EMPLOYER Advocate

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C o v e r S t o r y

Winning Ugly

Cover Story
Winning Ugly

by Jacquelyn Horkan, Editor

Over 60 days of regular session followed by four special sessions, Florida lawmakers confronted challenges that may just have been unprecedented in their scope and number.

The economy was in a downturn and every state in the nation faced a dilemma: cut spending or raise taxes? Thanks to the leadership of Gov. Jeb Bush, however, Florida's fiscal condition was among the healthiest in the United States. Nevertheless, lawmakers faced the stress of a limited pocketbook, which is never a cheery proposition for a politician.

Adding injury to the insult were several costly mandates placed in the constitution by voters over the past several years. From construction of a high-speed rail system to fulfilling the demands of a 10-year plan to shrink class sizes, Florida voters have charged up billions of dollars worth of new services and asked lawmakers to start paying off the balance.

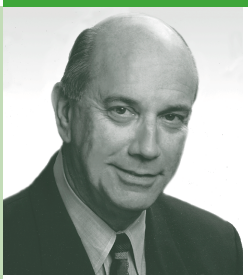
It all added up to a protracted battle over how to craft a budget that could satisfy the spending priorities of the governor and a majority of the members of the House and Senate. Making the task even more difficult were the political machinations surrounding a few high-profile insurance issues, which are always explosive because they strike at bottom-line concerns for two high-powered rivals: carriers and trial lawyers.

Resentments lingered from last year's reapportionment session, always a divisive period in the life of a lawmaker, and from then-Senate President John McKay's quixotic and stubborn and grossly unpopular campaign to "reform" the tax system.

It was ugly, but, lawmakers deserve acknowledgment for the problems they confronted. Far too much attention has been given to their lack of polish and not enough to their accomplishments. In 2003, the style was lacking but the substance was there. ■

Jacquelyn Horkan is editor of and senior writer for the publications of Associated Industries of Florida Service Corporation (e-mail: *jhorkan@aif.com*).

What's Inside



Telling the Truth

Telling the Truth

by Jon L. Shebel, *Publisher*

Contrary to the common media portrayal, politicians are not blank slates. They do not arrive in Tallahassee ready to vote in accordance with the dictates of whoever donates the most to their cause.

Rather, legislators are, for the most part, people with well-settled opinions about how society should function and how best that they, as crafters of laws, can make it operate more smoothly.

Nowhere was this more on display than in the almost year-long debate over the medical-liability crisis and how it was affecting our access to quality health care. This was a crisis that met at the juncture of our legal culture and our economic system. Where the fault line lay depended on your perception of the weaknesses inherent in that culture and that system.

Every day of the 2003 regular and special sessions seemed to bring a new study, either substantiating or repudiating the existence of a medical-malpractice crisis. The same data were interpreted, reinterpreted, and then interpreted anew. And therein lay the source of much of the friction and hostility so prominently on display. How could so much proof exist for such contradictory conclusions?

The Senate leadership decided to attack the dilemma of dueling studies by putting the evidence on trial. Over a two-day period in July, the Senate Judiciary Committee held hearings on the medical-malpractice crisis with the committee chairman, Sen. Alex Villalobos (R-Miami), placing each witness under oath before hearing testimony.

The idea of testifying under oath intimidates some lobbyists who would prefer to avoid the verbal self-control demanded by the administration of an oath. A few years ago, a lobbyist's word was his most valuable asset. Everyone knew who could be trusted and who couldn't. If a lobbyist lied, no one listened to what he had to say. Today, unfortunately, this is no longer the case with all groups and individuals. While most lobbyists still tell the truth, some organizations and their spokespeople lie to and mislead the Legislature on an ongoing basis. Lawmakers often lack the institutional knowledge and experience in specific areas that enable them to sift through the jabber to find the nuggets of truth.

It seems to me that honest lobbyists should welcome the opportunity to testify under oath because doing so gives the advantage to their knowledge and logic. Sworn testimony will apply some well-needed political hygiene to the other kind of lobbyists — the ones who will say anything to win.

Lawmaking is rarely an easy task because lawmakers are rarely given clear and incontrovertible facts that define a problem and dictate a solution. Instead, we ask lawmakers to use their judgment. Lobbying is a matter of expressing the opinions of individuals or groups of citizens on the pressing problems and the best possible solutions. Notwithstanding the rants of the so-called good-government types, lobbying is a civic obligation as well as a constitutional right.

At AIF we have always told the truth in our lobbying efforts, but during recent years we have been at a disadvantage against those who feel no compunction about misleading legislators. Nowhere was this more graphically displayed to us than in the workers' comp battle this year.

If sworn testimony will force all those who practice the craft to rely on facts, logic, and principles — rather than sound bites and emotional melodrama — all of us on AIF's governmental affairs team will welcome the opportunity to raise our right hands and swear to tell the truth. ■

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A New Focus on Health Care

A new Focus on Health Care

by Jacquelyn Horkan, Editor

Health care coverage was one of the few areas of insurance left unreformed by the Legislature during the last year. That may be about to change.

On Thursday, August 14, House Speaker Johnnie Byrd (R-Plant City) appointed Rep. Frank Farkas (R-St. Petersburg) chairman of the newly created House Select Committee on Affordable Health Care for Floridians.

