakers. Barney Bishop, President of Associated Industries of Florida, testified on behalf of AIF and the Florida Coalition for Legal Reform that the elimination of joint and several liability was needed and would create a more fair and level playing field in Florida's judicial system which is desperately needed for our economic prosperity to continue. The representative for the Academy of Florida Trial Lawyers, Alexander Clem, tried to analogize the fault system in negligence cases with a co-signor on a bank loan who is responsible for full payment of that loan if the primary borrower defaults on payment. Representative Baxley, in debate, was quick to point out that such reasoning was not analogous since the co-signor freely accepts full responsibility for the full amount of the loan when they enter into that contract. With the current tort system, however, parties who are not responsible for most of the damages are stuck paying for someone else's share of damages which is simply unfair.

During debate on the bill, it was very clear that the committee members have felt tremendous pressure over this issue. Representative Sheri McInvale (R-Orlando), visibly shaken, even felt compelled to express her sincere concern over being approached during the committee meeting with political threats from members of the trial bar, who stated that her vote on this bill would be used against her in her upcoming re-election campaign. She confidently added that, "she would vote her conscious despite those threats and indicated that she was very proud of her accomplishment in the legislature and that it did not bother her if she did not return next year." She continued by stating, "I have three wonderful boys at home and a great life." Additionally, both Representative Jeff Kottkamp and Representative Kevin Ambler commented that they appreciated the efforts of Representative Brown and House Speaker Allan Bense (R-Panama City) in attempting to create a more fair system, but could not support the bill in its current form. Both Representatives indicated they would be working to make changes on various aspects of the bill at some point in the future.

In closing, Representative Brown, stated that he respected the committee members even though he did not agree with all of their opinions on amendments or future changes to the bill. Representative Brown reiterated that the business and insurance communities are united on this issue and even the Florida Supreme Court has stated on more than one occasion that the doctrine of joint and several liability is unfair and should be repealed in Florida.

The committee voted 7-5 to pass HB 145 and the bill will now be heard by the House Justice Council during the next interim committee week in February. The vote count was as follows:

Voting YES on the bill were: Baxley, Brummer, Grant, McInvale, Pickens, Ross, and Simmons.

Voting NO on the bill were: Ambler, Gelber, Kottkamp, Richardson, and Seiler.

AIF and the Coalition for Legal Reform sincerely appreciate the efforts of Representative Brown in sponsoring this extremely important legislation and we look forward to continue to work with him throughout the legislative session to ensure the passage of this bill by both chambers of the Florida Legislature. We encourage all of our members to thank Representative Brown as well as all the members of the committee who supported this fine bill for their hard work on this issue. Passage of this bill ensures a fair and predictable legal system that all Floridians will benefit from.

Also on Wednesday the 25th, the Senate Criminal Justice Committee unanimously passed SB124, Sovereign Immunity for Law Enforcement by Senator Bill Posey (R-Rockledge). The bill provides that a law enforcement agency is not liable for injury, death or property damage caused by a person fleeing from a law enforcement officer in a motor vehicle if : 1.) the pursuit is not being conducted in a reckless manner; 2.) the officer reasonably believes that the person fleeing has committed a forcible felony; and 3.) the pursuit is in accordance with a written policy governing high speed pursuit and the officer received instruction from the employing agency on the high speed pursuit policy. Senator Rod Smith (D-Gainesville) noted that the bill was essentially the same bill as last year, but the problems in last year's bill have been worked out between the Trial Bar and the proponents of the bill.

There was a significant amount of debate regarding whether the bill provided uniform standards for high speed pursuit. Senator Smith observed that the bill provides standards because an agency is prohibited from receiving the benefit of immunity unless it meets criteria provided by the bill.

The Florida Sheriff's Association, Florida Police Chiefs, Florida Sheriff's Self Insurance Fund, and the Police Benevolent Association all stood in support of the bill. Senate Bill 124 is now headed to the Senate Judiciary Committee.

