



2011 New Law Reference Guide

for Businesses

*Do You Know How
These New Laws
Will Affect
Your Business?*



2011 New Laws Affecting the Business Community

Thousands of bills were introduced in the Florida Legislature this year. Of those, 295 were passed by the Legislature. Do you know which new laws will affect your business?

- **Employers may now utilize a Single Sales Factor formula that will allow their corporate tax liability to be calculated solely on sales. (see page 3)**
- **Telecommunications providers will now be relieved from vast regulatory oversight by the Public Service Commission. (see page 4)**
- **Did you know that several of Florida's state agencies have been consolidated and reorganized, including portions of the Agency for Workforce Innovation and the Department of Community Affairs, to eliminate inefficiencies in state government? (see page 5)**
- **If you are an expert witness licensed outside the state of Florida, you must now obtain an "expert witness certificate" before providing an affidavit or testimony in medical malpractice cases. (see page 10)**
- **Did you know that unemployment compensation claimants must now document contact with at least five potential employers per week to receive benefits? (see page 16)**

This easy-to-use guide does not attempt to provide information on all 295 bills passed this year. Rather, we have taken the time to analyze all the bills that were signed into law by the Governor and selected the ones that have the broadest impact on Florida's business community. Then we provide a short synopsis of the bill and highlight some of the more important provisions or requirements affecting your business. Finally, we provide the law's effective date so that AIF members can be sure to be in compliance with these new laws and regulations.

We hope that this guide will serve as a good source of information as you navigate the sometimes complex and complicated regulatory environment. For more information on all the other issues important to the business community and Florida's future, please visit ***AIF's homepage at www.aif.com***.

Questions?
*Please contact
José Gonzalez
Vice President of
Governmental
Affairs at
850-224-7173 or
jgonzalez@aif.com*



AIF 2011 New Law Reference Guide for Businesses is published by Associated Industries of Florida © 2011. All rights reserved.
516 North Adams Street • Post Office Box 784 • Tallahassee, FL 32302-0784
Phone: 850.224.7173 • Fax: 850.224.6532 • E-mail: aif@aif.com

www.aif.com

Economic Development

Economic Development Tax Incentives – Chapter No. 2011-76

This omnibus economic development package contains several tax incentives for various industries in the state of Florida. These incentives will promote business growth by allowing for current Florida businesses to expand their operations or for out-of-state businesses to bring their work to the state of Florida, and subsequently provide work for Floridians.

What You Need to Know:

Film Industry Incentives

Increases funding from \$38 million to \$42 million per year for fiscal years 2012-13, 2013-14, 2014-15. This law creates incentives for using regions of the state that have been underutilized by the film industry while limiting total combined credits for a project to 30% of expenses. Furthermore, the bill removes television from the general production queue when more than 25% of credits over the history of the program have been granted to television series.

Single Sales Factor

Creates an optional mechanism for eligible corporations to use single sales factor apportionment (SSFA) to calculate Florida income for Florida income tax purposes. The SSFA formula allows companies to be taxed only on sales and not the current formula (sales + property + payroll). To qualify as eligible, the taxpayer must notify the Office of Tourism, Trade, and Economic Development (OTTED) of its intent to submit an application and commence a 2-year period for measuring qualified capital expenditures of at least \$250 million.

Aerospace Tax Incentives

Allows a certified spaceflight business to apply for a credit equal to 50% of the business's corporate income tax liability in a given year, or for a transferable corporate income tax credit based upon a business's net operating loss incurred over a three-year period. The total amount of credits that may be approved under this law is \$10 million.

Research & Development

Provides an annual corporate tax credit for qualifying research and development expenses in Florida, equal to 10% of the current year's expenses that exceed the average expenses over the past four years. The amount of credits available to be awarded under this law is \$9 million.

Brownfield Rehabilitation Tax Credits

Increases from \$2 million to \$5 million the corporate income tax credits that are annually available to partially compensate taxpayers that voluntarily clean up dry-cleaning solvent contaminated or brownfield sites.

Effective Date: July 1, 2011

Economic Development – Chapter No. 2011-182

In 1980, the Florida electorate approved a constitutional amendment that allows local governments to grant economic development ad valorem tax exemptions following, voter referendums, to new or expanding businesses.