Eleven days later, Gov. Jeb Bush announced the formation of his Task Force on Affordable Health Insurance.

As the names suggest, both the select committee and the task force will investigate barriers faced by Florida employers and their employees in finding affordable health-insurance coverage. During a series of public hearings, the members of both groups will seek the data and testimony they need to help them understand the problem and recommend public policy solutions.

The two groups are working separately but both have received a clear mandate to investigate ways to promote a successful free market in health insurance. This initiative on the part of the governor and the House speaker is particularly timely, coming as it does on the heels of an article in the August 13 issue of the *Journal of the American Medical Association*, calling for a universal health system run by the federal government and funded by "modest new taxes."

Just as this small group of doctors is trying to lure Americans toward an all-you-can-eat health-care system, other nations are struggling to escape from the ghastly expense of the starvation health-care diet they've inflicted on their people through universal coverage. Rather than turning the world's best health-care system into one featuring out-of-control tax burdens or long waiting lines, the governor and the House speaker have chosen to take Florida on a path that builds on the successes of our state's framework for insuring and delivering health care.

The House select committee and the governor's task force have been given the broad task of recommending strategies to increase the affordability of and access to health insurance for Florida's employers and employees. Health-care costs for almost two-thirds of Florida's residents are reimbursed through employment-based coverage. That framework is being threatened by premiums that have been averaging double-digit increases for the last several year. Both groups will be working to identify cost-drivers in health insurance that can be ameliorated through policy changes at the state level.

Expanding the affordability and availability of health-care coverage has been a key objective of Associated Industries of Florida for the last two and a half decades, since health-insurance inflation began threatening the ability of employers to offer coverage, which is one of the most desired employee benefits and has become a key to attracting and retaining quality personnel.

Rep. Farkas, the select committee's chairman, has been one of the Legislature's leading advocates for expanding opportunities for employers to purchase health insurance for their employees. At AIF we welcome his experience and his understanding of the obstacles Florida's politicians have placed in our marketplace that curtail the availability of affordable health insurance.

In the coming months, the select committee and the task force will hold public hearings around the state to receive testimony regarding the effects of rising health insurance rates on employees, employers, and health care providers. We urge all employers to monitor the work of these two important bodies and participate in the deliberations if at all possible. ■

The governor and the House speaker has chosen to take Florida on a path that builds on the successes of our state's framework for insuring and delivering health care.

Jacquelyn Horkan is editor of and senior writer for the publications of Associated Industries of Florida Service Corporation (e-mail: *jhorkan@aif.com*).

Oh What a Relief It Is

Oh What a Relief It IS

by Jacquelyn Horkan, Editor

"We wanted to rearrange the wealth in the system," said Mary Ann Stiles. "The key was to get rid of hourly fees for claimants' attorneys."

The 2003 Legislative Session was the sixth year of the business community's effort to enact meaningful and lasting reform of the state's workers' compensation system. In 2001 and 2002, passage of reform legislation seemed a sure thing, but at the last minute a workers' comp defeat was snatched from the jaws of victory.

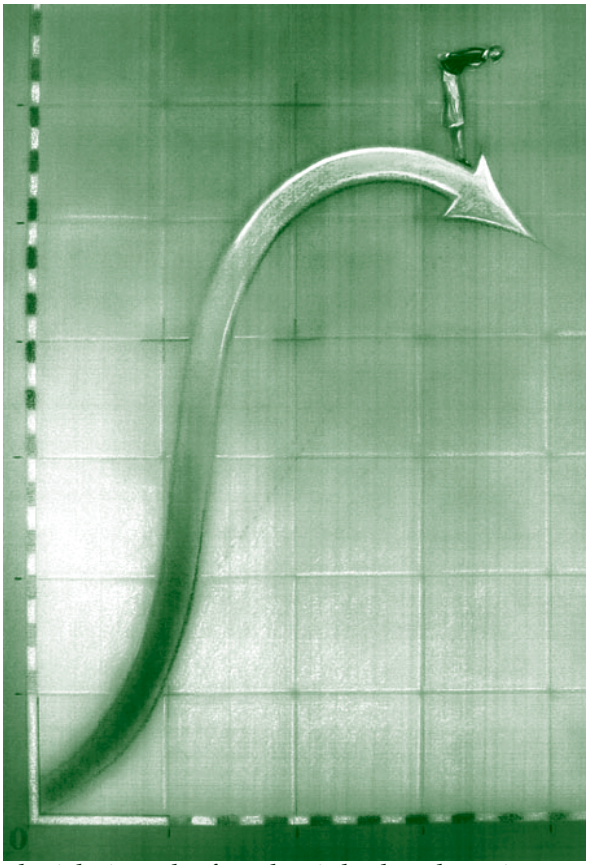
This year, an ad hoc group called the Coalition of Business and Insurance Industry once again took the lead on this issue as the depth of the crisis faced by employers worsened. Last year, NCCI, an organization that collects data from state workers' comp insurers and uses it to develop rate levels, had recommended a 21-percent increase in premiums. State regulators approved a 13.7-percent average rise. The evidence was growing that an untenable situation existed: employers could not pay rates high enough to allow insurance companies to make a reasonable profit on their workers' comp lines of business.

Thanks to the strong leadership of Gov. Jeb Bush, Senate President Jim King (R-Jacksonville), and House Speaker Johnnie Byrd (R-Plant City), the business community prevailed and a strong workers' compensation reform bill was enacted in Special Session A.

