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SIXTY
DAYS
Legislative Special Edition
The Voice Of Florida Business
A Publication Of Associated Industries Of Florida Service Corporation

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FLORIDA BUSINESS INSIGHT
The Magazine of Free Enterprise & Public Policy

March/April 1999
Volume 3, Issue 2

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Count the Capitols.
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by jon l. shebel, publisher

Primum Non Nocere

I would like to see everyone in government, elected or not, take an oath of office based on the ancient physicians' postulate of *primum non nocere* — first do no harm.

Not that people in government intentionally set out to harm the governed. They are simply the victims of one law politicians cannot repeal, the law of unintended consequences. From Lyndon Johnson's War on Poverty and its progeny of illegitimacy and welfare dependency to Richard Nixon's price controls and the resulting collapse of the economy, grand government programs to fix society's problems almost always hurt more than they help. In fact, the best we can usually hope for is a minimum of pain. The beginning of December, in one of those felicitous coincidences, brought a reminder of that.

As the Justice Department forged ahead in its antitrust suit against Microsoft, news broke of the proposed Exxon-Mobil merger. As you might remember from your high school history classes, Exxon and Mobil were created in the breakup of Standard Oil, the industrial behemoth created by John D. Rockefeller in 1870.

Standard Oil was the prime target of trust-busting President Theodore Roosevelt's war on monopolies. But how anti-competitive and anti-consumer was Standard Oil? When the company was created, kerosene sold for 30 cents a gallon. Twenty years later, when Rockefeller had captured almost 90 percent of the market, the price of kerosene had dropped to 8 cents a gallon. The very size of Standard Oil gave it the resources to cut costs.

The late economist Murray Rothbard argued that competition is a process, not a quantity. Standard Oil's market concentration didn't necessarily qualify it as non-competitive. In fact, at the time of its breakup, Standard Oil was on the verge of decline because it had failed to invest in Texas oil fields in the early 1900s. As the Justice Department was "fixing" Standard Oil's alleged restraint of trade, Gulf Oil was experimenting with offshore drilling and the corner service station. The market was doing its job just fine without the help of government, thank you.

Today the two descendants of Standard Oil are merging because of the need for greater efficiency in the petroleum industry. In this case, two smaller companies can't achieve the needed economies of scale that translate to increased efficiency, which translates to better products at lower prices for consumers.

The high-tech sector, where Microsoft has excelled, is even more complex and turbulent than the world John D. Rockefeller toiled in. And its functionings are far beyond the imaginings of those who understand the economy through two-dimensional theories and static equations. Microsoft does not operate as a self-satisfied monopoly. Instead it is haunted by the idea that its competition will engulf it in a tsunami of market-driven innovation. Need proof? With the news of the Exxon-Mobil merger, it was easy to forget that just seven days earlier we had been reading about another big merger: the $4.2 billion acquisition by AOL of Netscape Communications Corp., archrival of Microsoft and obstetrician of the Justice Department's antitrust prosecution.

The hurly-burly of the marketplace never makes for a placid existence. Political promises to ease the strain of the competitive struggle sound a beguiling song, but one that ultimately numbs the power from which our economic prosperity springs.

So as the days of the legislative session wear on, and enthusiasm for big government's exercises in compassion wax strong, here at Associated Industries we'll voice the reminder: *Primum non nocere.* ■

Jon L. Shebel is president and CEO of Associated Industries of Florida and affiliated companies.

ILLUSTRATION: ALBERTO RUGGIERI

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by frank t. white

Whose Job Is It?

Last summer a top executive at one of Florida's leading insurance companies was asked whether he had any proposals to fix problems in the state's workers' comp system. His answer, in effect, was, "That's not our problem. Let the employer groups do it."

His is an opinion common among some in the insurance industry. Workers' comp is a small cog in their profit machine. Perhaps the cost of losing that line of business doesn't justify the cost of efforts to keep it from becoming twisted and warped.

At Associated Industries Insurance Company (AIIC), we look at the matter a little differently. We are deeply involved in finding solutions to the ailments of the workers' comp system. Although we are not an employer group, AIIC was established and is owned by Associated Industries of Florida (AIF), which is an employer group. For eight decades AIF has advocated for the interests of the business community. Long before AIF ran a workers' comp insurance company, the association's lobbyists were creating far-reaching legislative solutions to the problems in that system.

The relationship between AIIC and AIF creates synergy, to use a faddish management term, that helps us take action on reform of the system. Insurance companies may be the experts on what's right and wrong with workers' comp, but employers have to create the demand for reform at the grass roots level. That demand is what gives the politicians the impetus to make changes that are unpopular with some special interests.

Right now the workers' comp system is in trouble. Rates are too low to cover the cost of benefits. At the same time, benefits are too low to compensate injured workers adequately. This is because quirks in the system enrich those who exaggerate injuries or manipulate the system through litigation, while the truly injured worker suffers.

Last year, the National Council of Compensation Insurance (NCCI), a private-sector company that recommends premium levels based on actuarial studies, recommended a 13.1-percent rate increase. Insurance Commissioner Bill Nelson rejected that increase, in part because NCCI was using data in its analysis that did not adequately reflect emerging trends. Just as importantly, however, the insurance commissioner wasn't given sufficient justification to make a decision that was unpopular with his constituents.

When rates are set artificially low, employers who are safety conscious eventually end up subsidizing the rates of those who aren't because there isn't enough leeway to reward good risks with lower rates.

In my personal opinion, NCCI's rate increase was overly optimistic; a 13.1-percent increase is not enough to cover the looming costs of the system.

The only alternative to high rates is action to adjust abuses that are artificially inflating costs. It's a simple rule of business: You either raise prices or you lower costs. Unless the Legislature takes action soon, workers' comp will again become the sick man of the insurance industry. More carriers will leave the market, forcing more employers into the residual market, the insurer of the last resort, where rates are three times higher.

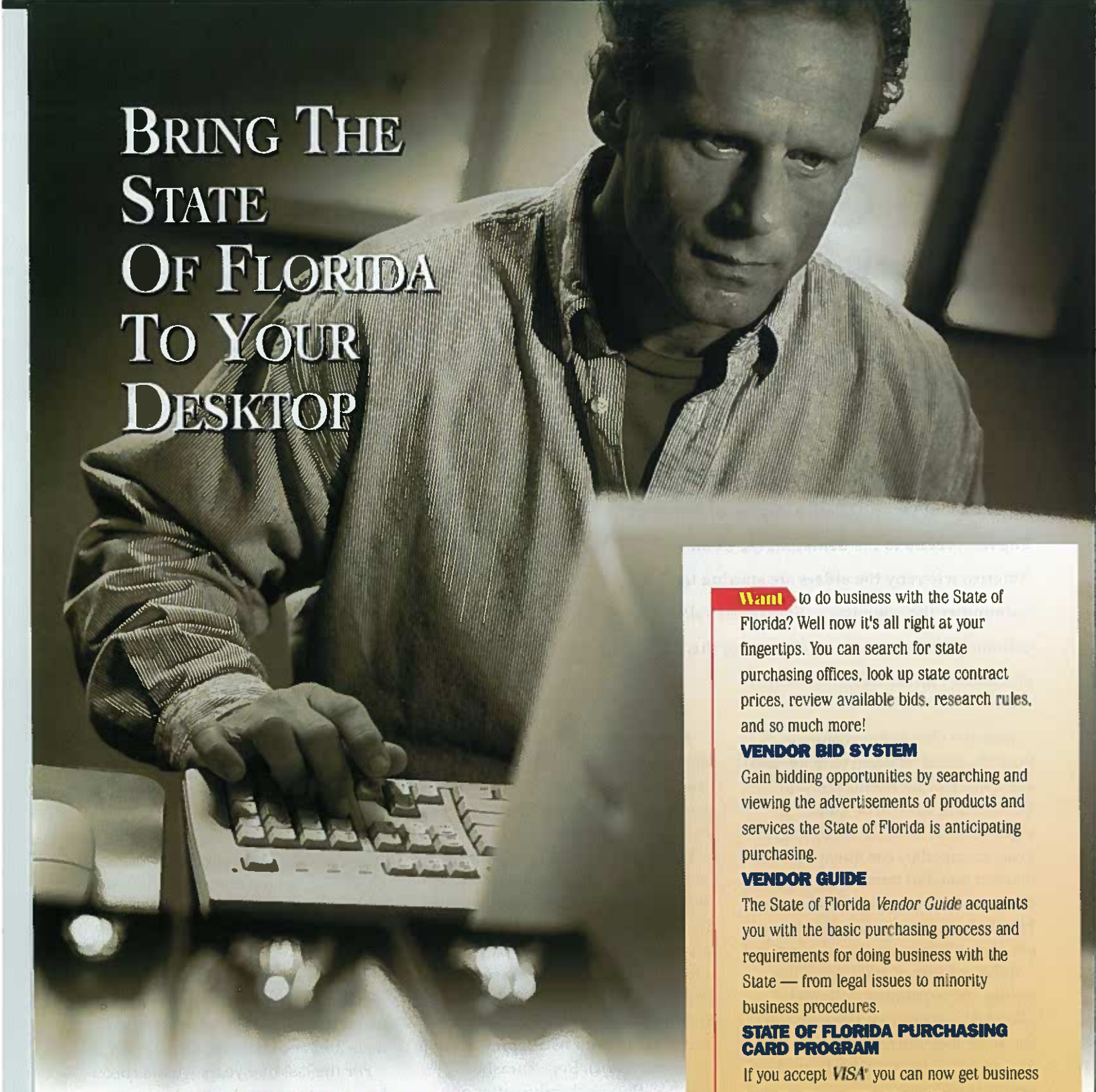
Keeping rates artificially low only postpones the day of reckoning and, in postponing it, makes it more painful.

Politicians won't listen to insurance lobbyists who tell them that higher rates are necessary. They will listen to employers who tell them that they'd better do something because higher rates are unaffordable.

That's why AIF and AIIC will, together, take on the job of fixing workers' comp. ■

Frank T. White is executive vice president and COO for Associated Industries Insurance Services, Inc.

ILLUSTRATION: PETER TILL



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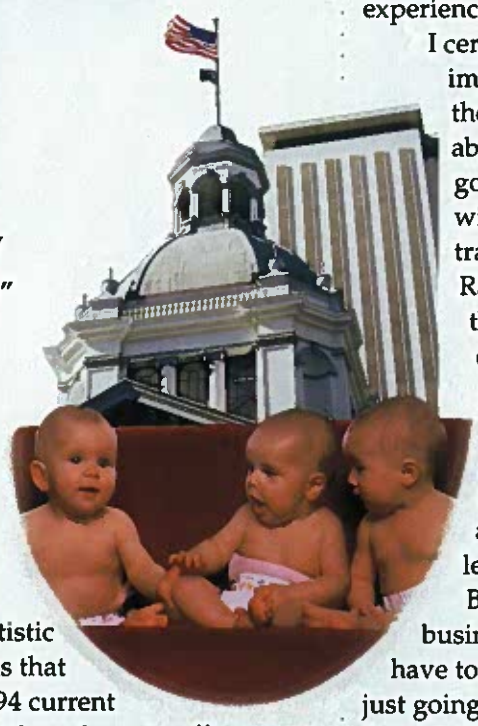
by marian p. johnson

The Childhood Of The Florida Legislature



Have you noticed all the news stories lately about the so-called "Graying of America?" The term refers to the demographic trend in America whereby the elders are starting to outnumber the youngsters. One of my fellow columnists is even writing about it in this edition of *Florida Business Insight*.

Trust the Florida Legislature to buck the trend. Starting with the 2000 elections, Florida lawmakers and Cabinet officials will be limited to eight years in office. Once the eight years are up, they can always run for another seat, but term limits mean that even as America gets older the Florida Legislature will get younger. Oh, boy, will they have to grow up fast.

In November of 2000, 66 of the sitting 160 legislators will not be allowed to appear on the ballot for the seats they currently hold. That's 41 percent of the total body, broken down as follows:

- 55 Representatives, or 46 percent
- 26 House Democrats, or 55 percent
- 29 House Republicans, or 40 percent
- 11 Senators, or 28 percent
- 3 Senate Democrats, or 20 percent
- 8 Senate Republicans, or 32 percent

That statistic also means that the other 94 current lawmakers have been in office for six years or less.

We're already seeing the effects of term limits on leadership. Both Senate President Toni Jennings (R-Orlando) and Speaker of the House John Thrasher (R-Jacksonville) will be ineligible for re-election to seats they now hold. While Sen. Jennings has been in the Legislature for 22 years (four as a representative, 18 as a senator), Rep. Thrasher reached the speakership after only six years in office.

Consider some of the years of experience that will be lost. Overall, with 13 seats, Orange County will lose 72 years of legislative experience. Duval County will lose even more — 79 years held by 11 lawmakers. And when you take a look at the committees, the effect is even more startling.

For example, Senate Banking and Insurance will lose 120 years of collective legislative experience; Senate Rules 108 years. The House Education Appropriations Committees will lose 64 years of collective experience.

I certainly do not wish to imply that the fresh faces in the Legislature will not be able to govern and make good decisions. However, wisdom is not a personality trait we are born with. Rather, wisdom is acquired through many years of experience. The inexperienced legislator will have to be a quick study as the legislative process is rapid fire, with so many topics to address and so much to learn.

