



DAILY BRIEF

From March 23, 2011

Today, House committees considered two very important measures that will help improve Florida's legal climate – HB 967 by Representative Mike Horner (R-Kissimmee) and HB 1411 by Representative Jim Boyd (R-Bradenton). While they both address large cost drivers relating to fraudulent Personal Injury Protection (PIP) claims, they aim to curb these "fraud taxes" in their own unique ways.

In other news, Governor Rick Scott issued an executive order late this evening calling for the creation of a commission that will review taxpayer-funded hospitals and determine if these entities are operating in the most efficient and cost-effective manner possible. AIF commends Governor Scott for employing his executive power to act in the best interest of Florida's tax payers.

Health Care

Today, the House Insurance and Banking Subcommittee unanimously approved HB 445 Relating to Wellness or Health Improvement Programs by Representative Clay Ingram (R-Pensacola). This bill would allow insurers to provide voluntary wellness or health improvement programs for employers and employees and to encourage participation in these programs by providing rewards or incentives. Furthermore, the bill sets out a process for verifying that an employee suffers from a condition that would inhibit participation in these programs. **Jose Gonzalez, V.P. of Governmental Affairs for AIF** testified in support of the bill today.



HB 445 will now proceed to its last committee of reference, the House Health and Human Services Committee. The Senate measure, SB 1522 by Senator Don Gaetz (R-Niceville), is in the Senate Banking & Insurance Committee.

AIF SUPPORTS legislation will lead to a healthier workforce and lower premiums. Costs to insurers could be offset by a reduction in the insurer's medical expenses due to having a healthier insured population. Furthermore, this legislation will offer these incentives without mandating coverage on the backs of Florida's Insurance providers.

This afternoon, the House Health and Human Services Access Subcommittee passed HB 1117 by Representative John Wood (R-Haines City). This bill would permit the solicitation and sale of an "interstate health insurance policies (IHIP) in Florida. An IHIP is a health insurance policy governed by the law of any other state, district, or commonwealth in the U.S. Further, the bill would allow insurance agents to market and sell these policies.

Representative Wood told members of the committee that he put this bill forth to expand the affordable health insurance options to Florida employers and individuals. These IHIPs would be exempt from rate approval, underwriting restrictions, guarantee issue requirements and coverage mandates currently required by Florida's Insurance Code. Florida health insurance policies are required to include all 52 benefit and provider mandates in current law, as well as follow other regulatory restraints that many believe drive up the cost of health insurance premiums for Floridians.

Consumer protection provisions in the bill include a requirement for conspicuous language to be included in any insurance application which notes that the policy is not governed by the laws of Florida and that the consumer should carefully consider the purchase of an interstate health insurance policy.

HB 1117 will now advance to the House Insurance and Banking Subcommittee. The Senate companion, SB 1566 by Senator JD Alexander (R-Lake Wales), has not yet been heard in the Senate Banking and Insurance Committee.

AIF SUPPORTS legislation that will increase competition in Florida's health insurance market at a level not previously seen within the state. The increased competition will result in greater affordability for Florida's employers and consumers.

Also approved by the Health and Human Services Access Subcommittee today was HB 935 by Representative Richard Corcoran (R-New Port Richey). This bill would require primary care physicians (including osteopathic physicians, and podiatrists) to publish a schedule of charges for the services they offer and to post the schedule in the reception area of their office. The schedule must include the fees that would be charged to an uninsured patient paying for medical services on their own.

The bill also provides that a primary care provider, upon request, must provide a reasonable estimate for non-emergency medical treatment to patients. Further, this estimate must be consistent with the posted schedule. Physicians in violation of this requirement would have a penalty assessed which would be determined by the physician's regulatory board.

HB 935 will now proceed to the House Health Care Appropriations Subcommittee. The Senate companion, SB 1410 by Senator Joe Negron (R-Palm City), has yet to be heard in the Senate Health Regulation Committee.

AIF SUPPORTS legislation that provides accountability amongst Florida's health care providers. Providing clarity in these types of services will bring private health care providers more in line with other private-sector industries by increasing efficiency and promoting accountability.

Insurance

Today, the House Civil Justice Subcommittee passed one of AIF's priority insurance bills of the 2011 Session. HB 967 by Representative Mike Horner (R-Kissimmee) caps attorney's fees, restores the ability of insurers to require examinations under oath, and allows insurers to include mandatory arbitration clauses in their contracts.