"We wanted to rearrange the wealth in the system," said Mary Ann Stiles, general counsel to Associated Industries of Florida and the founding partner of the Tampa law firm of Stiles, Taylor & Grace. "The key was to get rid of hourly fees for claimants' attorneys. That's what was driving the rising costs in the system, to the detriment of employers and injured workers alike."

Stiles has led every workers' comp reform effort since the 1970s, and knows that reform legislation can be judged on how effectively it reduces the influence of trial lawyers over the operation of the system. Attorneys are involved in only five percent of all workers' comp claims filed in the state of Florida, yet those cases represent 70 percent of the benefit dollars paid in the state.

Attorney involvement — in a system



legislation, the fact that it had to do so is illustrative of the fundamental weakness in the workers' compensation system.

"Almost everything the Legislature has had to fix since 1979 is because of interpretations of the law made by the courts," said Stiles. "They have a liberal bent and they want to legislate."

Stiles has been unsuccessful at gaining support for the elimination of the First District as the appeals court for the workers' compensation law. So far the idea has been too radical for members of the Legislature, who have yet to accept the argument that every reform the Legislature giveth, eventually the First District will taketh away.

The fear that the courts will unravel the latest round of reforms could keep carriers — who have been burned before — from returning to the state. The Office of Insurance Regulation recently approved a 14-percent decrease in rates. If the courts take apart the reforms that made that decrease possible, the effect will be market collapse.

Nevertheless, all Florida employers will experience immediate relief from the de-

coverage for employees. Carriers and self-insurers will also face more stringent penalties for actions that cause unreasonable delays in the delivery of benefits to injured workers. ■

Key Provisions of The 2003 Workers' Compensation Reforms

- Abolishes hourly attorney fees in most cases, requiring contingent fees instead, which will help lower costs by eliminating the incentive to keep litigating cases rather than working to settle them quickly in the best interests of the injured worker.

- Restricts the construction industry exemption from purchasing coverage to a maximum of three corporate officers who must each own at least 10 percent of the corporation.

- Reforms Florida's costly and misused system of permanent-total disability by eliminating the Social Security definition of permanent and total disability, which allowed injured workers, who were capable of working, to stay at home and collect workers' comp benefits; also eliminates loopholes that allowed workers to continue collecting workers' comp benefits long after retirement age.

- Increases impairment-income benefits from 50 percent of the employee's compensation rate to 75 percent, which should help reduce litigation over disability by claimants who are truly injured but had not been receiving benefits adequate enough to support them until they reached full recovery.

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Visit *http://fbnnet.com* for a complete explanation of the 2003 workers' compensation reform legislation.

Jacquelyn Horkan is editor of and senior writer for the publications of Associated Industries of Florida Service Corporation (e-mail: *jhorkan@aif.com*).

Small Step or Giant Leap?

The is article is based on the August 15 edition of FBNNET.COM's Weekly Session Update

by Jacquelyn Horkan, *Editor*

It was just over a year ago that Gov. Jeb Bush appointed a task force to investigate the root causes of skyrocketing premiums paid by health-care professionals for their malpractice insurance, and to forestall a looming crisis that could have threatened Floridians' access to health care. Following months of meetings, research, and intensive deliberation, in January the task force recommended 60 changes to current law; their conclusions were supported by 13 volumes of reports, presentations, letters, and testimony.

Despite the task force results — and a medical liability crisis that loomed larger with every passing week — the regular session ended on May 2 with an uncertain forecast on the future of medical-liability reform. Indeed, it took three special sessions devoted exclusively to the subject before lawmakers could negotiate a comprehensive package of reforms.

Art Simon, AIF's senior vice president for governmental affairs and lead spokesman for the business community on this issue had warned lawmakers, "There is no way to put a lid on rising health care costs without a cap on non-economic damages in actions arising from claims of medical negligence."

In the middle and late 1980's, while serving as a state representative from Miami-Dade County, Simon help steer medical liability reform bills through the Legislature, an experience that helped him appreciate the frustrations felt by legislators as they waded through often conflicting data in an attempt to solve this seemingly insoluble problem. "Medical malpractice is a problem that appears complex on the surface," says Simon, "but when you delve below the surface, you find that it is even more complex than it appears."

Neverless, lawmakers unraveled the complexity and CS/SB 2D was finally enacted with bipartisan support on Wednesday, August 13; it was signed into law on the following afternoon by Gov. Bush. One of the most important — and the most controversial — sections of CS/SB 2D establishes a rather complex framework for a cap on non-economic damages (see *The Mechanics of the Cap*).

The largest possible award for economic damages would be $2.5 million, and would only be available under the most egregious circumstances (a pierceable claim) or a single incident involving multiple claimants, negligent doctors, and one or more negligent facilities. That is substantially less than the "sky's the limit" amount that a jury might award under present law.

The bill's bad-faith provisions, which are not as strong as those originally proposed by the governor, are better than current law. SB 2D does not eliminate third-party bad-faith actions, but it does create safe harbors for insurers, which should help alleviate the threat that is driving the high rate of settlements in Florida.