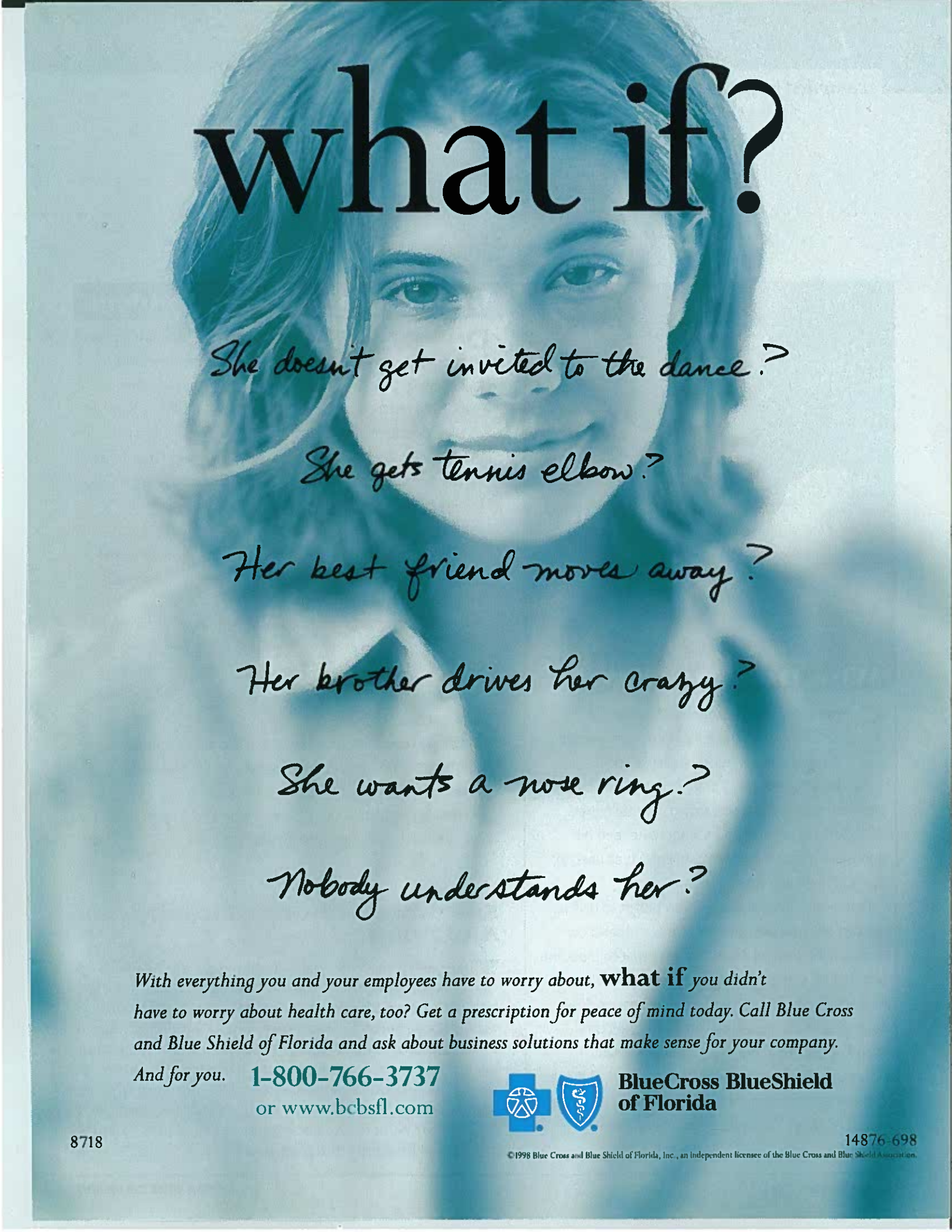
Because of term limits, the business community is going to have to work harder since there's just going to be more work to do. It is not going to have the luxury of safe seats any more, where old friends of business never face a challenge "so we doesn't really have to worry about them."

Every seat is going to be up for grabs every eight years. The entire business community is going to have to do more than just support candidates. It is going to have to make sure there are candidates we can support.

For the last five years AIF has been building the infrastructure to carry out that task. In the months ahead, you'll be hearing more about our plans to use that infrastructure to combat the political Y2K bug: term limits. ■

Marian P. Johnson is senior vice president of political operations for Associated Industries of Florida Service Corporation.

PHOTO ILLUSTRATION: DWIGHT SUMNERS



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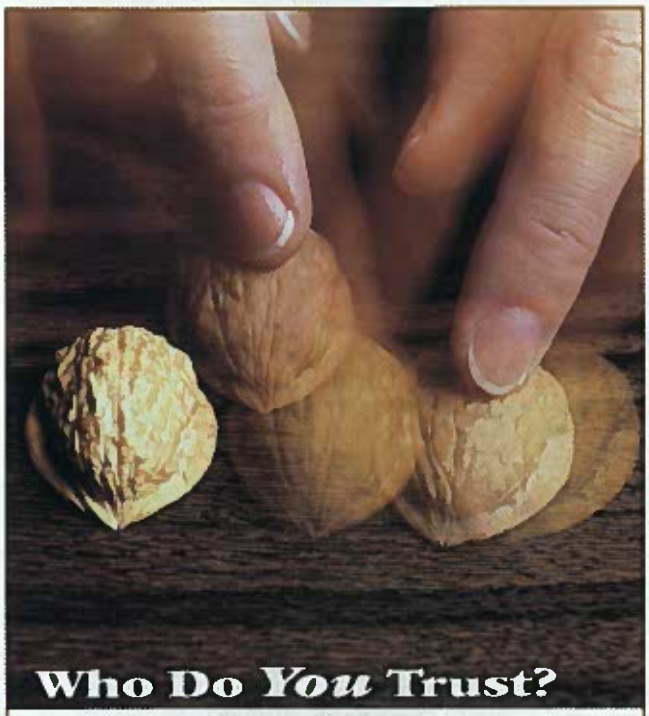
compiled by jacquelyn horkan, editor



Who Do *You* Trust?

Further proof that President Bill Clinton's declaration that, "the era of big government is over," was just a meaningless applause line ...

The day after this year's State of the Union, the president spoke to a union crowd in Buffalo, New York. Among other things, Clinton defended his opposition to tax cuts: "We could give it all back to you and hope you spend it right."

That's right, our president doesn't want to give us tax cuts because we can't be trusted to spend our money right. Instead, he wants to keep it to mask the fact that his surplus is really a budgetary shell game. Instead of spending the whole Social Security Trust Fund surplus on more social programs, he's only spending part of it, putting off the day when government will have to raise taxes to fund all those IOUs it's cramming in the trust fund now.

And he doesn't trust *us* to spend our money. ■

Honey I Shrank The Problem

President Bill Clinton and Vice President Al Gore have made suburban sprawl one of their top public enemies. Here in Florida, we've been fighting "unsustainable" growth with the weapons of red tape and citizen activists. According to Samuel R. Staley, director of the Urban Futures Program for Reason Public Policy Institute, however, we're wasting our time.

In *The Sprawling of America: In Defense of the Dynamic City*, Staley published the result of his study of land-use trends. Among his findings:

- Less than 5 percent of the nation's land is developed, and three-quarters of the nation's population lives on 3.5 percent of its land area.
- More than three-quarters of the states have more than 90 percent of their land in rural uses, including forests, cropland, pasture, wildlife reserves, and parks.
- Acreage in protected wildlife areas and rural parks exceeds urbanized areas by 50 percent.

Staley also concludes that many of common assumptions about sprawl, including its costs and environmental degradation, are either inaccurate or exaggerated.

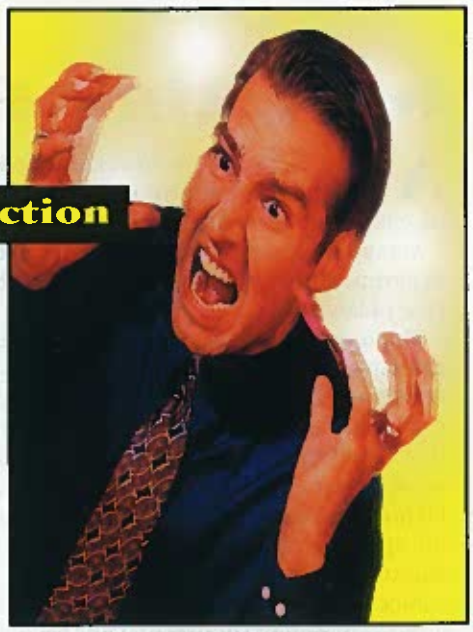
To view a complete copy of Staley's report, visit Reason Public Policy Institute's web site (*http://www.rppi. org*). ■

Speaking Of Social Security And Taxes

There are some who want to eliminate the $72,600 cap on wages subject to the 12.4 percent payroll tax. The president himself hasn't shut the door on this provision to "save" Social Security. How much money would getting rid of the cap raise? A cool $425.2 billion, making it the largest tax increase in the nation's history, dwarfing the record set by the current title-holder, Clinton's 1993 increase of $240 billion. How much "saving" of Social Security would it accomplish? A mere six-year extension (from 2013 to 2019) of financial health for the program. ■

PHOTO ILLUSTRATION: GREGORY VOWELL

A Chemical Overreaction



The January edition of the *Journal of American Medicine* carried results of a study indicating that heredity plays almost no role in the development of Parkinson's disease after age 50. Newspapers across the nation picked up the story after the journal held a press conference trumpeting the study results. In article after article, however, the real story was not about the study but the nation's miseducation at the hands of radical environmentalists.

As Michael Fumento of the Hudson Institute points out, the authors of the study drew the logical conclusion that since the cause of the disease wasn't genetic, it must be environmental. Reporters responded by misinterpreting the word "environmental," which includes anything from diet to weather patterns, to mean "chemical." According to Fumento, the study made no mention of pesticides, but virtually every newspaper story blamed herbicides and pesticides for triggering the disease.

There you have it, further proof that evidence is not necessary when blaming industry and chemicals for disease. ■

Now *There's* A Solution

"Italian defense-industry executive tells *Armed Forces Journal International* about preparing for millenium bug: 'In Italy, Y2K will not present any special problem. Things are always going wrong here, so it will be nothing unusual.' " (*From the Feb. 8, 1999, edition of* National Review) ■

An Actionable Offense

In the 1970s some Woburn, Mass., parents noticed that a suspiciously high number of children were being diagnosed with leukemia. In fact the incidence rate was about four times the national average. What followed was a lawsuit, a book deal, and movie rights.

At the beginning of this year *A Civil Action*, starring John Travolta, opened to packed movie houses across the nation. Based on the book of the same title, *A Civil Action* is the story of a young personal injury lawyer who bankrupts himself and his firm trying to pin the blame for the Woburn leukemia deaths on two large, wealthy corporations.

The heartbreaking morality play, advertised as factual, was a fiction. Yes, the illness, the lawsuit, and the bankruptcies really did occur, but the story was one of a junk lawsuit based on junk science.

According to the plaintiffs the leukemia was caused by the consumption of well water polluted by, among other things, the common industrial solvent trichloroethylene (TCE). Pollution was a problem in Woburn, a heavily industrialized area. True to the earlier lax attitudes about pollution, area companies had been disposing of harmful chemicals by dumping them on the ground. and in the nearby Aberjona River in the early decades of the century. But was pollution making the children sick?

Families of seven children and one adult decided it was so they retained Jan Schlichtman, a trial lawyer with a moderate record of success. In accordance with the principles of his profession, Schlichtman filed suit against those who could pay without much concern over their actual liability. Schlichtman charged that the companies had contaminated the wells with TCE and that TCE caused leukemia.

According to the Hollywood scriptwriters, *A Civil Action* is the story of a greedy plaintiff lawyer who is eventually redeemed by the justice of his clients' cause but is ultimately defeated by the greed and callousness of his powerful corporate opponents who can outwait and outspend him.

In fact, Schlichtman lost his case because he overplayed his hand. There was no evidence to indicate that the defendants had poisoned the wells with TCE or that TCE even caused leukemia. He simply did not have a case.

Just as Schlichtman didn't need facts to file a lawsuit, so Hollywood didn't need them to make a "factual" movie. ■

What's In A Name?

Fred Levin, as some may recall, is the slippery Pensacola trial lawyer who wrote the law that made possible the state's tobacco lawsuit, and then helped sneak it past the Legislature.

Although Levin did not take part in the lawsuit, he collected millions in fees after the settlement as a reward for his help in getting the law enacted. In the past his illegal gambling on football games earned him criticism from The Florida Bar and a reprimand from the Supreme Court.

Thus did those who still hold the legal profession in some esteem suffer upon learning that the University of Florida had decided to name its law school after this less-than-sterling barrister. The price for this stain upon the reputation of the school? A mere $10 million.

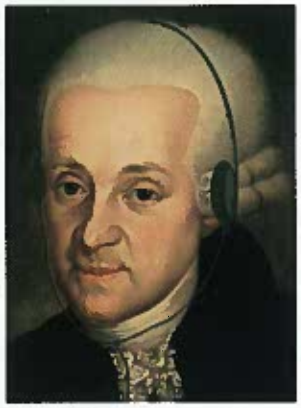
There are nine other lawyers in Florida made filthy rich by the settlement and only six other law schools in Florida. Let the bidding begin. ■

In A Risk-Free World

A Jan. 24, 1999, *St. Pete Times* article showed the illogical extremes reached in a lawsuits-and-regulations regime based on the idea that risk and danger can be eliminated from the world.

According to reporter Kent Fischer many Florida high schools ban any science experiment that involves living tissues, sharp objects, and flames. The reason? Fear of lawsuits.

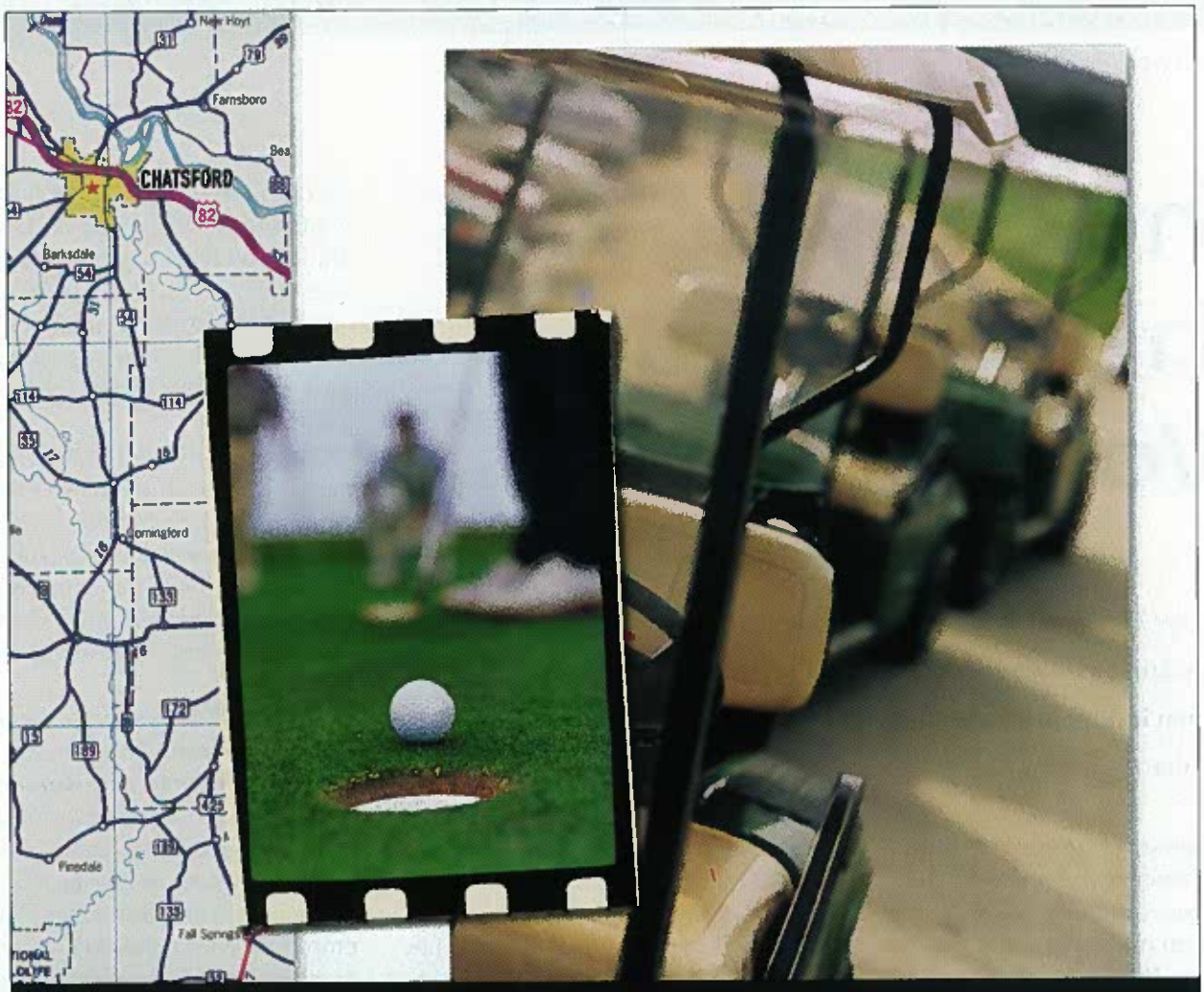
The most absurd example Fischer cited of liability anxiety involved an honor student's idea for a science fair project. Cynthia Elkhouly, a senior at St. Petersburg's Lakewood High School, wanted to measure the effect of listening to classical music on short-term memory retention. Her experiment would involve some classmates, some Mozart, and some test questions. Before Elkhouly could proceed, however, she would need the approval of her teacher, her school principal, and two doctors. "Then," writes Fischer, "all 39 'test subjects' had to sign waivers promising not to sue if the experiment somehow went haywire."