The bill would substantially reform Florida's no fault motor vehicle statute to and would provide for the following, specifically:

- Allows Personal Injury Protection (PIP) insurance policies to require or allow the use of arbitration to resolve disputes;
- Caps attorney fee awards in disputes under the No-Fault Law at \$10,000 (\$50,000 in class actions) or three times the disputed amount recovered, whichever is less;
- Prohibits the use of a contingency risk multiplier in determining fee awards in No-Fault cases;
- Permits insurers to use the schedule of maximum charges based on Medicare Part B when providing reimbursement for durable medical equipment and services provided by clinical laboratories;
- Allows the reimbursement for services provided in ambulatory surgical centers to be limited to 80 percent of the workers' compensation fee schedule;
- Requires the insured person seeking PIP benefits to submit to an examination under oath;
- Requires the insurer to make to provide, in writing, the information they are seeking prior to requesting an examination under oath; and
- Provides that it is an unfair and deceptive trade practice for an insurer, as a general business practice, to request an exam without a reasonable basis.

Representative Matt Gaetz (R- Ft. Walton Beach) offered a strike-all amendment to the bill which would have replaced its language with that of another PIP reform bill in the legislature – HB 1411 by Representative Jim Boyd (R-Bradenton). Representative Bill Hager (R- Boca Raton) called a point of order on the amendment, expressing concern that the amendment was not germane within the scope of the bill. In the end, Vice Chair Clay Ford (R-Pensacola), serving as Chair in Representative Eric Eisnaugle's (R-Orlando) absence, ruled the amendment out of order. The bill was subsequently approved by a vote of 9-6.

HB 967 will now head to the House Health and Human Services Committee for further consideration. The Senate companion, SB 1694 by Senator Garrett Richter (R-Naples), awaits hearing in the Senate Banking and Insurance Committee.

AIF SUPPORTS legislation that will reduce the costs associated with litigation and automobile insurance premiums from the PIP no-fault system.

Another PIP reform measure was considered and passed today in the House Insurance & Banking Subcommittee. HB 1411 Relating to Motor Vehicle Personal Injury Protection Insurance by Representative Jim Boyd includes many provisions which will reduce PIP fraud and thus, business' automobile insurance premiums. HB 1411 creates direct disincentives for deceitful, "fly by night" clinics to file fraudulent claims. Specifically, the bill:

- Creates a rebuttable presumption that a claimant's failure to appear for an examination following an accident is an unreasonable refusal to submit to examination. Makes submission to examination a condition precedent to recovery of policy benefits.
- Bars PIP claimants who submit false or misleading statements from receiving policy benefits and provides for insurers to recoup funds previously paid.
- Requires certain medical entities seeking PIP reimbursement to provide the insurer with a sworn statement of compliance with eligibility requirements for reimbursement.
- Requires PIP insureds and medical providers to provide the insurer, upon request, with treatment and examination records for review by a physician.
- Requires employers, upon insurer request, to provide a sworn statement of the pre- and post-injury earnings of a PIP claimant.
- Specifies civil penalties for claimants who make false or fraudulent insurance claims.

Testimony provided before the committee today provided insight into the rampant fraud that occurs from disingenuous PIP claims, particularly within South Florida. PIP costs are rising at 70 percent a year and are expected to approach \$1 billion in 2011.

AIF SUPPORTS legislation that will rein in increased costs associated with fraudulent PIP claims. Florida's businesses and consumers should not continue to shoulder the burden of additional "fraud taxes" initiated by unscrupulous practices.

Business Regulation

Today, the House Rulemaking & Regulatory Subcommittee approved HB 993 Related to Rulemaking by Representative Ken Roberson (R-Port Charlotte). Last session, the Florida Legislature passed HB 1565 that made significant changes to the way rule making is handled in Florida. If a rule is going to cost more than \$1 million over a five-year period to implement, then the rule has to go back to the Florida Legislature for ratification.

Unfortunately, former Governor Charlie Crist vetoed HB 1565 following its passage in 2010; however, during a Special Session, the new legislature voted to override the veto for HB 1565 and have enacted it into law.

HB 993 requires agencies to include in each notice of rulemaking whether the proposed rule will require legislative ratification and resolves timing conflicts created by last year's bill.

AIF SUPPORTS efforts to keep agencies from promulgating burdensome rules and stifling further expansion and growth within Florida's economy.