Lawmakers ultimately rejected a proposal to roll back rates by some arbitrarily determined percentage. Instead, they opted for a rate freeze from July 1, 2003, to January 1, 2004. The Office of Insurance Regulation will develop a so-called "presumed factor," based on an actuarial analysis that will reflect the savings embodied in the legislation. Carriers will then have 60 days to make a new rate filing reflecting what will most probably be a decrease in rates after the presumed factor is applied. Carriers may seek a deviation (i.e. a rate increase or a decrease less than that applied by the presumed factor) but they will have to prove to the Office of Insurance Regulation that the deviation is actuarially justifiable. The new rates will be retroactive to September 15, 2003, and policyholders will receive premium refunds if the effective date of the policy falls on or after that date.

The legislation also provides measures for improving patient safety, including the funding of a study to identify methods for reducing preventable errors that lead to bad outcomes and medical-negligence claims. Other studies will allow the collection of better data on the medical-liability system that will lay the predicate for more aggressive reforms that may be necessary in the future.

Simon sounds a note of caution, however. "It is not enough to merely pass a bill, which is tough enough. The legislation must withstand a constitutional challenge in court or else the effort was all for naught. Moreover, the legislation must be viewed by insurance carriers and state regulators as tough enough to warrant meaningful reductions in insurance rates."

The plaintiff bar faces two options for attacking the constitutionality of the caps on non-economic damages. Almost immediately after the bill becomes law, trial lawyers or other opponents of tort reform could file a lawsuit claiming that the cornerstone provision providing for damage caps is unconstitutional on its face, or they could wait for a case that will portray the caps as particularly brutal, (i.e. where the injury is particularly

(Continued on back page)

The Mechanics of the Cap

The cap on non-economic damages created in CS/SB 2D divides medical-malpractice defendants into two categories.

- Doctors and other practitioners: $500,000/claimant; $1million maximum/incident; can be pierced to $1 million
- Hospitals, HMOs, Hospice providers, etc.: $750,000 per claimant; $1.5 million maximum/incident; can be pierced to $1.5 million

Examples:

- One claimant would receive a maximum of $500,000 from practitioners, regardless of how many defendant practitioners were involved in the suit. If there were two claimants the maximum recovery from one doctor would still be $500,000.
- If the case involved one claimant who met the standards for pierceability (which are described below), the claimant could receive up to $1 million from the doctor or doctors.
- Two or more claimants suing two or more doctors could receive, at most, $1 million.
- One claimant winning a claim against one or more facilities could receive a maximum of $750,000 from any and all facilities involved in the claim.
- If there were two or more claimants, or if the one claimant could meet the standards for pierceability, the facilities could be assessed up to $1.5 million in non-economic damages.

A separate category is created for emergency room doctors, who would be subject to caps of $150,000 per claimant for a maximum of $300,000 per incident regardless of the number of claimants or defendants.

The caps may be pierced under one of two circumstances (with the exception of the emergency-room provider caps, which cannot be pierced):

- if a case involves death or permanent vegetative state
- a catastrophic injury occurs and the trier of fact finds that a manifest injustice would occur if the lower cap were imposed; catastrophic injuries include permanent injuries such as severe paralysis, amputations, severe brain injuries, severe burns, blindness, and loss of reproductive organs

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The Initiative Reform Debate Continues

The Initiative Reform Debate Continues

by Doug S. Bailey

Consensus seems to be building that reform should be aimed at creating a more responsible process.

The ballot intitiative — which allows ordinary citizens to recommend changes to the state constitution — has come under heavy fire over the last few years.

Special interests with increasingly narrowly focused objectives have enacted programs through the initative process that the duly elected Legislature has rejected after intense scrutiny and debate. The initiative process exists to give the governed the ultimate power over those who govern them, but many supporters of the process have become concerned that it needs reform.

During the 2003 Regular Session 14 bills outlining initiative reform concepts were introduced and considered by the Legislature. Although none of these measures were enacted, the debate revealed that a majority of lawmakers favored some type of reform.

Criticism coalesces around the idea that the process sets an unacceptably low threshold for amending the constitution, which allows it to be easily exploited by high financed or well-organized special interests. Although legislators have not expressed an intention to do away with the people's access to the constitution, consensus seems to be building that reform should be aimed at creating a more responsible process.

Since the 1990s the number of active ballot initiatives has increased tenfold. There are currently 49 active ballot measures vying for a position on the 2004 ballot, and new ones are being filed at a rate of two or three a month. Florida's initiative passage rate is at 87 percent, well above the national average of 43 percent. In fact, since 2000 every popular initiative that appeared on a ballot was approved by the voters.

For all the attention they received, a majority of the proposals never made it past their first committee assignment. With the 2003 Legislature distracted by budget problems (caused in large part by certain costly constitutional initiatives enacted by voters) and some other big-ticket issues, second-tier issues had to be ignored. With these big crises behind them, the 2004 Legislature may choose to redirect its focus toward initiative reform.

Legislative passage of initiative reform, however, is only half the battle. Initiative reform would require a change in the constitution, which would require a constitutional amendment approved by the electorate. Therefore political viability is as significant a consideration to the Legislature as the initiative reform logic itself.

The 14 items of initiative reform legislation proposed during the 2003 Regular Session covered a gallimaufry of reform concepts ranging from instituting statutory initiatives to increased ratification thresholds. Here is a brief description of a few of the reform proposals that were considered.