CREDIT: ET ARCHIVE, LONDON

The paperwork was demanded by the science fair's strict adherence to international protocols designed to halt the kind of gruesome human experimentation conducted by Nazi doctors.

Thus is intellectual inquiry perverted by a civil justice system that only teaches one lesson: Rapacious and uncontrolled trial lawyers give birth to junk lawsuits that eventually give birth to junk restrictions. ■



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by kathleen "kelly" bergeron

The Graying Of The American Workforce

Today 12 percent of all Americans are aged 65 or older; by 2030, that age group will represent 17 percent of the population, a rise from 31 million in 1999 to 52 million 30 years from now. As America gets older, so will the workforce.

The aging workforce is a direct consequence of the so-called Baby Boom generation, the 43-million infants born in the years immediately following World War II. Thanks to increased life and health expectancies, demographic trends, and changes in social legislation, the Baby Boomers are prolonging their careers.

What affect does an older workforce have on employers? The Age Discrimination Employment Act (ADEA) provides protection for individuals aged 40 and older. The ADEA, which prohibits employers from making employment decisions based on age, applies to private employers as well as state and local governments.

The Older Workers Benefit Protection Act (OWBPA) adds "teeth" to the ADEA by prohibiting discrimination against older workers in all employee-benefit, reduction-in-force, and early-retirement plans. Some of the provisions under OWBPA are complicated and should be carefully examined before confronting benefit compensation issues involving older workers.

Although the percentage of claims based on age discrimination has been declining since 1995, employers shouldn't drop their guard. They must eliminate any indication of age bias in the workplace, ensuring that no grounds exist for an age-discrimination claim. Every employer should review its hiring practices, evaluation and promotion systems, retirement programs, and termination procedures to ensure that all employment practices are blind to age.

When advertising for positions, don't specify or limit the age of applicants. Avoid terms such as "student or recent college graduate" and "young and energetic." There are certain jobs that can specify age as a "bona fide occupational qualification," or BFOQ. These types of occupations usually involve public safety, as in fire, police, and aviation services. Before you advertise a position with an age restriction, make sure your job description can meet the requirements established for a BFOQ.

Another indication of age discrimination could be requiring applicants to complete an application that requests age, birth date, or date of graduation from high school. These questions are not unlawful but can be used to support a claim of age discrimination by an over-40 applicant who is not selected for the position.

Other employment practices, particularly promotions and terminations, must clearly rely on performance as the sole basis for decision-making. And while all employment actions must be accurately documented, any reference to age should be avoided.

Beware of the actions of other employees. Don't let younger employees refer to a co-worker as old man or old woman, or make fun of old-fashioned or out-of-date clothing, habits, or beliefs. Make clear that making fun of an older employee with harassing or jeering comments is not acceptable. If you as an employer are aware of such behavior, you must eliminate it immediately. A claim could be made that you discriminated against older employees by condoning an atmosphere where older workers were made to feel uncomfortable.

Go ahead and develop written policies and procedures now — before the need arises. A policy that originates with the accommodation of one older employee will be suspect and may give the perception of age discrimination.

Employers must remain adaptable to the changing workforce, adopting policies to ensure that all employees are treated fairly and without prejudice. ■

Kathleen "Kelly" Bergeron is executive vice president and chief of staff for Associated Industries of Florida and its affiliates.

Workers' Comp By The Numbe

Last year actuaries at the National Council for Compensation Insurance, the organization that recommends Florida's workers' comp insurance rates, suggested a 13.1-percent increase in premiums. Drawing the conclusion that the system wasn't working right didn't involve a huge leap of faith. Understanding why the system isn't working right is a little trickier.

After 21 years in the practice of workers' compensation law, I've seen plenty of anecdotal evidence that indicates where the system is failing and why, but sometimes a more in-depth analysis is necessary. At the beginning of this year I finalized the fifth edition of the *Closed Claims Study*, a review and analysis of insurance-carrier cases involving injured employees who either lost three weeks of work or should have received three weeks of benefits.

While the Bureau of Research and Education at the Department of Labor and Employment Security also compiles workers' comp statistics, the data in the *Closed Claims Study* are very different in nature. They come directly from actual case files, making the information, in my opinion, more reflective of the true nature of workers' comp cases, the results of those cases, and the effects injuries have on the employees, employers, insurance carriers, and attorneys involved.

WHEN AND WHERE ACCIDENTS HAPPEN

One of the striking results of the 1998 study was the short amount of time between the hire date and the injury. In 1988 only 2.5 percent of all injuries involved employees who had been with the employer for six months or less; today they account for 33 percent of all injuries. The roots of this trend are unknown, but possible contributing factors could be a lack of training or inadequate workplace safety. There is also the possibility that welfare reform is creating an influx of employees who are unprepared for the discipline required in the world of work, but such a conjecture is purely speculative. While drawing conclusions about causes may be premature, this statistical increase from 2.5 percent to 33 percent is a trend that bears watching.

PHOTO: MICHEL TCHEREVKOFF LTD.

by mary ann stiles

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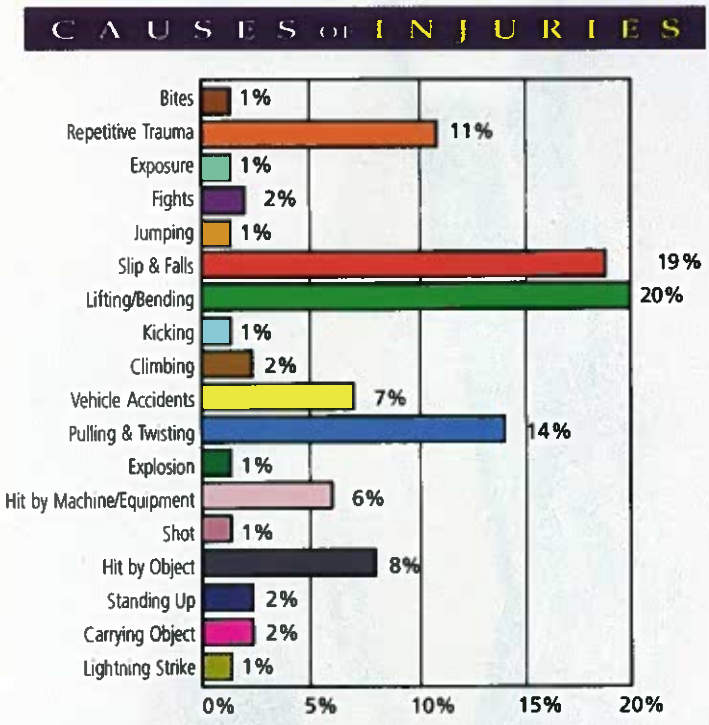


Source: 1998 *Closed Claims Study*

One curiosity has always been the day of the week when most accidents occur. While many would nominate Monday, the 1988 study showed the frequency of accidents was evenly spread throughout the week, with the exception of Sunday when few accidents occur. In fact, the most common day for accidents in 1988 was Wednesday, with an average of 18 percent. The 1998 study revealed that Friday has now gained the honor of most accident-prone day with an increase of nearly 100 percent (from 16 percent in 1988 to 31 percent in 1998).

Lifting objects, improperly or otherwise, and slipping and falling continue as the most common sources of workers' comp injuries, making up nearly 40 percent of all lost-time cases in 1998 and 1988. Worth noting is a 1,000 percent increase in the number of repetitive trauma cases, such as carpal tunnel syndrome, over the last 10 years. Repetitive trauma injuries are highly litigious, a trend that is likely to continue.

Strains, fractures, and sprains continue as the most frequently litigated physical injuries, accounting for approximately 67 percent of all litigated cases. While the back continues to be the most commonly injured body part, there has been an 18-point drop in the frequency of litigation over back injuries (from 43 percent in 1988 to 25 percent in 1998). The neck has replaced the knee as the second most commonly injured part of the body.

The construction industry is still the most injury-prone occupation in Florida. In 1988 the construction industry accounted for 23 percent of all the litigated cases studied; in 1998 the number dropped to 18 percent. This number will probably rise in the coming years, due in part to the changes made to the workers' comp law during the 1998 legislative session. Those revisions grew out of the statewide grand jury investigation of fraud in workers' comp, along with reports prepared by several government agencies, indicating that many in the construction industry abused a loophole in the law that allowed construction companies to opt out of the workers' comp system under certain circumstances.

We can safely predict that these changes in the law will cause an increase in workers' comp costs for the construction industry (and an increase in litigated cases), not because more injuries will occur, but because more will fall under workers' comp. Increased workers' comp coverage in the construction industry might motivate some to file claims for coverage for injuries that they might have ignored when no safety net was available.

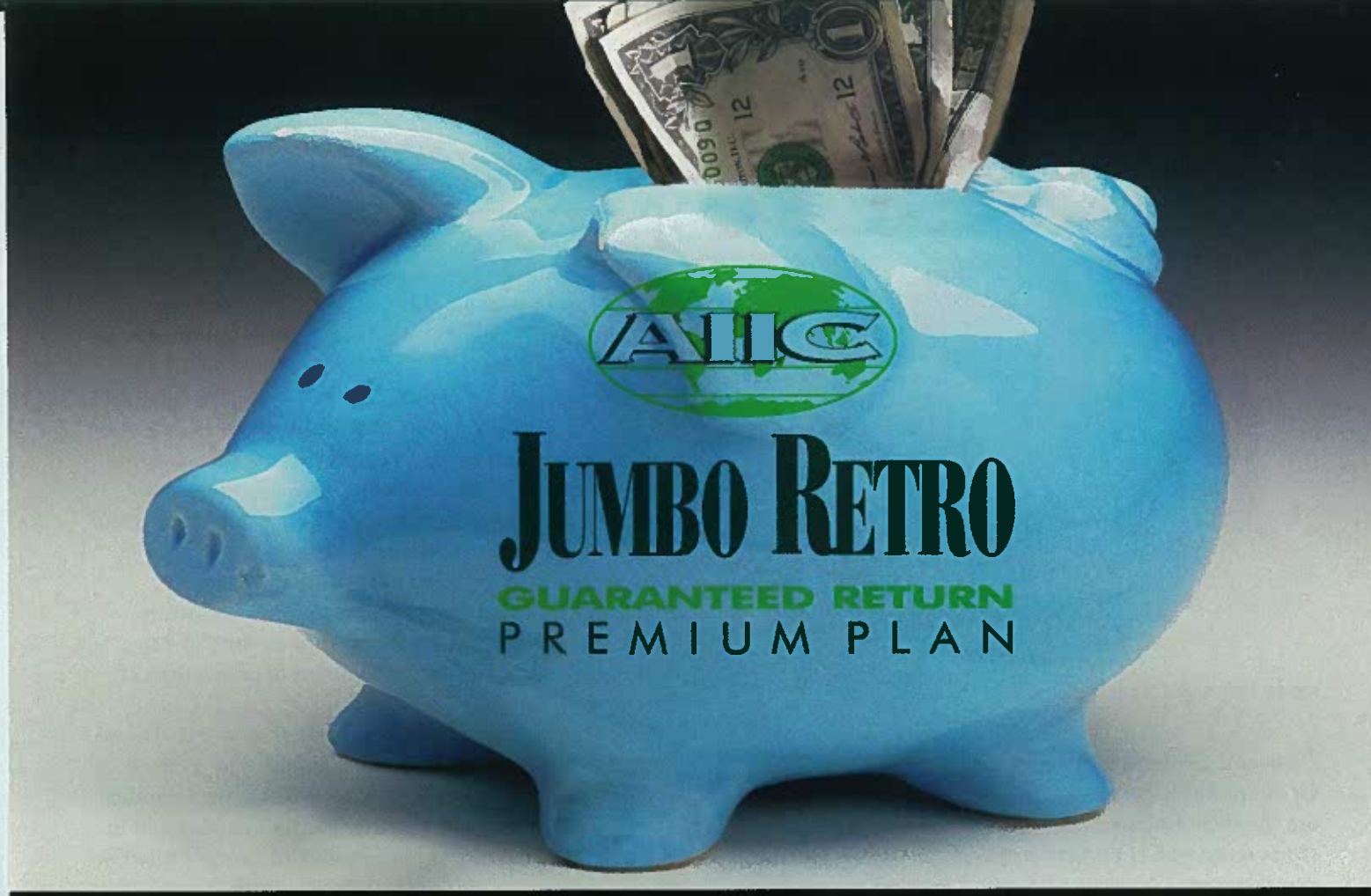
THE TREATMENT OF INJURIES

Another interesting statistic uncovered in the study was the decrease in the number of employees seeking emergency room treatment after an injury, from 65 percent 10 years ago to 45 percent today. The introduction of managed care is probably the likely source of this change. Insurers have only been required to offer a managed care component since Jan. 1, 1997, however. Until experience gives us more reliable data on the effect of managed care we cannot draw conclusions.

The 1988 study found that 3 percent of the employees, at the urging of their attorneys, visited a physician without getting any prior approval or authorization. That figure is up to 19 percent in 1998. Doctor-shopping (the term given to the practice of manipulating medical expenses and treatment to inflate claims costs) appears to be on the rise despite the introduction of managed care. Referrals by the injured worker's attorney account for nearly 20 percent of all physician referrals, exceeded only by referrals from the initial treating physician. The phenomenon was nearly non-existent 10 years ago. It is probably due to the decrease in benefits to employees when they reach maximum medical improvement. Associated Industries of Florida is proposing a revenue-neutral increase in benefits to employees to try to reverse this trend.