What You Need to Know: Eligibility standards provided by this law may allow more businesses and organizations to benefit from exemptions. The exemption is administered and approved at the local level; therefore, the direct impact of this law will vary greatly depending on the specific county or municipality.

- This law revises and modifies the definition of “new business” and “expansion of an existing business” to include qualifying “organizations.”

These incentives will promote business growth by allowing for current Florida businesses to expand their operations or for out-of-state businesses to bring their work to the state of Florida, and subsequently provide work for Floridians.



- Provides that any new jobs created by an eligible business or organization must pay a wage above the average wage of the locality.
- Eligibility is expanded to include Qualified Target Industry businesses.

Effective Date: July 1, 2011 (and shall apply only to exemptions from ad valorem taxation granted pursuant to referenda held on or after July 1, 2011)

This law revises the qualified target industry list by providing that special consideration be given to industries that strengthen the state's position as a global trade and logistics hub.

Targeted Economic Development – Chapter No. 2011-223

In 2009, the Legislature created an Energy Economic Zone Pilot Program to develop a model area that incorporates energy-efficient land-use patterns, encourages the generation of renewable electricity, and promotes green manufacturing. At the request of the Legislature, the Department of Community Affairs provided recommendations as to the types of incentives that may be offered in the designated zones. Last year, the Department selected two areas, the City of Miami Beach and Sarasota County, to participate in the 2-year pilot project.

What You Need to Know: This law revises the qualified target industry list by providing that special consideration be given to industries that strengthen the state's position as a global trade and logistics hub. This addition will codify into law global logistics as a qualified target industry and may have the effect of encouraging private sector economic activity in that particular industry.

- This law fully implements the Energy Economic Zone Pilot Program and provides that all incentives and benefits currently included in the enterprise zone program are available to the two designated energy economic zones.
- This law also provides that a local governing authority may exempt certain developments in an energy economic zone from regulations relating to a development of regional impact.

Effective Date: July 1, 2011

Telecommunications – Chapter No. 2011-36

In 1995, the Legislature opened local telephone markets to competition on January 1, 1996. The 1995 law allowed an incumbent local exchange company to elect "price regulation" instead of traditional rate-of-return regulation, making it subject to price caps on basic service and non-basic service. This law retained the Public Service Commission's (PSC's) jurisdiction over service quality issues and granted it new authority to address consumer issues in the transition to a sufficiently competitive market.

What You Need to Know: This law removes several components of the PSC's regulatory oversight of telecommunications services. Specifically, the law will:

- Remove the PSC's regulatory oversight of basic local telecommunications service and non-basic service, including service quality and price regulation.
- Remove the PSC's regulatory oversight of intrastate interexchange services, operator services, and shared tenant services.
- Promote the adoption of broadband services without the need for government subsidies.
- Consolidate existing provisions related to the PSC's oversight of carrier-to-carrier relationships for purposes of ensuring fair and effective competition among telecommunications service providers.
- Replace the requirement that telecommunications service providers obtain from the PSC a certificate of necessity with a requirement that such providers obtain from the PSC a certificate of authority to provide service and establish the criteria for obtaining such a certificate.
- Remove rate caps on pay telephone service.

Effective Date: July 1, 2011



REGULATIONS

Government Reorganization – Chapter No. 2011-142

Streamlining government functions and eliminating inefficiencies has been a top priority for Governor Rick Scott in his first administration. As such, Gov. Scott has signed a bill into law that will create the Department of Economic Opportunity to provide oversight and coordination over Florida's economic development, housing, growth management, community development programs, and unemployment compensation system. This newly created department will be tasked with developing a single, statewide 5-year strategic plan to address the promotion of business formation, expansion, recruitment, and retention in order to create jobs for all regions of the state.

What You Need to Know:

Creates the Department of Economic Opportunity (DEO)

- Transfers the Office of Tourism, Trade and Economic Development (OTTED), portions of the Department of Community Affairs (DCA), and portions of the Agency for Workforce Innovation (AWI) workforce functions to the new agency, effective October 1, 2011.
- Director of the office appointed by the Governor, and confirmed by the Senate.