Statutory Initiative. A statutory initiative process would allow citizens to place statutes (laws) or memorials (non-binding laws) directly on the ballot for voter approval or rejection. There are currently 21 states in the nation that allow some sort of statutory initiative process.

Sponsors of the statutory initiative resolutions aim to maintain the people's access to direct democracy while protecting the sanctity and supremacy of the constitution. Another argument that has been made in support of the statutory initiative is the political importance of giving something to the people in return for limiting their access to the constitution.

Though a statutory initiative process would possibly serve to further protect the sanctity and supremacy of the state's constitution, it would only impede and complicate the Legislature's ability to govern effectively. The public interest is much better served by fair procedures that permit contentious matters to be hashed out face-to-face rather than by the

imposition of the results of a plebiscite.

Ratification Threshold. Currently a constitutional initiative amendment can be ratified by a simple majority of those who vote on election day. During the regular session five joint resolutions were filed that would have raised the ratification threshold. The increased thresholds ranged from instituting a two-thirds or three-fifths majority, to requiring a simple majority of only those electors voting on the specific initiative, to requiring that an initiative be approved by a simple majority in each county.

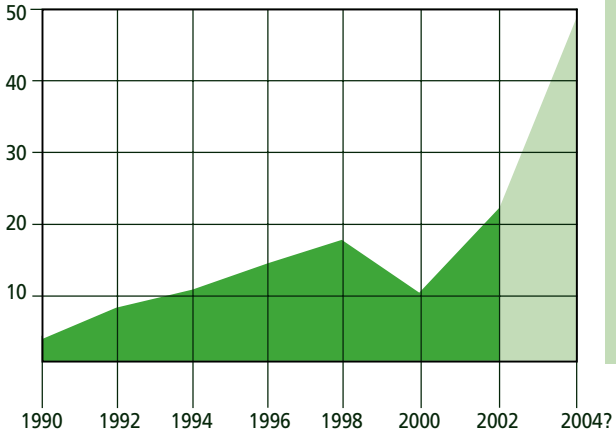
Manipulating the ratification threshold may be the simplest or most immediate way to alter the current initiative process. Asking citizens to impede their own ability to affect change in their government is a difficult argument to make, but of all the proposals made thus far, a higher threshold would probably be the most attractive to the electorate.

Judicial Responsibilities. The Florida Supreme Court plays a minor role in today's initiative process.

Some reformers have sought to increase the court's responsibilities by asking it to determine whether a ballot question is appropriate for inclusion in the state's supreme organizational document. They argue that the state's constitution is the heart of the social contract and should not be carelessly altered.

Expanded judicial requirements, according to the reform sponsors, would allow Florida's justices to protect the permanency and the supremacy of the state constitution. A common criticism of this approach to reform is that it gives power to the supreme court that it should not have.

Fiscal Responsibility. According to proponents of this school of reform thought, appropriations authority is reserved exclusively to the Legislature and, therefore, any amendment proposed by initiative must be revenue neutral. Florida's initiative process, however contains no mechanism to protect the fiscal integrity of public coffers. Some of the most recent initiatives to pass are projected to eventually cost the state billions of dollars. The full ramifications of the high-speed rail initiative and the class-size initiatives are still unrealized, but they have already made their mark on the state's appropriations process.



Active Ballot Initiatives by Election Year

Reform concepts aimed at the fiscal responsibility of the initiative process would require revenue neutrality for any proposal placed on the ballot. Other proposals would require an initiative that mandates additional spending paired with a plan to generate revenue to fund the initiative. While this is a common sense solution, it would be difficult to implement. Who would decide how much a new mandate would cost? Who would determine the revenue-generating potential of the financial proposal?

The debate over the merits of direct democracy versus a representative democracy is older than our nation. There are those who believe that the public interest can best be discovered through a deliberative process by informed and enlightened representatives. Others believe a pure democracy is essential to giving voice to the people's opposition to the elite in business, politics, and culture.

In Florida, we've added a little dollop of direct democracy to our state constitution. Sessions and elections of the near future are bound to raise the question of whether that dollop is too large, too small, or just right. ■

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What Passed

What Passed

by Jacquelyn Horkan, *Editor*

Constitutional Amendments

Workplace Smoking Ban

HB 63A, sponsored by Rep. Manuel Prieguez (R-Miami), implemented Constitutional Amendment 6, which was enacted by Florida voters in last year's general election to ban smoking in the workplace.

Most of the controversy surrounding the implementation of Amendment 6 concerned the treatment of the amendment's four narrow exceptions, particularly the first. Those exceptions are

- Stand-alone bars
- Retail tobacco shops
- Designated guest rooms at public lodging establishments
- Private residences that are not being used commercially to provide child care, adult care, or health care

HB 63A defines a stand-alone bar as one where food sales account for 10 percent or less of the establishment's gross revenues.

While most of the news stories on this issue have focussed on the exemptions from the law, such as stand-alone bars and hotel rooms, Amendment 6 bans smoking in virtually every indoor area where one or more persons engages in work. Employers will no longer be allowed to designate rooms where smoking is allowed. If employees want to light up, it will have to be outdoors.

Violations could result in fines ranging from $250 to $2,000. The fines will only be levied if a complaint is filed and the business refuses to comply.