Perhaps the most startling transformation is in the number of injured workers who are treated by more than one doctor, from 78 percent in 1988 to 94 percent in 1998. In spite of that, there has actually been a decrease in the average number of physicians involved in each case. The average number of treating physicians for 1980, 1982,

GRAPH: GREGORY VOWELL



Our Workers' Comp Plan Has Some Great Things In Store For You — *Guaranteed!*

Our Jumbo Retro Program gives you something you can bank on — results! Of all our initial Jumbo Retro accounts, 90 percent received a Return Premium check.

Not only that, but 95 percent of those insureds received the maximum return based on their individual premium size.

The Jumbo Retro Program, designed for small- to medium-size businesses, employs aggressive loss control and safety programs and rewards insureds with a *guaranteed* return of premium up to 20%.

Other companies can only offer dividend promises. Associated Industries Insurance Company is approved by the Department of Insurance to *guarantee* a return of premium.

Workers' Compensation Insurance Return Premium Plan

Premium Range	Incurred Loss Ratio: Less Than 10%	10% to 19%	20% to 29%	30% to 39%	40% to 49%	50%+
	Percentage of Return Premium					
Less than $5,000	5%	3%	3%			
$5,000 to $10,000	6%	5%	3%	3%		
$10,000 to $20,000	8%	6%	5%	3%		
$20,000 to $30,000	10%	8%	6%	5%	3%	
$30,000 to $50,000	12%	9%	7%	5%	3%	
$50,000 to $75,000	15%	12%	9%	6%	3%	
$75,000 to $100,000	17%	13%	10%	6%	3%	
Greater than $100,000	20%	15%	10%	6%	3%	

If you're safe and you'd like money back for your efforts, your advantage is AIIC's Jumbo Retro Program. Discover the difference you can bank on!

NO OTHER PROGRAM IN FLORIDA CAN DO WHAT JUMBO RETRO DOES. FEWER LOSSES EQUALS A GREATER RETURN OF YOUR PREMIUM DOLLARS — *GUARANTEED.*

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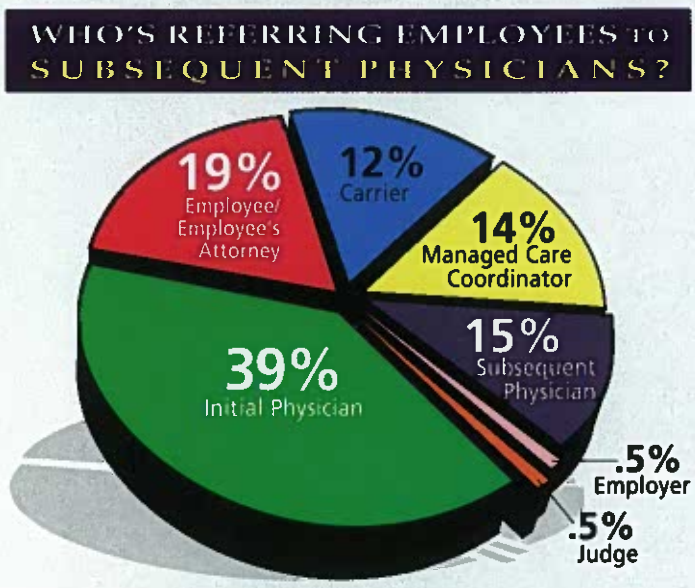


Source: 1998 *Closed Claims Study*

1988, and 1998 respectively were 2.4, 3.5, 5.4, and 5.25. Of all medical specialists, orthopedists and radiologists are the most frequent providers of medical treatment (28 percent and 11 percent respectively) in the workers' comp system.

One final medical statistic of note concerns second opinions. In 1988, 16 percent of all physician referrals arose out of a request for a second opinion; in the 1998 study that number had climbed to 36 percent. Whom the requests are originating with (employees, employers, attorneys, or a treating physician) is unclear and warrants further study to determine if this is becoming a tactic to manipulate the system.

1-800-LAWSUIT

The greatest number of litigated lost-time cases are brought in Dade county. Southeast Florida has always generated the greatest number of litigated cases and this continues to hold true. The other counties with high rates of litigation in workers' compensation cases are Orange and Duval.

In 1988, 43 percent of the cases involved attorneys for the injured workers. In the 1998 study, that number is up to 62 percent of all cases. In response, workers' comp insurers hired defense attorneys in 58 percent of all cases. On average, a claimant hired an attorney 175 days after the injury occurred, down from 408 days in 1988. The average number of days to ultimately close a litigation file is also down, however. The 1988 study found that the average case stayed open for 875 days, while in 1998 that number was down to an average of 560 days.

The 1993 rewrite of Florida's workers' comp law mandated mediation in disputes over claims. The 1998 study revealed that the mediation process is resolving a number of cases before the final hearing. Mediation occurred in 54 percent of all cases; of those cases, 61 percent resulted in the total resolution of the disputed issues.

The final area of analysis that deserves mention is the ratio of benefits paid to total expenditures for the workers' comp system. Between 1988 and 1998 there occurred a substantial decrease in the amount of money received by the injured workers, yet medical expenses were up and the percentage of money going to the claimants' attorneys stayed consistent. ■

Mary Ann Stiles is the founding partner of the law firm of Stiles, Taylor & Grace, and serves as general counsel to Associated Industries of Florida.

CLOSED CLAIMS STUDY METHODOLOGY

The 1998 *Closed Claims Study* contains an analysis of over 150 categories of data from hundreds of files on injuries that caused workers to miss three weeks or more of work or that qualified them for three weeks of benefits.

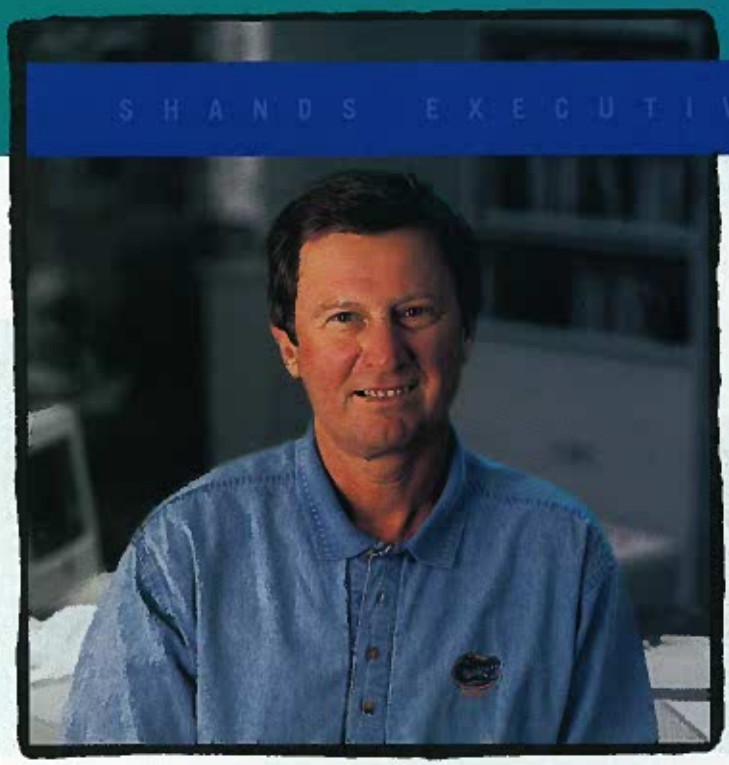
The data were drawn from the case files of three Florida insurance companies, including Associated Industries Insurance Company.

Previous closed claims studies were completed in 1978, 1980, 1982, and 1988. The parameters of the current study were designed to mirror those of previous studies so that the body of data developed over the last 20 years could be reliably compared.

The trends discovered in the studies are particularly useful in pointing out weakness in the workers' compensation system and, in some cases, where the abuses are originating. This information is then used by Associated Industries of Florida to develop its legislative priorities in order to improve the effectiveness and efficiency of Florida's workers' comp system. ■

GRAPH: GREGORY VOWELL

SHANDS EXECUTIVE HEALTH CENTER



In today's competitive business world, there's a lot riding on every decision you make. And maintaining good health is critical to performance.

Shands Executive Health Center at the University of Florida can give you the edge you need. Our team of UF physicians offers comprehensive health assessments and screenings using state-of-the-art medical diagnostic technology, along with personal consultations and recommendations to help you reduce health risk factors and improve your life.

TO WIN YOU'VE GOT TO STAY IN THE GAME.

Choose from different Executive Health Programs, from half day to full day in length. And make good health part of your winning game plan - for yourself and your executive team.

SHANDS
Executive Health Center
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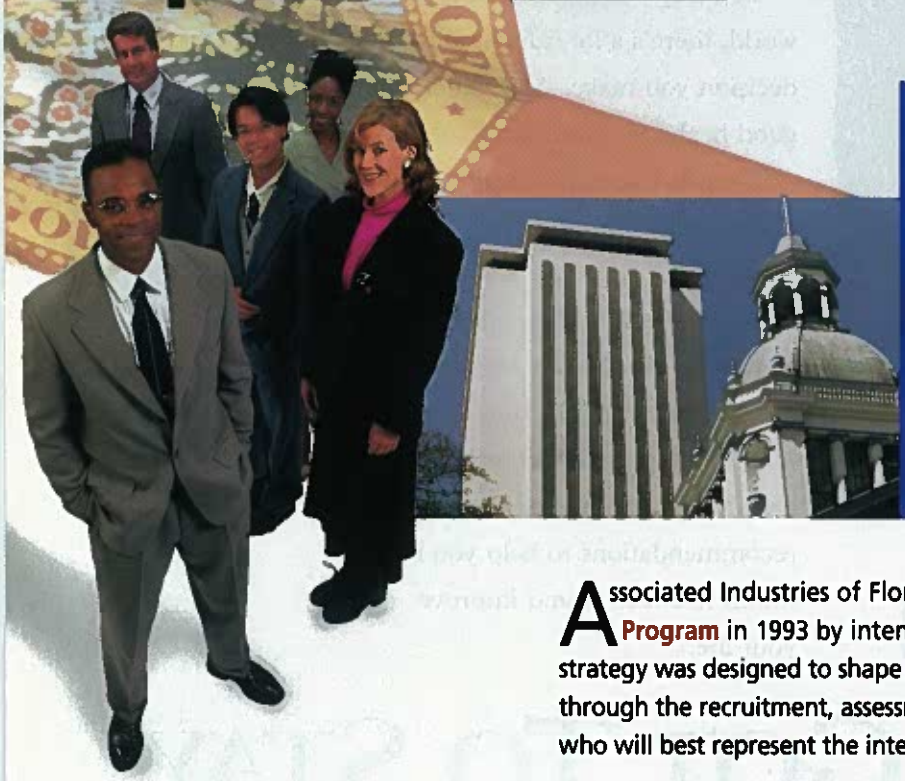
For more information on Shands Executive Health Center programs call 1-800-556-EXEC (3932).

Because Political Action Is More Important Now Than Ever Before



Associated Industries of Florida (AIF) began expanding its **Political Operations Program** in 1993 by intensifying its involvement in election campaigns. This strategy was designed to shape the direction and philosophy of the Florida Legislature through the recruitment, assessment, and financial support of only those candidates who will best represent the interests and concerns of Florida's business community.

The result: since 1994, **contributions** made by the AIFPAC and AIF affiliated companies to pro-business candidates have totaled more than **$1.5 million,** including $249,274 in 1994; $449,126 in 1996; and $821,125 in 1998. Additionally, members of AIF's Florida Business United contributed more than **$6 million** during the 1998 election cycle. Our **success ratio** has been equally impressive since 1994 — more than **93 percent** of the candidates supported by AIF **have won election,** including 92 percent in 1994; 92 percent in 1996; and 95 percent in 1998.

But now, our efforts are more important than ever before due to **eight-year term limits.** Beginning with the 2000 election cycle, there will be **66 open seats** because of term limits, which means many experienced, pro-business lawmakers will be replaced by less experienced legislators.

We encourage you to join our efforts today to help ensure that when the 2000 election rolls around, Florida's business community is represented by **pro-business legislators** who understand and advocate public policies that promote economic freedom and prosperity.

For more information on AIF's Political Operations, Florida Business United, or the AIFPAC, contact Marian Johnson, senior vice president - political operations, at (850) 224-7173, or e-mail her at mjohnson@aif.com.

AIF POLITICAL ACTIVITIES

Political operations at AIF is not just an election-year effort; rather, it's a full-time, year-round continuing operation with the purpose of electing pro-business candidates.

Political Operations

- Electorial district analysis
- Candidate recruitment and assessment
- Campaign evaluation and technical assistance
- Polling and get out the vote phone banks
- Campaign expenditure analysis

Florida Business United

FBU, a membership-based group comprised of Florida business people, keeps its members current on the state's political environment through extensive research and analysis.

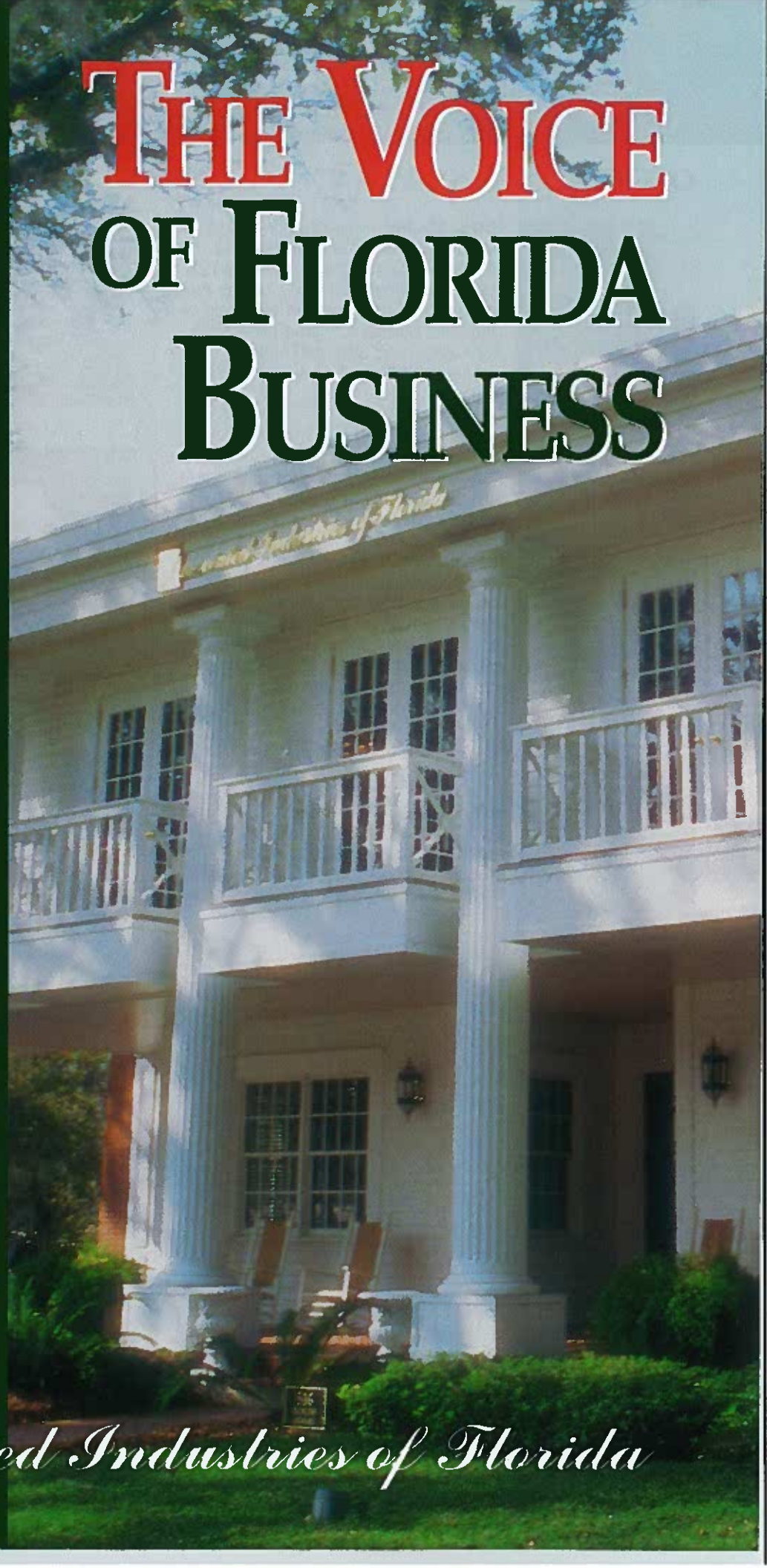
AIF Political Action Committee

AIFPAC financially supports those candidates who understand and embrace our free-enterprise system. Contributions to candidates are determined by a board of directors, with input from AIFPAC members.