The House Community and Military Affairs Subcommittee passed HB 457 Relating to Fertilizer by Representative Clay Ingram (R-Pensacola). This bill creates a state preemption for the regulation of fertilizer sale and use in Florida through the implementation of a model fertilizer ordinance. Currently, each county and city in Florida can establish its own local ordinance on the sale and use of fertilizer. This practice has led to a complicated, patchwork of local regulations on the use of fertilizer, which in turn makes it very difficult for retailers and applicators to run their businesses. In fact, some local jurisdictions in Florida ban the outright sale of fertilizer during the summer months.

AIF and other business groups have joined the fight to enact this model ordinance, which was developed through a rigorous scientific process conducted by the Department of Agriculture and Consumer Services, the Department of Environmental Protection, and the Institute for Food and Agricultural Science at the University of Florida. There has been a strong push by local government representatives to oppose this bill, but so far members of the Legislature have sided with business on the need for a common set of practices which can be followed across the 67 counties in Florida. The bill was passed on a narrow vote of 8 to 7 with two Republican members, Representatives Ed Hooper (R-Clearwater) and Matt Caldwell (R-Ft. Myers) voting against the bill.

HB 457 will now be heard by the House Rulemaking and Regulations Subcommittee.

AIF SUPPORTS legislation that develops an overarching model for fertilizer regulation that applies statewide.

Space

Today, the House Civil Justice Subcommittee unanimously passed HB 703 Relating to the Liability of Spaceflight Entities by Representative Tom Goodson (R-Titusville). During his introduction of the bill, Representative Goodson explained that this legislation will keep Florida competitive in attracting businesses related to space flight by eliminating the sunset provision in the existing liability exemption. This puts Florida on par with other states and assures prospective companies that they will continue to enjoy protection from liability for injuries due to the reasonable risks associated with space flight.

AIF appreciates the committee's unanimous support of legislation to enhance Florida's position as a leader in aerospace commerce. HB 703 will now proceed to the House Economic Affairs Committee, its final committee of reference. The Senate measure, SB 652 by Senator David Simmons (R-Altamonte Springs), has also progressed to its last committee of reference – Senate Rules – before heading to the floor.

AIF SUPPORTS this bill and the entire space agenda, and will work with Space Florida and other partners in the aerospace industry to make Florida a desirable location for aerospace commerce. HB 703 will continue to make Florida a desirable location for commercial spaceflight by extending liability protections for commercial space companies.

Environmental

HB 991 Relating to Environmental Permitting by Representative Jimmy Patronis (R-Panama City) unanimously passed the House Rulemaking & Regulations Subcommittee this afternoon. This proposed legislation makes significant changes to the environmental permitting process in Florida. Representative Patronis asked for the committee to consider a strike everything amendment after the enacting clause that encompasses the work that he has done with all of the stakeholders. The 70 page amendment is far reaching; however, the most important provisions make the permitting process more efficient. It addresses real practical problems and shortens time lines without reducing standards. The proposed legislation also eliminates duplication and streamlines the permitting process so that in many cases you have only one agency regulating a subject – instead of the current process where multiple agencies are regulating the same practice.

AIF wants to thank Representative Patronis for his commitment to work with all stakeholders on a bill that will streamline the permitting process. Time is money and Florida businesses are spending too much time on a “red tape” that includes duplication and burdensome regulations. HB 991 is a major step to rein in the permitting process.

HB 991 will now move forward to the House Economic Affairs Committee for further deliberation by its members.

AIF SUPPORTS efforts to streamline the permitting process in Florida. Businesses must be relieved from unnecessary costs and extensive waiting periods when seeking development, construction, operating, and building permits. AIF applauds Representative Patronis for understanding the importance of modernizing Florida’s environmental permitting system.

The Senate Environmental Preservation & Conservation Committee unanimously approved SB 842 Relating to Tax Credits/Rehabilitation of Contaminated Sites by Senator Jack Latvala (R-St. Petersburg). This proposed legislation increases the total amount of the Voluntary Cleanup Tax Credit Program cap (VCTC) cap from \$2 million to \$4 million, annually. The VCTC can apply toward corporate income taxes and helps with the cleanup of Brownfield sites, for purposes of redevelopment and reuse. The tax credit program continues to be a strong incentive for voluntary cleanup of contaminated sites in Florida. With a greater number of sites that are cleaned up and eligible for use, the more property that goes back on the tax rolls.

SB 842 will now advance to its final committee of reference, the full Senate Budget Committee. The identical House measure, HB 641 by Representative Debbie Mayfield (R-Vero Beach), is scheduled for consideration in the House Finance & Tax Committee on Thursday, March 24th at 11:30 am.

AIF SUPPORTS increasing the current \$2 million general revenue appropriation to \$5 million for applicable tax credits for Brownfield site cleanup.