Effective Date: July 1, 2003

Senate vote: 38-2

House vote: 106-10
Final action: Signed into law June 23

Education

Charter Schools

In 1996, the Florida Legislature authorized the formation of charter schools, which operate as public schools under a charter (or contract) between a sponsor and a school district. Charter schools were designed to inject some competition into the public-school monopoly, while allowing experimentation in educational techniques that may better serve different populations of students. Charter schools are free of many state and local regulations but are still subject to laws designed to promote the health and welfare of children, as well as standards for accountability and performance.

HB 55A, sponsored by Rep. Dennis K. Baxley (R-Ocala), formulated guidelines for the creation and operation of charter schools that are designed to increase accountability while raising standards of achievement and putting a greater emphasis on reading. The bill also abolishes the limits that had existed in state law on the number of charter schools per district; a school district may implement a local charter-school cap, subject to the approval of the State Board of Education.

There currently are 222 charter schools in Florida that serve 51,000 students. Several business have opened charter schools on or near their corporate property, which operate as a benefit for parents employed at the facilities. The law will allow the number of charter schools to expand while ensuring that the education they provide is of the highest quality.

Effective Date: July 1, 2003
Senate vote: 39-0
House vote: 86-30
Final action: Signed into law June 9

School Choice

SB 30A, sponsored by Senator Lee Constantine (R-Altamonte Springs), increased

To find out how your lawmakers voted, visit the *Voting Records* section of *http://fbnnet.com*

from $50 million to $88 million the total amount of contributions to the Corporate Tax Credit Scholarship Program, which provides up to $3,500 each to poor students who want to switch to a better public or private school. The program in funded by contributions that are then deducted dollar for dollar from the corporate income tax paid by the contributors. This program reduces the burden placed on public schools while giving parents of underprivileged students a chance to send their children to schools that better suit their educational needs.
Effective Date: July 1, 2003
Senate vote: 35-0
House vote: 77-38
Final action: Signed into law June 9

Environmental Regulation

Drycleaning Solvent Cleanup

SB 956, sponsored by the Senate Natural Resources Committee and Sen. Dennis L. Jones (R-Seminole), expanded the civil-immunity provisions of the Drycleaning Solvent Cleanup Program, which is funded by taxes and fees levied on drycleaners. Prior to the passage of this bill, the exemption from liability for cleanup costs was limited to eligible dry-cleaning facilities and wholesale supply facilities, provided that the facilities met the requirements of the law and regulations.

SB 956 extends that exemption to owners of property who lease it to the owners of the facilities from which drycleaning solvent contamination originates. The immunity provisions cover property damage claims of any kind from any person unless that person sells, transfers, or changes the land use of the contaminated property or demonstrates that actual economic damage has occurred as a result of the contamination.

The bill will prevent "double dipping" by affected property owners who recover damages for the lost value of the contaminated property and then recover more damages for rehabilitation of the property to its pre-contamination status. Now, those affected property owners will not be able to recover damages for the lost value of their contaminated properties, but their properties will be rehabilitated at no cost to them.
Effective Date: Upon becoming law
Senate vote: 39-0
House vote: 119-0
Final action: Signed into law July 11

Risk-based Corrective Action

Over the last five years lawmakers have adopted legislation applying the principles of risk-based corrective action (RCBA) to the cleanup of specific kinds of contaminated sites. HB 1123, sponsored by the House Natural Resources Committee and Representative Donna Clarke (R-Sarasota), applies RCBA principles to the remediation of all contaminated sites in the state of Florida.

RCBA uses realistic objectives for the cleanup of sites, as opposed to the idealistic objective currently used. For example, the Environmental Protection Agency often requires elimination of exposure at a contaminated site to a cancer-risk range of one in one million. RCBA allows greater flexibility in determining the goals for remediation, which allows pollution to be removed more effectively at a lower cost, thereby bringing more land back to health and to fruitful use more quickly.
Effective Date: Upon becoming law
Senate vote: 36-0
House vote: 113-4
Final action: Signed into law June 20

Insurance

No Fault Automobile Policies

In 1971, the Florida Legislature enacted a law that required every Florida driver to purchase, at a minimum, auto insurance that covered injuries in accidents regardless of fault. These no-fault, or personal injury protection (PIP), policies were intended to reduce costs of auto insurance that had been driven up by litigation over who should pay to treat injuries sustained in automobile

accidents.

Today, the issue has come full circle as the no-fault system has degenerated into a network of fraud, litigation, and criminal behavior. The Legislature debated possible reforms throughout the regular session and into Special Session A. Finally, late in May, the Legislature enacted a package of improvements to the law that will help abate the problems Florida drivers are facing in finding affordable automobile insurance.

SB 32A, sponsored by the Senate Committee on Banking & Insurance and Sen. J.D. Alexander (R-Winter Haven), did not go as far as it could have to reduce courtroom manipulation of the system. AIF had backed provisions that implemented a prompt, fair, final, and inexpensive mechanism for resolving disagreements. An expansive revision of the no-fault law was hampered, however, by a lack of agreement over whether no-fault was even worth saving. In fact, SB 32A sunsets no fault in 2007, unless it is re-enacted by the 2006 Legislature.