AIF supports legislation that protects our state's law enforcement community from the threat of costly lawsuits and litigation, which often result from officers protecting property and the public. As long as fair and concrete guidelines are followed, law enforcement officials should not be afraid to pursue criminals.

HEALTH CARE

On January 12th, 2006 Maryland's Legislature became the first in the nation to pass legislation requiring all companies with more than 10,000 employees to spend a certain amount on health care or pay the difference in taxes. It took an override of the Governor's veto to get the measure passed. The law would require any employer with more than 10,000 employees to spend at least 8 percent of its payroll on employee health care. On Tuesday January 24th, similar legislation was filed in the Florida Legislature by Representative Susan Bucher (D-West Palm Beach) and Senator Skip Campbell (D-Tamarac).

HB 813 and SB 1618 are already receiving a lot of attention from members of the business community. These two bills would impose an employer health tax on these companies who do not spend at least 7% and up to 9% of total earnings on employee health care.

AIF opposes legislation that arbitrarily imposes a payroll tax and mandated healthcare on the businesses and employers of Florida. This proposed health tax would be damaging to Florida's business climate and if passed would go a long way in deterring future investment in the state's economy.

Go to <http://www.aif.com/2006Articles/pr060124.htm> to view AIF's press release on this issue.

JESSICA LUNSFORD ACT

The House Criminal Justice Committee held a workshop on HCJ 3 Relating to Background Screening for Contractual School Personnel. This proposed committee bill is trying to address some of the challenges businesses face when complying with the Jessica Lunsford Act, passed during the 2005 Session. The bill limits the fees that can be charged for a state or federal criminal background check for non-instructional school personnel. Currently the fee is \$47 with \$23 going to the Florida Department of Law Enforcement and \$24 to the FBI. However, school districts were charging an additional fee and the price fluctuated from district to district. The bill establishes that a school district can only charge 30% of the total of the FDLE and FBI fee. Also, so that there could be consistency, the bill directs school districts to use the Florida Shared School Results Systems so that multiple background screenings are avoided if another school district has already requested a criminal history check on an individual.

AIF supports legislation that would help business comply with the Jessica Lunsford Act with out compromising the original intent of the law. This bill is a starting point and we look forward to working with committee members and Representative Charlie Dean (R-Inverness), last year's sponsor of the Jessica Lunsford Act.

TAXATION

On Wednesday January 24th, Senate Committee on Commerce and Consumer Services unanimously passed SB 24 Relating to Hurricane Preparedness/Sales Tax by Senator Carey Baker (R-Eustis). This legislation provides a sales tax holiday for the purchase of items typically associated with hurricane preparedness and items used to protect a structure from possible damage resulting from a hurricane and tropical storm. The sales tax holiday will be from May 21, 2006 through June 1, 2006 and from May 20, 2007 through May 31, 2007. Items such as portable self powered light source (flashlights) for \$20.00 or less; portable radios, two-way radios, or weather band radios selling for \$50 or less; ground anchor systems or tie-down kits selling for \$50 or less; batteries and non-electric food storage coolers selling for \$30 or less just to name a few.

AIF supports SB 24, as it is important for employees to properly prepare for hurricanes. Florida has seen an increase in the number of hurricanes over the past two years. Ensuring that citizens are prepared during the storm season will go a long way in decreasing the down time of employees, therefore helping businesses get back to work as quick as possible.

GROWTH MANAGEMENT

The House Growth Management committee met on Thursday January, 26th to hear staff presentations on a number of interim projects.

Andrew Grayson gave an overview of the two interim projects of the committee. The first project was the post session review of last year's landmark growth management legislation (SB 360) and the second project was the review of the Development of Regional Impact (DRI) on Affordable Housing. As to the first report, the staff met with interested parties to determine if additional legislation is necessary and what issues would be appropriate for inclusion into such legislation. Comments were sorted into three groups: "glitch"; "policy refinement"; and "new issues". The committee is approved for three proposed committee bills that will fit that description.