Associated Industries of Florida

516 North Adams Street • P.O. Box 784 • Tallahassee, FL 32302-0784
PHONE: (850) 224-7173 • FAX: (850) 224-6532 • INTERNET: http://aif.com

The Voice of Florida Business



Dear Florida Employer:

By standing up for your right to succeed, free from government intrusion and interference, Associated Industries of Florida helps companies like yours grow.

For eight decades, wherever and whenever governmental officials have met, Associated Industries has made sure they listen to the voice of state employers.

We champion the value of hard work and productive endeavor and the incentive offered by the ability to make a profit. We make sure government officials understand the consequences of their actions on the ability to succeed in Florida.

Like it or not, the decisions made in Tallahassee can make the difference between success and failure in commerce. When those decisions are made, Associated Industries speaks out on the side of success.

If your company does not belong to Associated Industries, please consider the benefits of joining. With your support, we can grow in our mission to promote a vigorous economy, filled with the promise of abundance for every person who calls Florida home.

Jon L. Shebel
President & CEO

Associated Industries of Florida

Associated Industries of Florida

OFFICERS & LOBBYISTS

Jon L. Shebel—President & CEO of Associated Industries of Florida and affiliated corporations ... more than 28 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.

Randy Miller—Senior executive vice president & COO of Associated Industries of Florida ... responsible for the daily operations of AIF ... former special consultant to Pennington, Moore, Wilkinson, Bell & Dunbar, P.A. ... former executive director of the Florida Department of Revenue ... expertise in state and local tax issues, including consulting, lobbying, and government agency liaison ... B.S. from Florida State University.

Mary Ann Stiles, Esq.—General counsel of Associated Industries of Florida ... senior partner in the law firm of Stiles, Taylor, & Grace, P.A. ... more than 25 years of legislative and lobbying expertise before the Legislature and other branches of government ... graduate of Florida State University and Antioch Law School.

Ronald L. Book, Esq.—Principal shareholder of Ronald L. Book, P.A. ... formerly special counsel in Cabinet and legislative affairs for Bob Graham ... 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.

Jodi L. Chase, Esq.—Partner in the statewide law firm of Broad and Cassel ... former executive vice president & general counsel of AIF ... more than 11 years of legislative and lobbying experience ... areas of specialization include health care, legal and judicial issues, and business issues ... undergraduate and law degrees from Florida State University, both with honors.

Keyna Cory—President, Public Affairs Consultants, a public affairs and governmental relations consulting firm ... more than 14 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.

Martha Edenfield, Esq.—Partner in Pennington, Moore, Wilkinson, Bell & Dunbar, P.A. ... more than 12 years of lobbying experience before the Legislature and other branches of government ... areas of expertise include environmental and administrative law ... graduate of Florida State University and Florida State University College of Law.

Randy Enwright—Partner in Tidewater Consulting, Inc. ... more than 15 years of experience in political and governmental affairs and political management ... former executive director of the Republican Parties of Florida and Iowa ... served as a regional political director for the Republican National Committee ... managed George Bush's presidential campaign in Missouri in 1987-88 ... undergraduate studies, University of Missouri.

Ralph Haben Jr., Esq.—Partner in the law firm of Haben & Richmond, P.A. ... former speaker of the Florida House of Representatives (1981-1982) ... as a member of the House from 1972 to 1982, served on every major committee and received numerous awards in recognition of legislative accomplishments ... B.A. from the University of Florida and J.D. from Cumberland College of Law.

David Johnson—Partner in Tidewater Consulting, Inc. ... more than 8 years of experience in political affairs and management, and 10 years of experience in corporate accounting ... former deputy executive director of the Republican Party of Florida as well as congressional liaison ... graduate of the University of Tulsa with graduate studies at the University of Tennessee.

1999 LOBBYING TEAM

Oscar Juarez—President of Juarez & Associates ... more than 21 years of experience representing clients before federal, state, and local governments ... formerly served as special assistant to President Gerald Ford and as chief of staff to Congressman Lou Frey ... graduate of Stetson University.

Frank Mirabella—Partner in the public and governmental relations firm of Mirabella, Smith & McKinnon ... more than 12 years of legislative lobbying experience ... B.S. in government from Florida State University.

Dale Patchett—President of R. Dale Patchett Management, Inc. ... former Republican leader of the Florida House of Representatives (1984-1990) ... over 22 years of governmental experience, including the House as well as the executive branch, including the Departments of Natural Resources, Environmental Protection, and Agriculture & Consumer Services ... also experienced in small business ... B.S. in forestry from Southern Illinois University.

Jim Rathbun—President of Rathbun & Associates ... more than 10 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.

Tom Slade—President and Partner in Tidewater Consulting, Inc. ... served as state chairman of the Republican Party of Florida from 1993-1999 ... former state representative and state senator ... served as vice-chairman of the Florida Taxation and Budget Reform Commission in 1990.

Damon Smith—Partner in the public and governmental relations firm of Mirabella, Smith & McKinnon ... more than 14 years of legislative lobbying experience ... former south Florida aide to U.S. Sen. Lawton Chiles ... B.S. in journalism from the University of Florida.

Arthur E. Teele Jr., Esq.—Vice-chairman of the Miami City Commission ... former chairman of the Metro-Dade Commission ... former vice president & general counsel of AIF ... former administrator of the Urban Mass Transportation Agency under the Reagan administration ... also served on the President's Task Force on Urban Affairs ... B.S. from Florida A&M University and J.D. from Florida State University.

John Wehrung—Partner in Tidewater Consulting, Inc. ... more than 10 years of experience in political and governmental affairs ... former political director of the Republican Party of Florida ... served as chief of staff in the general counsel's office at the Republican National Committee ... B.S. from the University of Maryland.

"The AIF staff is extremely competent and highly respected as one of the best lobbying groups in Tallahassee, and is, as a result, very effective in representing business interests."

Lance Ringhaver
President, Ringhaver Equipment Company

1999 AIF KEY BUSINESS ISSUES

CIVIL JUSTICE REFORM

- Cap contingency fees at 10 percent of the settlement to keep the doors of the courtroom open to poor plaintiffs while ensuring that they get most of any settlement
- Abolish joint & several liability and keep the *Fabre* ruling intact
- Create a statute of repose
- Create a government rules defense

TAXATION

- Repeal or modify Florida's intangibles tax
- Repeal the advanced payment of sales tax by Florida's businesses
- Roll back the sales tax rate from 7 percent to 6 percent on commercial telephone and electricity
- Remove the tariff on Florida manufactured goods by removing the sales tax on repair parts and labor used to repair machinery and equipment used in manufacturing
- Support revisions to the Taxpayer Bill of Rights, supporting the statute of limitations of audits to taxpayers be reduced from five to three years and also the penalty rate be adjusted from 12 percent to prime plus one
- Repeal the alcoholic beverage surcharge

HEALTH CARE

- Oppose "any willing provider" provisions
- Oppose any language that would create a new lawsuit against HMOs
- Oppose any mandated health insurance coverages
- Oppose "mental health parity"
- Oppose restraints on provider contracts

LABOR RELATIONS

- Require that state inmates work 40 hours per week, with compensation applied toward restitution, child support and alimony, correctional facility operations, or the Crimes Compensation Trust Fund
- Oppose payment of workers compensation to state inmates
- Oppose attempts to implement a state minimum wage, mandated breaks and lunch periods

LEGAL & JUDICIAL

- Support the expansion of protection of businesses that are subject to eminent domain
- Support Y2K computer glitch legislation that protects companies, but at the same time, protects a company's right to recover for damages caused by another
- Revise the Administrative Procedures Act to clarify the intent, strengthen, and to level the playing field

WORKERS' COMPENSATION

- Eliminate exemptions for workers compensation for workers in the construction trade and provide coverage for all employees
- Eliminate hourly attorney's fees for claimants with small medical claims or on issues relating to the average weekly wage
- Adopt new criteria for determining eligibility for permanent total disability benefits

ENVIRONMENTAL

- Support the continuation of auto emissions testing to comply with the Florida Clean Outdoor Air Act

"AIF does a great job of representing the business perspective before the Legislature. We also rely heavily on AIF's legislative tracking system to help us keep up with the 2,000 or so bills that are filed each year."

Travis Bowden, President
Gulf Power Corp.

Associated Industries of Florida

516 NORTH ADAMS STREET • P.O. BOX 784 • TALLAHASSEE, FL 32302-0784
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Fifty-four farms make up Sugar Cane Growers Cooperative of Florida. For 36 years, we have lived up to our commitment to farm and produce high quality sugar. Today, we are vertically integrated and produce sugar from the field to the table.

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We're Florida's partner in environmental stewardship.

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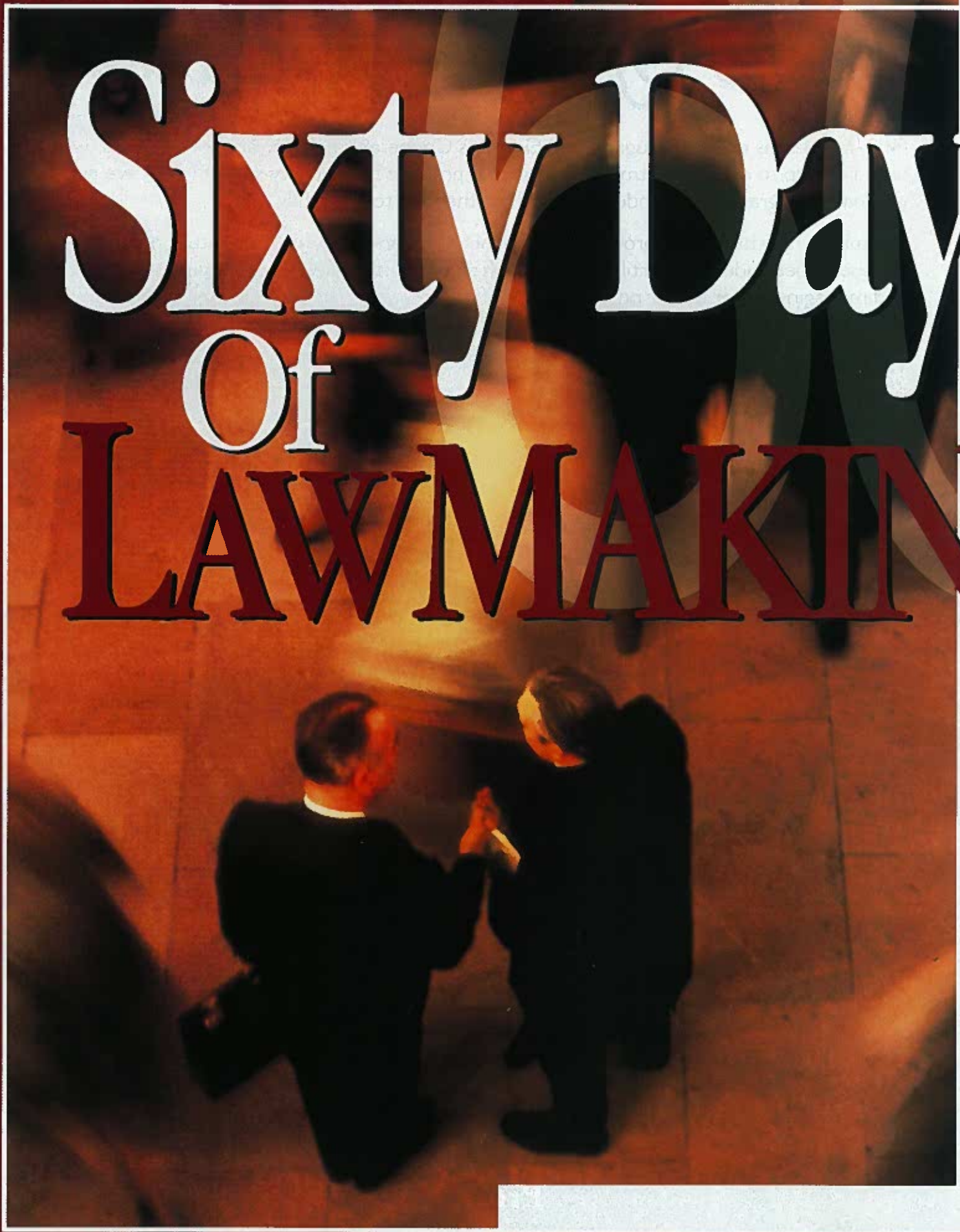
Proud to be Part of the Solution

Sixty Day Of LawMakin



As is the case with most legislative sessions, Associated Industries of Florida (AIF) will spend the months of March and April and the first week of May trying to get laws passed that didn't get enacted last year, and trying to kill bills restored to life from last year's legislative graveyard.

With Republican control of the Legislature and governor's mansion, some might be tempted to consider passage of pro-business bills a done deal. There are no guarantees in lawmaking, however, and this session will demand just as much perseverance and vigilance as any other.

by Jacquelyn Horkan, Editor, and
Todd A. Sterzoy, AIF Legislative Coordinator

TORT REFORM

In 1998 the Legislature enacted a comprehensive package of reforms to the state civil justice system that was vetoed by the late Gov. Lawton Chiles. This year the House and Senate leadership, along with Gov. Jeb Bush, have endorsed passage of a significant tort reform bill.

The 1999 House and Senate bills remain essentially the same as the version vetoed last year by Gov. Chiles, with two exceptions. First, the safe harbor list in the premises liability section has been deleted because it placed complex, ambiguous, and impractical requirements on businesses.