Lawmakers largely chose not to address the unnecessary litigation in the system, and instead focused on reducing fraud. SB 32A beefs up penalties for soliciting accident victims, presenting improper billing, and intentionally causing motor-vehicle accidents. It implements provisions designed to detect fraud by medical providers. By January 1, 2004, the Department of Health is required to establish a list of unnecessary diagnostic tests for which insurers do not have to provide compensation. This provision may help to reduce unnecessary litigation, as may another section that requires health-care providers to send a demand letter to insurance companies before filing suit.

Effective Date: October 1, 2003
Senate vote: 38-0
House vote: 97-19
Final action: Signed into law July 11

Labor

Minimum Wage

Currently, Florida has no statewide minimum wage. SB 54, sponsored by the Senate Committee on Comprehensive Planning and Sen. Lee Constantine (R-Altamonte Springs), prohibits local governments in this state from establishing a minimum wage that exceeds the federal minimum wage. The bill does, however, allow political subdivisions to establish minimum wages for their employees, for employees of private employers under contract with the political subdivision, and for employees of employers receiving direct tax abatements or subsidies from the political subdivision.

This will become a broader and more contentious issue in the years ahead, as Florida becomes a battleground for union-backed activists who want to mandate so-called living wages that they claim will alleviate poverty. Already one of the primary engines in the living-wage movement has signalled its intention to place an initiative on the 2004 ballot that would implement a constitutionally mandated statewide minimum wage of $6.15, one dollar more than the federally mandated hourly wage.

Living-wage advocates would like us to deny the economic realities of laws that mandate someone be paid at a rate higher than the value set on his labor by the market. When a job is paid at a rate higher than its value, that employment often shifts away from the person in the job and to a person who is qualified for the higher wage. Minimum-wage mandates always result in some loss of employment for those whose skills place them at the lower end of the labor-value spectrum. Rather than a poverty-alleviation measure, living-wage mandates often lead to job losses for the poorest of the working poor.

Effective Date: Upon becoming law
Senate vote: 22-13
House vote: 84-32
Final action: Signed into law June 4

Jacquelyn Horkan is editor of and senior writer for the publications of Associated Industries of Florida Service Corporation (e-mail: *jhorkan@aif.com*).

For up-to-date information on business issues, visit *http://fbnnet.com*

AIF's NEW Political Team

"We have 30 years of data to work with," says Bishop. "Anybody starting fresh today could not duplicate what AIF has."

Barney Bishop and Doug Bailey have joined Associated Industries as consultants to guide and manage the association's political operations.

These two experienced political hands will bring with them vast knowledge to augment an effort begun in 1974 when AIF created Florida Business Forum, the state's first political action committee for business; the name was changed to AIFPAC a few years ago.

Over the years the association has branched into other areas of political action. In the 1990s AIF built Florida Business United (FBU) into an aggressive program that included data collection, analysis, and dissemination — the paperwork of politics — that was applied to help promote pro-business candidates and public policies.

"We have 30 years of data to work with," says Bishop, "from political contributions to in-depth voting trends to historical demographic snapshots of legislative districts. Even with unlimited resources, anybody starting fresh today could not duplicate what AIF has."

Bishop says his goal is to "empower FBU members by providing them with authoritative information that will allow them to make better decisions more quickly for their companies."

Barney Bishop is the president and CEO of The Windsor Group, a full-service bipartisan firm that he established in 1993 to provide strategic public affairs, communications, and government relations services. He is also the **chief political consultant for AIF**, where he has applied his political and governmental expertise as a consultant for four years.

Bishop enjoys a stellar reputation for his knowledge of the political process and his insight into its inner workings. He came to Tallahassee in 1979 and after entrenching himself in Capitol matters was appointed state executive director of the Florida Democratic Party in 1991. For the past three years he has been a political commentator and analyst on Florida News Channel's The *Vasilinda Report*.

Bishop attended college on a debate scholarship and worked as a licensed private investigator after his graduation from Emerson College in Boston, giving him two crucial skills for any politician: the ability to get information and then use it to argue his point.

Bishop lives in Tallahassee with his wife Shelby, who serves on the staff of the Senate Judiciary Committee.

Doug Bailey is the Windsor Group's executive vice president; as **AIF's senior political consultant** he runs the day-to-day affairs of FBU, the association's political arm.

Doug is not new to the members of AIF. Last year, he guided the association's reapportionment and redistricting project. Portions of district maps that he drew at the request of lawmakers were subsequently adopted by the Legislature. He also organized and facilitated FBU's candidate interview process during the 2002 election cycle.

After serving on a submarine in the U.S. Navy, then serving as an Asheville, North Carolina, police officer, Doug earned a master's degree public administration from Florida State University. He is a frequent guest lecturer for political science classes and political groups.

He lives in Tallahassee with his wife Bridget and their son Seth.

Florida Business United

Associated Industries of Florida

AIF lobbyists, representing centuries of accumulated experience in politics and government, spent more than 10,000 hours in the Capitol during the 2003 Legislative Session *advocating for your business interests.*

Officers

Jon L. Shebel
President & CEO of Associated Industries of Florida and affiliated corporations ... more than 34 years as a lobbyist for AIF ... directs AIF's legislative efforts based on AIF Board of Directors' positions ... graduated from The Citadel and attended Stetson University College of Law.