Regarding “Glitch” issues, there are several funding areas that need to be addressed. The most important of which is the reduction of the \$200 million appropriation for 2005-06 to fund projects on the Strategic Intermodal System to \$175 million.

Issues related to “Policy Refinement” are Urban Infill Incentives; Capital Improvement Element (CIE)/ Comprehensive Plan; Century Commission; Long Term Concurrency Management Plans; “financial feasibility” definition; Rural Land Stewardship; Community Vision; School Concurrency; Water Concurrency; and Transportation Concurrency.

“New Issues” relate to realignment of regional boundaries; impact fees; annexation; regionalism; county preemption; and affordable housing.

ENVIRONMENT

On Tuesday January 24th, the Senate Committee on Environmental Preservation approved the filing of SB 7068, a proposed committee bill that will re-write the Solid Waste Management Act. SB 7068 implements some of the recommendations from the Committee’s interim report 2006-121: “Review of the Solid Waste Management Act.” During the summer and fall, committee staff held work group meetings to discuss possible changes to the original law which was written in 1988. Many technical changes were needed to correct cross-references, delete certain obsolete provisions and dates from the solid waste management statutes. Some of the changes included alphabetizing the definitions used in the Act; provides for management of storm-generated debris and the deletion of certain reporting requirements.

The bill was assigned a new number, SB 1528, and will go back to the committee for any amendments needed. Another workgroup meeting will be held on Thursday, February 2 from 2:00 – 5:00 pm in 112 Knott Office building to discuss any changes needed to the bill before it goes back to the Environmental Preservation Committee.

AIF supports this legislation because it makes a difficult law easier to understand and deletes many reporting requirements that were duplicative and unnecessary.

ECONOMIC DEVELOPMENT

Skeptics on the value of sports to the Florida economy were dramatically answered on Thursday, January 26th during the House Tourism Committee meeting, where legislators received the results of a new study. The findings of the Washington Economics Group showed that public investment in sports ventures throughout Florida, have had a significant economic impact. Findings from 2004 data they collected, conservatively estimates the economic output from sports and recreational activities at a minimum of \$32 billion dollars annually.

The Group’s Senior Consultant for Economics, Robert D. Cruz, PhD, explained further that the \$32 billion includes nearly \$13 billion paid out for salaries which support 434,000 full time jobs. That employment covers a broad spectrum of the economy including the arts, entertainment and recreation industry group which benefits from 19% of the economic impact; the accommodation and food service industry was second with 17% of the total; retail trade was third with 8%. The construction industry, sales and manufacturing and health and fitness enterprises were also substantial beneficiaries.

In addition to the economic output the study also discovered another impact defined as “externality benefits” relating to tourism. Sports and recreation opportunities in Florida improve the quality of the tourism experience for out-of-state visitors. The data shows that a tourist coming to Florida for sports related activities, on average, will participate in sports related events 5.5 days of a 10.5 day stay. The economic output of \$32 billion does not include any of the impact from those additional 5 days of activity.

The following is a breakdown of the impact of different sectors of sports and recreation activities:

| Sector | Total Economic Impact (millions) | Total Employment Impact (jobs) |
|--|---|---------------------------------------|
| Professional Golf & Tennis Events | 211 | 3,031 |
| Sports Commission Sponsored Events | 668 | 9,667 |
| Pro Sports Teams | 2,081 | 18,204 |
| Recreational Ownership of Horses | 2,112 | 25,162 |
| Local Government Parks & Recreations | 1,942 | 31,171 |
| Spending on Sports Apparel & Equipment | 2,590 | 36,581 |
| Pari-mutuel Sports Games | 2,447 | 36,947 |
| Sport Fishing, Hunting & Wildlife | 3,563 | 51,952 |
| Recreational Golf & Golf Courses | 16,697 | 203,775 |
| Totals | 32,312 | 433,999 |

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.