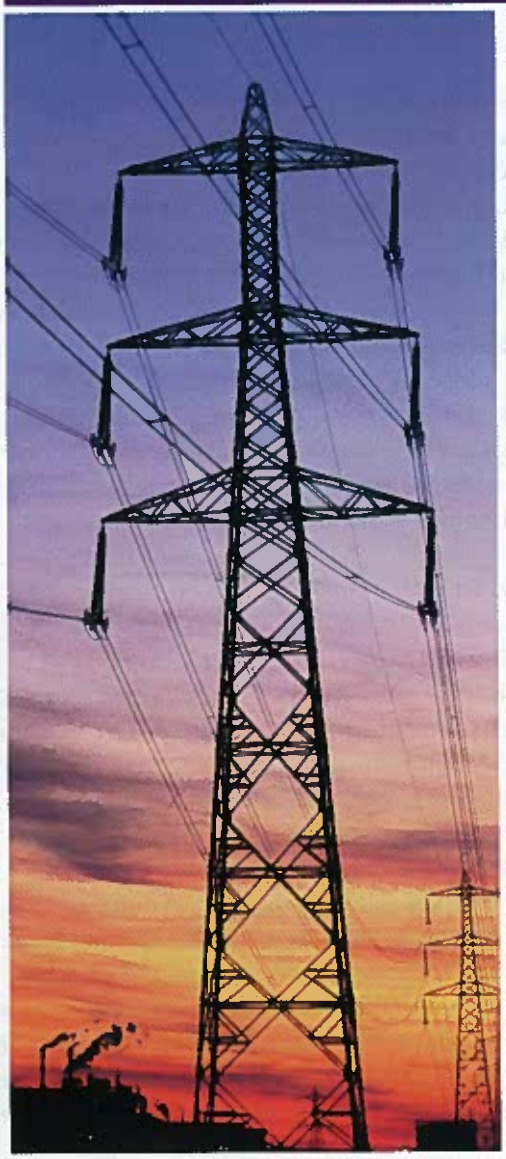
The second exception involves joint and several liability. Last year's bill contained a key compromise on joint and several liability that established a 20-percent threshold and $300,000 cap. In other words, joint and several would only apply to those defendants 21 percent or more at fault; their joint and several liability for economic damages would be capped at $300,000. For any damages over $300,000, each defendant would pay only the portion of damages attributed to his percentage of fault. The business community had sought a total repeal of joint and several, but accepted the partial limitation for the purpose of getting the measure passed.

This year the House version of tort reform lowers the joint and several cap to $200,000 and removes the percentage threshold. The Senate version of the bill includes a $250,000 cap and a 33-percent threshold.

Other provisions of the 1999 bill include the following:

- a series of jury reform measures to inform and instruct jurors and allow greater participation by jurors in civil trials
- greater sanctions to deter frivolous litigation and tactics designed to delay the process
- a safe harbor for employers when they hire new employees
- definition of trespassers and the duty owed to them by the owners of property
- a change in premises liability that makes the owner liable only for his contribution to an injury that occurs on his property; the owner of the premises is not liable for the portion of damages that is attributed to the criminal or other person who injured the plaintiff on the owner's premises.
- punitive damage reforms including: raising the burden of proof for entitlement to punitive damages to "clear and convincing" evidence; repealing vicarious liability for punitive damages; caps on punitive damages when they are imposed because of gross negligence; clear definitions of conduct necessary to impose punitive damages; and a one-time award of punitive damages for the same action.
- cap of $800,000 on vicarious liability damages for owners of vehicles
- government rules defense that is a rebuttable presumption; allows a jury to consider a manufacturer's adherence to government rules if a three-part test is met
- a statute of repose that does not allow a product liability action if a specified amount of time (probably between 12 and 18 years) has passed since the delivery of the completed product to its original purchaser

PHOTO: PAT CROSS



TAXES

Four years ago AIF introduced its 1995 Jobs Act, a package of industrial tax cuts based on an exhaustive study of impediments to the state's economic development efforts. The study found that Florida's crazy-quilt system of taxation made the state non-competitive in the contest to lure new industries. Taxes on industry also kept homegrown manufacturers from expanding within the state.

In 1995 the Jobs Act, while supported by lawmakers and the governor's office, fell victim to controversy surrounding the creation of Enterprise Florida, the public-private partnership that was to assume control over economic development.

Over the last three sessions the Jobs Package has been enacted in a piecemeal fashion, beginning with the 1996 passage of the exemption on energy used in manufacturing. Last year more provisions gained approval, most significantly sales tax exemptions on the purchase of pollution control equipment and tax exemptions designed to spur an increase in corporate-sponsored research at state universities.

This year AIF will seek implementation of the remaining provisions of the Jobs Act, along with the reduction or abolition of other anti-prosperity taxes.

Intangibles Tax

Last year the Legislature enacted an AIF-backed phase-out of the intangibles tax on accounts receivable. In 1998 the Legislature exempted one-third of total accounts receivable from the annual tax, with the remaining two-thirds to be phased out over the next two years. Gov. Bush, however, is proposing an acceleration of the phase-out, making accounts receivable 100

percent exempt from the intangibles tax this year. The savings to business from this exemption is an estimated $80.2 million per year.

Gov. Bush is also recommending an increase in intangibles tax exemptions for individual filers, joint filers, and businesses, of $100,000, $200,000, and $100,000 respectively. The larger exemption amount will free smaller business and those of more modest means from the burden of complying with the paperwork demanded by this complex and confusing tax.

The total savings for the accounts receivable phase-out and the increased property exemptions is estimated at $283 million per year.

Repeal Of Sales Tax Speedup

In the early 1980s the state devised a method to increase tax revenues without increasing taxes.

All registered sales tax dealers (businesses that collect sales taxes from consumers and forward them to the state) were required to advance 66 2/3 percent of their average monthly sales tax collections (and actual collections for the last ten days of the previous month) by the 20th day of the current month.

The speedup of sales tax remissions amounted to an interest-free loan by businesses to the state of Florida. Since the advance was based on *average* monthly collections, in months when sales were slow, businesses were advancing more in sales tax than they had collected. Many businesses had to borrow money in order to meet their obligation to advance money to the state.

The speedup, scheduled to be phased out, was extended in 1990 when, once again, the state found itself short on cash.

Total repeal of the speedup is unlikely because it would cost the state $600 million a year in lost revenue. AIF is working with legislative leaders and staff, however, to make the advanced payment of sales tax less onerous. AIF is recommending an increase in the threshold by which businesses become subject to the speedup from $100,000 in annual sales tax collections to $200,000 and moving the deadline for payment of the advance from the 20th day of each month to the 28th.

Taxpayer Bill Of Rights

Florida currently makes taxpayers subject to audits for a longer period of time than almost every other state. AIF is recommending a reduction from five years to three years in that statute of limitations on taxpayer audits.

Florida law also imposes 12-percent interest on delinquent tax payments. AIF is recommending legislation to adjust the penalty rate to prime plus one. That way the rate would float with the market and would not require the state to charge either an excessive rate or one that is lower than the going market rate.

Gov. Bush has endorsed both ideas and proposed that the state pay interest on overpayment of taxes when repayment by the state takes longer than 90 days.

Sales Tax Rollback On Commercial Telephone And Commercial Electricity

The sales tax rate for all taxable items and services is 6 percent, with the exception of commercial telephone and commercial electricity charges, which are taxed at 7 percent. AIF is recommending a rollback on this rate to 6 percent.

The higher rate was implemented in 1992 when the Legislature faced revenue shortfalls. Rather than raising taxes on individual taxpayers, lawmakers enacted several business-only revenue-creating mechanisms. At the time business people were promised that the increases would be short-lived and would be repealed when the state's economic condition improved. That time is now.

Sales Tax Exemption On Repair Parts And Labor

Attracting more manufacturers to Florida requires the removal of embedded taxes that increase the cost of goods manufactured in this state.

One such cost is the sales tax on parts and labor used in the repair of manufacturing machinery and equipment. This is yet another case of the politicians funding the growth of government by levying special taxes on manufacturers to avoid taxing individual citizens. As a result, high-paying manufacturing jobs are scarce.

Alcoholic Beverage Surcharge Repeal

In 1990, hungry for money, the Florida Legislature enacted a surcharge on alcohol served by the drink, an action taken with little discussion or deliberation. Billed as a tax on sin, the surcharge allowed lawmakers to increase taxes without raising the ire of taxpayers.

Restaurants, bars, and all other establishments licensed to serve alcohol by the drink collect this tax from their patrons. The surcharge is imposed at the rate of 10 cents per ounce of liquor or four ounces of wine, and four cents on 12 ounces of beer. The tax does not apply to package sales, only to alcoholic beverages sold at retail for consumption on the vendor's premises.

Since its passage, the surcharge has proven cumbersome in compliance and administration, raising more than its share of agitation from audit assessments.

The alcoholic beverage surcharge is a prime example of a tax enacted for all the wrong reasons and it should be repealed.

HEALTH CARE

Mandated Coverage

Imposing additional mandates in health insurance policies causes cost increases that can force some insurers out of the market and price health insurance out of the reach of many small businesses. Mandating coverage of certain treatments or certain practitioners forces people to pay for frills they may not want and cannot afford.

Still, each year new mandates are proposed and often enacted. They are now beginning to catch up with us. Heath insurance costs are rising across the board. Increased premiums result in more people dropping coverage. AIF opposes any health insurance mandate that makes coverage less affordable and accessible without greatly contributing to the increased well-being of all Floridians.

Mental Health Parity

For the last three years, members of the mental health professions have tried to convince the Legislature to enact so-called "mental health parity" legislation that would require all health insurance policies to cover mental health treatment at the same levels as physical treatment.

In 1998, a federal mental health parity mandate was enacted that capped resulting premium increases at 1 percent.

AIF opposes mental health parity legislation on the same grounds that it opposes other mandates: they force people to pay for services they do not want or need. Proponents of mental health parity legislation argue that taxpayers would save money if mental health treatment were covered by private insurance because it would help the mentally ill become more productive. The argument is flawed on several levels.

First, if mental health parity were enacted and those costs were transferred to the private sector, government would not reduce taxes. Instead taxpayers would be forced to pay twice: first in taxes and second in increased costs of products because companies would simply pass along their costs. For some employers the increase in premiums would force them simply to cancel their insurance policies, leaving their employees to rely on taxpayer-funded health care.

Second, most people with health insurance are covered by their employers. Many of the mentally ill are not employed or dependents of someone covered by an employer's health insurance policy. They either go untreated or they receive care in government-funded facilities.

Finally, if government chooses to provide services to one segment of the population, the cost for providing those services should be paid by taxpayers, not those in the private sector.

If Florida must enact mental health parity legislation, however, it should contain a 1-percent cap, similar to the one in the federal law, to avoid putting Florida companies at a competitive disadvantage.

HMO Civil Remedy

In 1996 the Academy of Florida Trial Lawyers successfully convinced the Legislature to enact a bill that created a new right for patients to sue their health maintenance organizations (HMO). The law would have allowed HMO subscribers to file a lawsuit if the HMO denied medical treatment or service.

Gov. Chiles, an ardent proponent of HMOs, vetoed the legislation on the grounds that it would "eviscerate the concept of utilization review and cost control that are the heart of managed care."

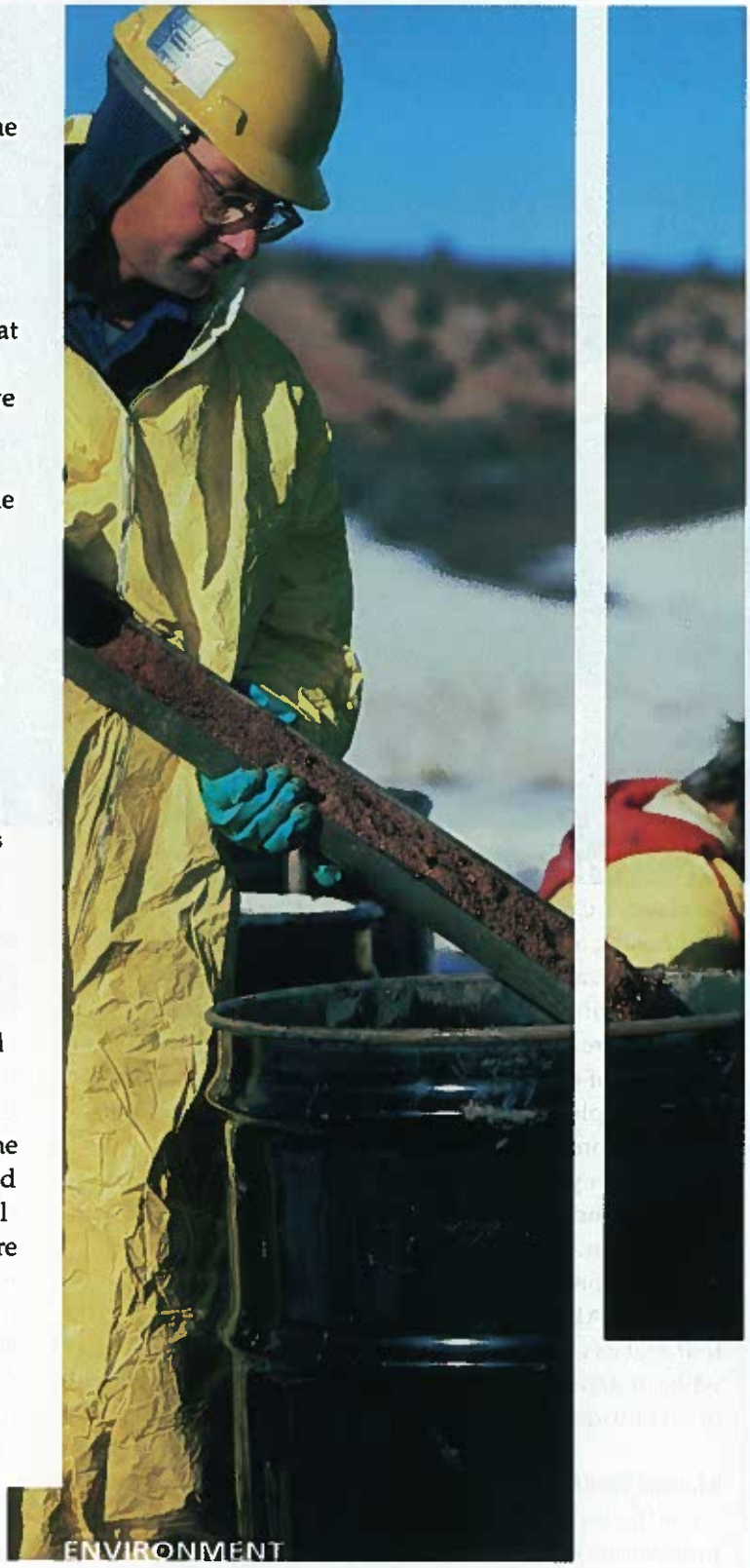
Proponents of the HMO civil remedy legislation claimed that it would simply parallel existing laws that allow bad-faith actions against fee-for-service insurers. They alleged, without evidence, that HMOs were withholding necessary treatments in the pursuit of profits. In fact, the proposed legislation did not parallel existing law and it contained little more than incentives for people to hire lawyers any time they experienced displeasure with their HMOs.