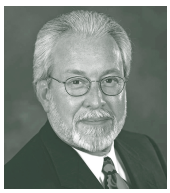
Art Simon
Senior vice president of governmental affairs of Associated Industries of Florida ... responsible for the daily operation of the governmental affairs department ... former bank regulator and deputy comptroller for state of Florida ... state representative from 1982 to 1994 ... expertise in workers' compensation, civil justice reform, and insurance ... B.B.A. and J.D. from the University of Miami, master's from Harvard University, and Ph.D. from Florida State University.

Mary Ann Stiles, Esq.
General counsel of Associated Industries of Florida ... managing partner in the law firm of Stiles, Taylor, & Grace, P.A. ... more than 30 years of legislative and lobbying expertise before the Legislature and other branches of government ... graduate of Hillsborough Community College, Florida State University, and Antioch Law School.

Chris Verlander
Senior vice president — corporate development of Associated Industries of Florida ... more than 23 years of expertise in insurance lobbying activities ... former president (1994-1997) and vice chairman (1997-1999) of American Heritage Life Insurance Company ... B.S. from Georgia Tech and M.B.A. from the University of Florida.

Consultants

Robert P. Asztalos
Buigas, Asztalos & Associates ... more than 15 years of experience as lobbyist on the state and national level ... instrumental in passage of 2000 long-term-care liability reform act ... Areas of expertise: long-term care and medical delivery systems ... Bachelor's and master's degrees from The George Washington University.



Barney T. Bishop III
President & CEO, The Windsor Group ... former aide to state Treasurer Bill Gunter ... former executive director of the Florida Democratic Party ... more than 24 years of experience in legislative and political affairs ... areas of expertise include appropriations, criminal justice, and behavioral health care issues ... B.S. in political & judicial communication from Emerson College in Boston.

Ronald L. Book, Esq.
Principal shareholder of Ronald L. Book, P.A. ... former special counsel in Cabinet and legislative affairs for Gov. Bob Graham ... 31 years of experience in government and legislative activities ... areas of expertise include legislative and governmental affairs with an emphasis on sports, health care, appropriations, insurance, and taxation ... graduate of the University of Florida, Florida International University, and Tulane Law School.

Keyna Cory
President, Public Affairs Consultants, a public affairs and governmental relations consulting firm ... more than 18 years of experience representing a variety of clients, from small entrepreneurs to Fortune 500 companies, before the Florida Legislature ... majored in political science at the University of Florida.

Jim Rathbun
President of Rathbun & Associates ... more than 14 years of experience representing individuals and entities before the Legislature, state agencies, and the governor and Cabinet ... formerly worked with the Florida House of Representatives and served as staff director of the House Republican Office ... B.S. from Florida State University.

Gerald Wester
Managing Partner, Capital City Consulting, LLC ... former chief deputy over Florida Department of Insurance's regulatory staff ... more than 27 years of lobbying experience ... expertise in insurance, banking, and health care issues ... Bachelor's and master's degrees from Florida State University.

2003 LOBBYING TEAM

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severe and the economic damages, which are not capped, are negligible).

Amid a full menu of contentious public policy issues they had to confront this year, medical-liability reform posed the most difficult challenge to Florida lawmakers. Reform would never have been possible without the open, active, and continued support of Gov. Jeb Bush and House Speaker Johnnie Byrd (R-Plant City). Senate President Jim King (R-Jacksonville) and Senate Majority Leader Dennis Jones (R-Seminole) also deserve credit for helping to forge a meaningful compromise in the public interest.

Most of all, however, special recognition is warranted for the primary negotiators, Sens. Rod Smith (D-Gainesville) and Tom Lee (R-Brandon), and their House counterparts, Reps. Dudley Goodlette (R-Naples) and Allan Bense (R-Panama City). A finer quartet of hard-working lawmakers would be hard, if not impossible, to find.

When evaluating the merits of medical-liability legislation, it is important to maintain a long view. In certain respects the bill is a mere shadow of the ideal proposed by Gov. Bush, and its best effects will not be felt for a while. Nevertheless, it is safe to say that the liability environment for practicing physicians had now been changed for the better. And, perhaps, Florida has finally turned the corner on the medical-liability crisis. ■

The Mechanics of the Cap

The cap on non-economic damages created in CS/SB 2D divides medical-malpractice defendants into two categories.

- Doctors and other practitioners: $500,000/claimant; $1million maximum/incident; can be pierced to $1 million
- Hospitals, HMOs, Hospice providers, etc.: $750,000 per claimant; $1.5 million maximum/incident; can be pierced to $1.5 million.

Examples:

- One claimant would receive a maximum of $500,000 from practitioners, regardless of how many defendant practitioners were involved in the suit. If there were two claimants the maximum recovery from one doctor would still be $500,000.
- If the case involved one claimant who met the standards for pierceability (which are described below), the claimant could receive up to $1 million from the doctor or doctors.
- Two or more claimants suing two or more doctors could receive, at most, $1 million.
- One claimant winning a claim against one or more facilities could receive a maximum of $750,000 from any and all facilities involved in the claim.
- If there were two or more claimants, or if the one claimant could meet the standards for pierceability, the facilities could be assessed up to $1.5 million in non-economic damages.

A separate category is created for emergency room doctors, who would be subject to caps of $150,000 per claimant for a maximum of $300,000 per incident regardless of the number of claimants or defendants.

The caps may be pierced under one of two circumstances (with the exception of the

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