AIF believes that when it comes to health care, disputes must be settled quickly as well as fairly in the interests of the health of the patient. Courtroom settlements to disputes are notoriously slow. If the need exists for improved dispute resolution procedures, better methods exist than lawsuits.

HMO civil remedy legislation may come up during the 1999 session. Many conservative lawmakers, who would normally oppose trial lawyer bills, support the proposal because they are leery of HMOs. It is true that HMOs are neither free market nor socialized; rather they are an unlovely hybrid in which command and control is exercised by players in the free market rather than in government.

To make health care affordable, some mechanism must be in place to control costs. As long as the consumers of health care are not the payers, that control will be exercised by a third party. Private insurance carriers, who are under the discipline of the free market, are better candidates for control than are government bureaucrats.

HMO civil remedy legislation will render impotent the cost-control strategies implemented by HMOs while doing nothing to improve the care and health of subscribers. For that reason AIF will continue to oppose this legislation.



ENVIRONMENT

AIF is anticipating action on an environmental self-audit privilege bill. This measure would allow businesses to conduct reviews of their pollution-control efforts without facing the threat of lawsuits and government punishment for any problems they uncover and correct (see *In an Imperfect World*, Nov.-Dec. 1998 *Florida Business Insight*). ■

Caren Snead IS BUILDING A BETTER TOMORROW

Doris Harrell, right, president of Positive Images, shows Caren Snead some of the clothing donations available for clients entering the workforce.

Caren Snead, associate counsel at JM Family Enterprises, frequently shares her time to benefit community organizations like the YMCA, Women in Distress and Florida Rural Legal Services. Recently, she helped Positive Images of Broward County, Inc. establish its by-laws. Because of her knowledge and expertise in the legal profession, Positive Images will continue to follow its mission to assist women in the transition from welfare to work by enhancing their image through professional dress and promoting personal and career skills development. Caren is preparing Florida for a brighter future. A part of Florida for 29 years, JM Family Enterprises, Inc. is a diversified automotive corporation. Beginning as a distributor of Toyota cars and trucks, we have grown to include vehicle distribution, finance, warranty and insurance services, and retail car sales. With nearly 3,000 associates, like Caren Snead, JM Family Enterprises is committed to building a better tomorrow.

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Y2K— Can We Legislate Order Out of

Jan. 2, 2000. If we can just make it to the second day of the third know it, everything will be smooth sailing from then on, right?

Actually, the lasting repercussions of the Y2K bug in computers will reverberate in the courtroom through at least the first decade of the next century (Y2K is shorthand for "Year 2 Kilo" or "Year 2000"). The bug will cause lawsuits and disputes on hundreds of issues.

Y2K litigation has the potential to become the Powerball version of the modern lawsuit lottery. Juries will be asked to decide whether a company knew or should have known that its systems were deficient. They will be asked to decide whether the deficiencies of one company harmed another. They will be asked to decide whether companies properly designed products in light of their knowledge that the bug might hit. They will be asked to construe contracts and unravel entire business deals. In fact, the litigation spawned by the bug will probably be bigger than the bug itself.

Just as companies are preparing their computer systems for the turn of the millennium, so are they preparing their legal defenses. Many lawyers are advising their clients to prepare for litigation by documenting everything they are doing to bring themselves into compliance, building a record that they may use in their own defense before a jury.

Lawmakers, on the other hand, are trying to create calm out of chaos by considering a Y2K litigation solution in the form of legislation. The 1999 session may be the last chance to create meaningful protections for businesses who are facing the unknown consequences of a simple date change.

RIGHT IDEA. WRONG APPROACH.

Late last year Sen. John Grant (R-Tampa) released proposed Y2K legislation, drafted under the guidance of Tampa lawyer Steve Burton. According to Sen. Grant, his Commerce Protection Act of 1999 would "safeguard consumers and businesses from the threat of costly litigation." Rep. Chris Hart, a Republican freshman

by jodi l. chase

Chaos?

millennium without a complete collapse of civilization as we

from Tampa, subsequently signed on as House sponsor.

The original Grant/Hart bill was built on the following four primary objectives:

- reduce businesses' exposure to litigation due to the Y2K dilemma
- protect commerce by encouraging businesses to be Y2K compliant
- protect businesses in their dealings with solution providers
- assist businesses by offering incentives to become Y2K compliant

The bill limited damages a business would pay if it could prove that it was extraordinarily vigilant in its Y2K-compliance program. The bill also gave immunity from paying attorneys' fees to the prevailing party if a business disclosed the extent of its compliance. The burden of actively monitoring compliance and of disclosure would fall on the corporate officers and directors personally. Directors and officers would be personally liable unless they took an active, day-to-day role in the Y2K-compliance process.

The bill's objective — bringing certainty to the limits of liability for Y2K non-compliance — was sound. The methods used, however, raised serious concerns.

Sen. Grant chose to use the law as a stick to force businesses into compliance by threatening them with penalties for non-compliance. He made the definition of compliance so strict, however, that it would entrap companies that were doing their best to get compliant.

The senator is sincere in his desire to help straighten out the Y2K mess. He does not want to punish; he wants to provide protection to companies who are making every effort to become Y2K compliant. When informed by the business community that his bill would not accomplish his intended goal, Sen. Grant opened his proposal to amendment.

LEGISLATING GENUINE SOLUTIONS

Crafting a meaningful Y2K litigation law is made difficult by the very technological innovations that are fueling the modern economy. Without eliminating legal recourse for those who are harmed by the

PHOTO: NICHOLAS RIGG

WHILE THE TECHNICAL ISSUES can be worked out with new programming, the legal issues must be worked out with new laws.

negligence of others, the legislation must recognize that even the best efforts of one company cannot protect it against the possibility of system failures elsewhere in our interconnected world.

To study possible legislative methods to ward off the Y2K legal feeding frenzy, Associated Industries of Florida (AIF) created a Y2K task force chaired by its general counsel Mary Ann Stiles. The task force is composed both of member companies that are compliant as well as companies that are still working toward compliance. In the months leading up to the session, task force members met several times with Rep. Hart and Steve Burton.

The task-force members agreed upon a few principles that should guide any legislative solution to the threat of Y2K lawsuits. First, the most effective way to calm the litigation storm is to create a safe harbor for businesses that make a genuine and good-faith effort to make their business systems Y2K compliant. In other words, the legislation should describe the level of care a company should take to determine whether it is Y2K compliant, and then give the company a defense in litigation if it reaches that level.

One goal must be the creation of a defense for a company that relies upon the advice of an expert and later finds the expert was wrong, leaving the company non-compliant despite its best efforts. In those cases, the company should have recourse against the expert, but others damaged by the company's non-compliance should not be able to collect damages from it. After all, a company should be able to rely on the advice of a true expert, and similarly should not be held accountable for the mistakes of that expert.

Sen. Grant's original bill made corporate officers and directors personally responsible for the day-to-day activities involved in attaining Y2K compliance. For example, under the earlier version of the bill, officers and directors would personally have to contact vendors and suppliers to receive statements of Y2K compliance. This represented an enormous expansion of the fiduciary duty officers and directors owe to a company. These provisions have been redrafted to recognize that corporate officers and directors are responsible for oversight of the company, not day-to-day activities.

The original bill also altered contracts by inserting warranties and other terms. For example, the bill would have superseded any clause in a contract specifying damages. Private contracts should remain intact and not be subject to amendment by politicians or any other outside party. If two parties choose to enter into a legitimate agreement, they should be able to live within the agreement without the interference of others.

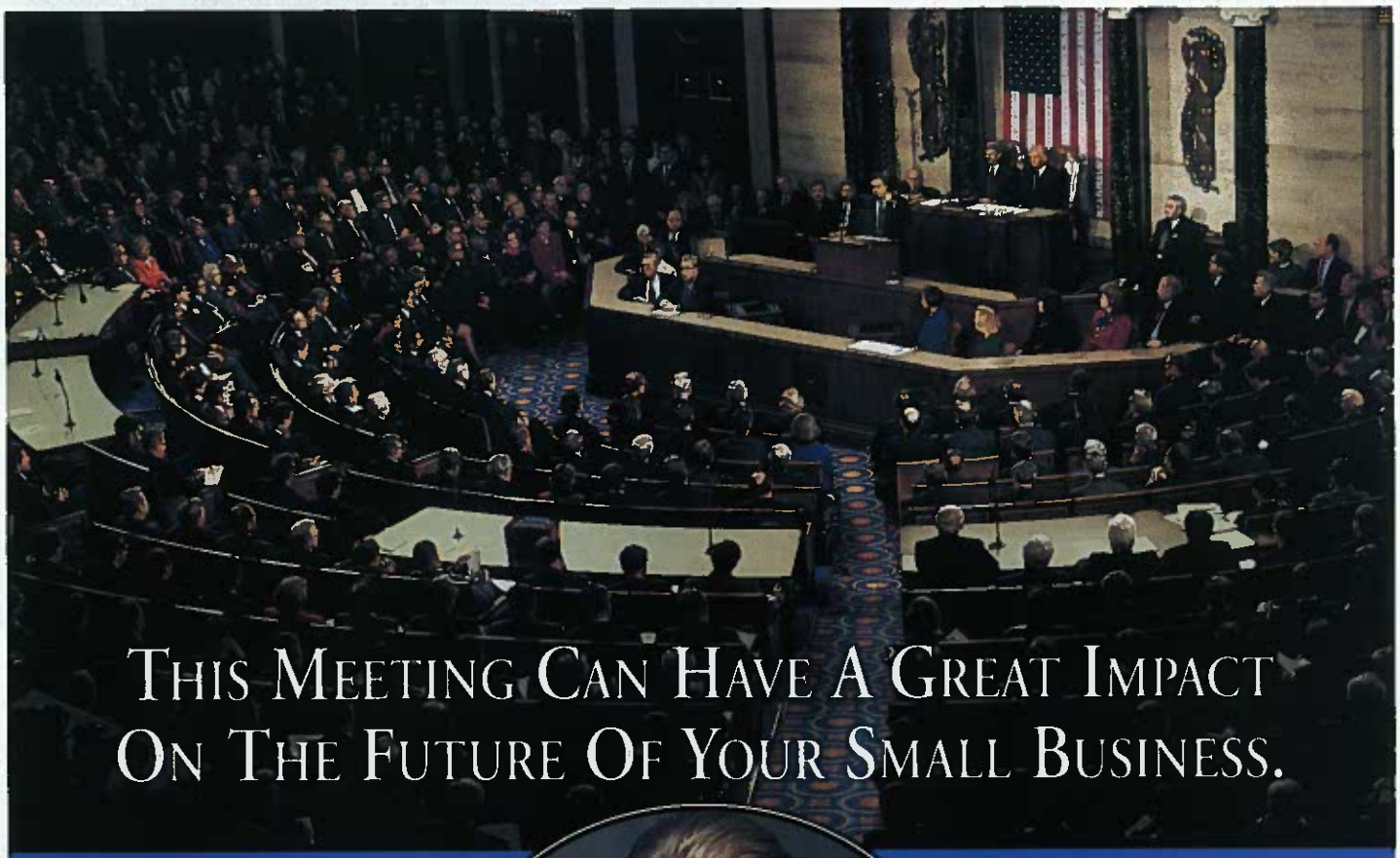
Protecting a company when it makes an effort to become compliant is just one part of the equation, however, because of the ability for problems arising from the Y2K bug to migrate from one computer system to another. A company can have its systems thoroughly reviewed and be in compliance only to find that a system upstream from it has infected its clean systems.

While the technical issues can be worked out with new programming, the legal issues must be worked out with new laws. Specifically, the AIF task force recommends that if a third party informs a company that the third party is Y2K compliant, the company should be able to rely on that advice. If the third party was not compliant, it should be held liable for any damages to the company's customers or suppliers.

Finally, there are some principles that the AIF task force considers simple and unbendable. Trade secrets must be protected. Neither punitive damages nor prevailing-party attorney fees should be allowed because both would provide an incentive for purely speculative lawsuits.

The millennium bug litigation stream is complex. The issues involve many parties and several types of damages. No one is sure if calm can be legislated out of the storm. However, Sen. Grant and Rep. Hart, with the help of AIF, have pledged to try. ■

Jodi L. Chase practices in the Tallahassee office of the law firm of Broad and Cassel, and is a legislative consultant to Associated Industries of Florida.



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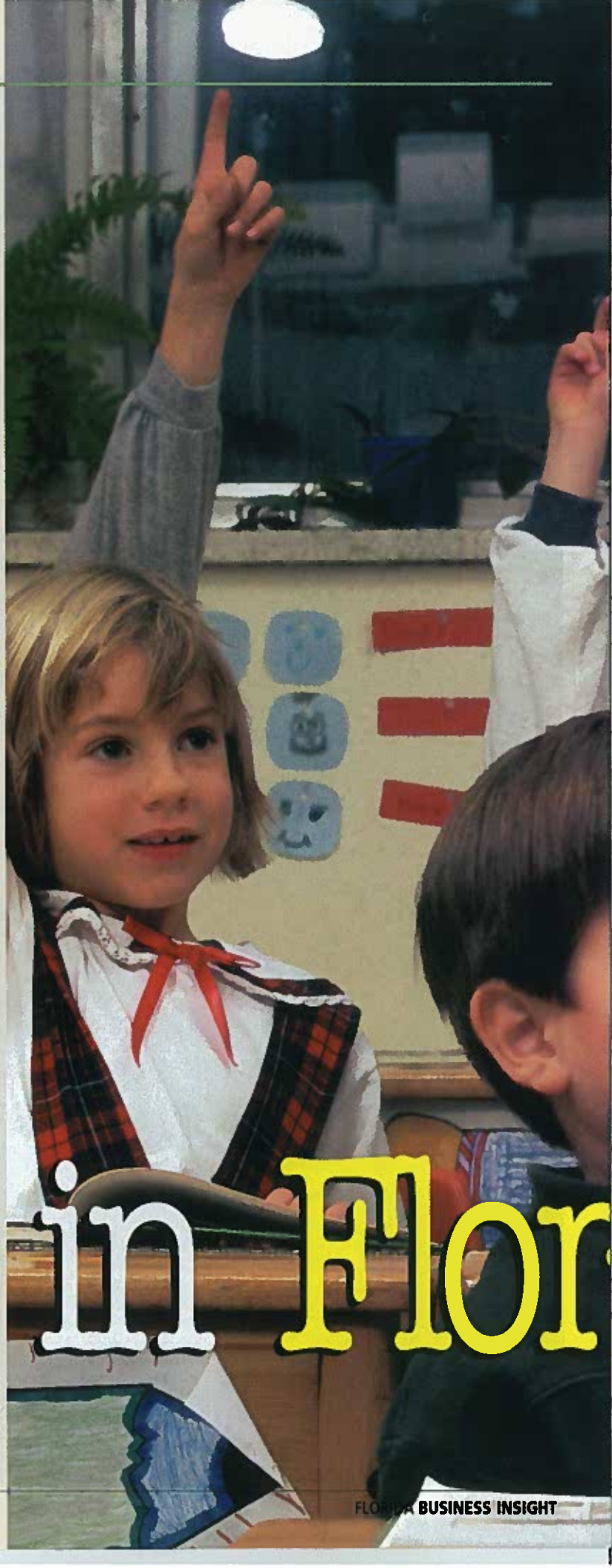
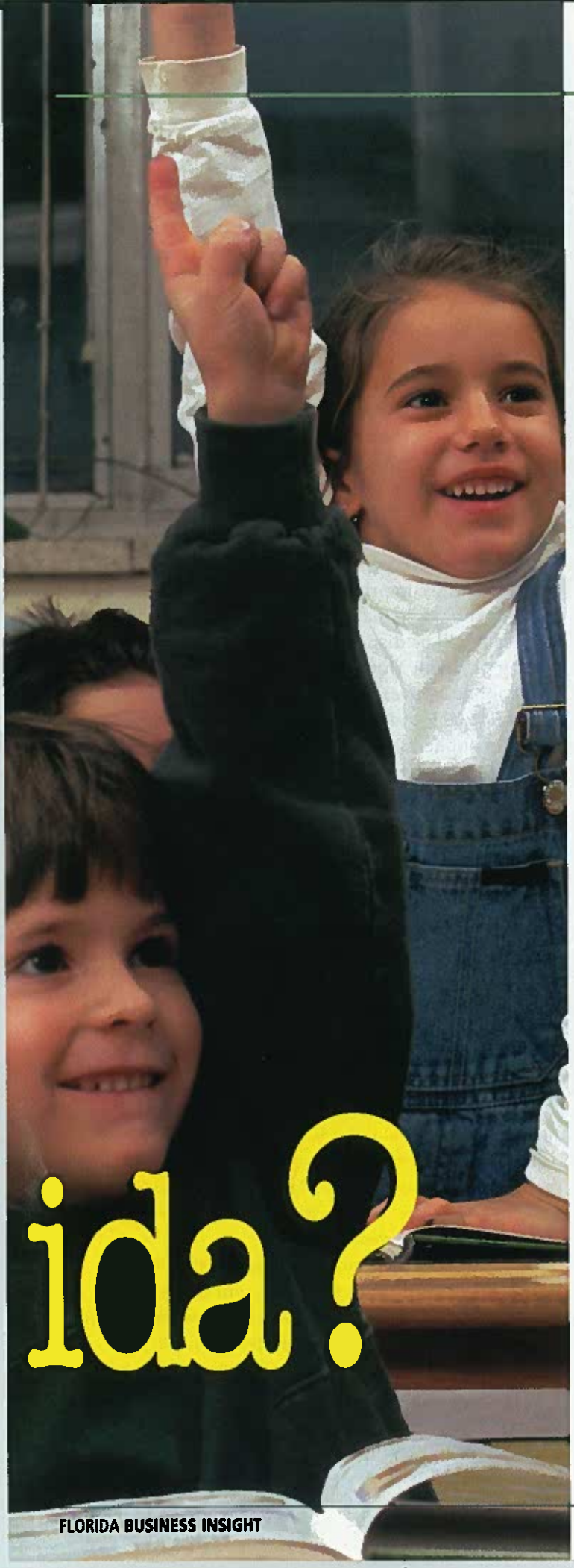
How Will School Choice Work in Flor



by patrick j. heffernan



ida?

Is school choice really the dangerous, untried experiment that detractors claim it is? Not in Vermont, which introduced school choice over a century ago.

The Vermont program, called "tuitioning," is limited to secondary students living in areas that are too thinly populated to support their own public high schools. Vermont students from such districts are free to use their share of public education funds to pay for tuition at the private high school of their choice, even out-of-state boarding schools if the family so desires. Almost 25 percent of Vermont's high-school students are eligible for this eminently sensible voucher program, which has proven enormously popular with Vermont families, schools, and taxpayers.

Vermont's experience with school choice offers inspiration to Florida. The fundamental insight of the Vermont program (along with school choice programs already underway in Maine, Wisconsin, and Ohio) is this: Assuring all children of an education at public expense does not require that they receive instruction at schools operated by the government. A school voucher program gives parents control over public money already set aside for their children's education.

School vouchers simply follow the model implemented in other government-subsidized programs, such as Medicare and college-level education. Government provides for the service, but each individual citizen decides how and where he will be served.

The freedom to choose works in other states and other government programs, and it can work in Florida's schools too. Here's how.

WHERE TO BEGIN

Proponents of school choice look forward to the day when *all* Florida parents will have the opportunity to choose the best education for their children, whether it be public or private, secular or religiously affiliated.

This, however, is a long-term goal that cannot — and ought not — be sought overnight. It must be achieved in a way that makes the educational interests of our children primary, while balancing the interests of the other key parties: the families, the schools, and the taxpayers. Gradual, orderly, and fair must be the bywords of any plan to implement school choice in Florida.

WHY WOULDN'T THE EDUCATION industry react to economic incentives just as any other industry would?

So if all children cannot be given state scholarships at once, where do we begin? The following are some of the suggested criteria for determining which children should get the first vouchers:

- children from low-income families
- children with exceptional needs
- children in overcrowded schools
- children whose parents enroll them in a voluntary scholarship lottery
- children in underperforming schools

The last category — children in underperforming schools — is the plan of implementation most likely to become the reality in Florida, because it is the one on which Gov. Jeb Bush and Lt. Gov. Frank Brogan campaigned. It certainly shines brightly from the perspective of justice. How can the state justify obligating parents to send their children to schools that the state itself has identified as inadequate?

Under the Bush-Brogan plan these children would be given the opportunity to leave any school the state deems critically low performing for two consecutive years. We don't know how many children would be eligible for scholarships if the program went into effect today, but let's suppose 2 percent of Florida's public-school students, about 50,000 children, become eligible for scholarships in just a few years' time. Opponents of the idea criticize the plan because there is not enough space in the state's private schools to accommodate such an influx.

Indeed 50,000 extra students represents a 20-percent increase in current enrollment in Florida's private schools, religious and otherwise. There's not much of a chance that the private schools are currently operating at 20 percent below capacity. But the number we need to consider is not how many are eligible but how many are likely to leave for non-government schools. We can look to Albany, New York, for guidance.

Two years ago a New York philanthropist, Virginia Gilder, asked educators to identify the worst school in Albany, New York. When told that Giffen Elementary met her criterion, she offered to pay the tuition for the next five years of every child who wanted to leave Giffen to attend any private school in Albany.

Giffen Elementary did not suffer a full-scale evacuation, but 30 percent of the students did take Gilder up on her offer. Those who chose to stay were promptly rewarded with a significant reduction in class size and the predicted response of a school that, for the first time, had to face the normal pressures of competition. The district removed the school's ineffective principal and assistant principal, and nine teachers were replaced.

Based on the Giffen experience, the proposed scholarship plan could result in the transfer of about 15,000 children (30 percent of 50,000), mainly from low-income families, to private schools. This influx of new students should be manageable for the private sector because it will be dispersed across the state and will be coming primarily from schools in urban areas where the supply of non-government schools is greatest. And because 15,000 students represent less than 1 percent of Florida's public-school population, the public schools would not be facing a mass exodus.

But what then? Will we stop there or will more children become eligible? Won't the public schools improve rapidly when their monopoly over the instruction of children from middle and low-income families is threatened? The expectation is that the number of children eligible for state scholarships will increase, even as inferior schools respond to the pressure of competition.

Last year Florida instituted new, tougher standards to measure the performance of public schools. As these standards come into effect, many marginal schools will for the first time be unmasked. The new standards not only raise the bar of reasonable expectations, they raise the veil of obscurity under which poor performance has been hidden. Just consider one recently revealed statistic about Florida schools: only 53 percent of the students who enter the state's public high schools are still there for graduation four years later.

With an almost guaranteed increase in the demand created by students with vouchers, will the private sector respond with a growing supply? Proponents of school choice answer with a confident yes. Why wouldn't the education industry react to economic incentives just as any other industry would?

By freeing the flow of dollars, school choice will also stimulate two other important sectors supporting education: inner city churches and local businesses.

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EDUCATION, COMMUNITY, AND RELIGION

Florida's current policy of withdrawing all public support when families select private schools for their children has devastated the supply of private (mainly church-based) schools in those neighborhoods where most of Florida's underperforming public schools are to be found.

As inner city public schools have declined, so have neighborhoods that were once mixed racially and economically. In the interests of their children, any family with the means to leave these neighborhoods did so, in search of better schools. The remaining families could not afford the tuition necessary to keep the doors of their local church schools open. Across the state dozens of such schools that used to serve inner city neighborhoods have closed, and new ones are almost totally prevented from forming.

In other words, the current government policy of "no school choice" has prevented the neighborhood agencies that are most respected and trusted by the local families — their own church congregations — from playing any significant role in education.

School choice should fix this dilemma quickly and dramatically. Congregations will have the opportunity to mobilize to meet the new demand with a new or renewed supply of classrooms. Churches and synagogues already provide 85 percent of Florida's non-government schools. Study after study has proven that church schools are particularly effective educators of low-income, minority students. Data from inner city Catholic schools show that students achieve higher test scores and graduation rates even though the schools have smaller, lower-paid staff and spend less on each student.

Neighborhood congregations also enjoy an existing and significant relationship with families who trust them and look to them for support in the upbringing of children. And local congregations have the advantages of location, facilities, volunteers, and a desire to work with their members that is typically a mandate of their theology. School choice will let this faith-based river flow and raise the level of life in communities that have long been denied its force and energy. It is in keeping with the growing belief and practice that the way to confront urban problems is to support those who are familiar with those problems and are already addressing them.

TOMORROW'S EMPLOYEES

Florida's business people should thrill at the prospect of competition coming at last to our system of elementary and secondary education. When middle and low-income parents are able to join the prosperous in choosing the schools they consider best for their children, all schools will have to improve to meet customer expectations. Instead of our current system, where frustrated parents must beg politicians to reform our schools, the schools will have to beg the parents for the opportunity to teach their children. Anyone who has ever run a business will agree that this is exactly as it should be.

Business will also be galvanized by school choice in another fundamental way. Support for public education is now equated with support for public schools. Many businesses have steered clear of providing aid to private schools generally, and to religious schools in particular, in order to avoid offending customers and stockholders by appearing to endorse one creed over another. While business has poured more and more support into public schools with little effect, struggling church and other community schools with a clear record of success have been off limits.

School choice changes all that. It makes plain that all schools that are serving the public purpose of preparing our children to become productive and responsible adults are part of public education. The children at those schools — whether public or private, religious or not — are deserving, not only of public support from the state of Florida but of private support from Florida's business community.

That support may come in many forms. Some children from low-income families may need help with transportation to their non-government schools for example. The sensible solution is for local businesses to include aid to those children in the dollars they budget for educational philanthropy.

In short, both government and the private sector will be liberated and energized by the new reality that their support is going not to institutions but to children. The new paradigm is this: Assuring every child in Florida of an education at public expense does not require that every child attend a public school.

In the words of former U.S. assistant secretary for education Chester Finn, "There is no greater evil than to confine a child, against his and his family's will, in a bad school when there is good alternative available in the next block, the next town, or even the next state."

Florida can declare an end to this shame. Let the families choose the schools. Let the dollars follow the child. That's how school choice will work in Florida. ■

Patrick J. Heffernan, Ph.D., is president of Floridians for School Choice, a not-for profit organization committed to the ideal that all families be able to choose their children's schools.

FLORIDIANS FOR SCHOOL CHOICE

Ten Principles Of Fair And Effective School Choice Legislation

Floridians for School Choice is a friend and supporter of both public and private schools. School choice is not about one type of school being better than another. It is about enabling as many families as possible to choose among them for the sake of their children.

For school choice legislation to be fair and effective if must conform to the following principles:

1. It must not disturb families who are happy with their children's current placements at a public or private school.
2. It must not reduce per-pupil spending in the public schools and should not increase total public spending on education except for those increases that would naturally occur as the result of increased student numbers or a growing commitment to education on the part of Florida's citizens.
3. It must ensure that participation in the system of tax-funded scholarships is voluntary for both the families and the schools. No person or educational institution will be mandated to do anything.
4. It must include all schools — public, private, and religiously affiliated — that wish to participate and are prepared to accept reasonable measures of accountability.
5. It must introduce no new regulations on private schools that would threaten their mission, identity, or autonomy; and it must offer a similar and prompt deregulation to those public schools that wish it.
6. It must include provisions to assure that children from low-income families have fair access to the schools their families prefer.
7. It must safeguard the interests of the families and the taxpayers by ensuring that no school that advocates unlawful behavior; that teaches hatred of any person or group on the basis of race, ethnicity, color, national origin, religion, or gender; or that deliberately provides false or misleading information shall be eligible to redeem tax-funded scholarships.
8. Its implementation must be gradual, orderly, and fair, protecting individual schools from abrupt large-scale reductions or unwanted increases in their numbers of students.
9. It must phase in scholarships for children who are already outside the public-school system, including those who are home-schooled.
10. It must be compliant with federal and state constitutional provisions, readily understood by ordinary citizens, and able to be implemented without excessive administration.

Time is of the essence. The crowd and players
Are the same age always, but the man in the crowd
Is older every season. Come on, play ball!

Polo Grounds, Rollie Humphries

Pursuit of Happiness

If any form of recreation shaped this young democracy, it was baseball. In the latter part of the last century, any town worth its salt had its own semi-pro baseball team. Sporting such nicknames as the Longfellows, Quicksteps, Muffers, Mystics, and Mutuals, they were the focus of civic pride and the center of Independence Day celebrations.

In Florida the most renowned of these were the Oak Hall Nine, the pride of Gainesville. The Oak Halls frequently played to crowds of 500 fans. Those who couldn't find seats in the overflowing grandstands simply pulled their buggies onto the field and watched from there. For home games, every store in town would close. Devoted fans would hire special trains to take them to away games. Their enthusiasm was rewarded as the team won the state championship in 1891, 1894, and 1903.

Even then, however, the game was not universally admired. According to one critic of ball games played on the Sabbath, "There is nothing more corrupt this side of hell than baseball." In 1903, a Gainesville alderman threatened to fire the city's street cleaners if they didn't quit playing baseball and get back to work.

George Will, columnist for the *Washington Post*, has remarked, "Baseball is an appropriate pastime for this democratic nation because it both requires and teaches what Americans often lack: patience."

And, it teaches another lesson, as the Gainesville street cleaners learned: There's a right time and wrong time for everything. Even baseball. ■

PHOTO: FLORIDA STATE ARCHIVES

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