Consolidates public-private economic development partnerships

- Enterprise Florida, Inc., (EFI) President, known as the "Secretary of Commerce," is appointed by and serves at the pleasure of the Governor.
- Space Florida retains special district status under the direction of appointed EFI board members.
- VISIT Florida direct support organization is retained under contract with the EFI Board.
- Florida Energy and Climate Commission within the Executive Office of the Governor is transferred to the Department of Agriculture and Consumer Services.
- Repeals DCA, AWI, and OTTED.

Other transfers

- Florida Communities Trust and Stan Mayfield Working Waterfronts are transferred from DCA to the Department of Environmental Protection.

Effective Date: July 1, 2011

Seaport Security – Chapter No. 2011-41

In 2000, the Legislature introduced regulation of seaports that benefited from public financing and provided for a statewide seaport security plan, as well as individual plans at each public port, criminal background checks of employees, and unannounced inspections by the Florida Department of Law Enforcement.

What You Need to Know:

- Removes the statewide minimum security standards, and provides that seaports may implement security measures that are more stringent, more extensive, or supplemental to the applicable federal seaport security regulations.
- Deletes the requirement for each seaport to update and revise its security plan every five years, and instead requires periodic revisions to the security plan to ensure compliance with applicable federal security regulations.
- Deletes the requirement for the Florida Department of Law Enforcement to conduct an annual unannounced security inspection of each seaport to determine if it meets the state's seaport security standards.
- Removes references to the Florida Department of Law Enforcement or a seaport's security director designating a period of high terrorist threat level, since they do not have the legal authority to do so.

Effective Date: May 24, 2011

This newly created department will address the promotion of business formation, expansion, recruitment, and retention in order to create jobs for all regions of the state.



Education

This law revises the evaluation, compensation, and employment practices for classroom teachers.

Student Success Act – Chapter No. 2011-1

The current evaluation system for classroom teachers, other instructional personnel, and school administrators relies on a completely subjective review and does not sufficiently, if at all, take the performance of students into consideration in determining the effectiveness of instructional staff and school leaders.

What You Need to Know: This law revises the evaluation, compensation, and employment practices for classroom teachers, other instructional personnel, and school administrators to refocus the education system on what is best for students. The law aligns with Florida's successful Race to the Top application which 62 of the 67 school districts and 53 local unions have supported and agreed to implement.

- A school district may include specific job-performance expectations related to student support and use growth data and other measurable student outcomes specific to the individual's assignment, as long as the growth accounts for at least 30 percent of the evaluation.
- Reinforces Race to the Top, which requires 50 percent of the evaluation for classroom teachers and other instructional personnel to be based on student performance for students assigned to them over a 3-year period. Further specifies that 50 percent of a school administrator's evaluation is based upon the performance of the students assigned to the school over a 3-year period.
- The remainder of a classroom teacher's evaluation is based on instructional practice and professional responsibilities.
- Furthers the goals of Race to the Top by basing employment decisions on the evaluation of instructional personnel; not tenure. Specifically, the law repeals last in, first out (LIFO) policies that base retention decisions on seniority.

Effective Date: July 1, 2011

Florida Tax Credit Scholarship Program – Chapter No. 2011-123

The Florida Tax Credit Scholarship Program provides private school scholarships to students from families that meet specified income limitations. The program is funded with contributions to private nonprofit scholarship-funding organizations from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax; severance taxes on oil and gas production; self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine, and spirits.

What You Need to Know: The law eliminates a current restriction for the corporate income tax credit and insurance premium tax that eligible contributions made to eligible scholarship-funding organizations may not exceed 75 percent of the taxpayer's tax due for the taxable year.

Effective Date: July 1, 2011

Questions? Please contact José Gonzalez, Vice President of Governmental Affairs, at 850-224-7173 or jgonzalez@aif.com



General Business

Rulemaking – Chapter No. 2011-225

This law revises portions of Chapter 120, the Administrative Procedures Act (APA) to make significant changes to the rulemaking process in Florida. Specifically, this law will provide earlier notice to the public and the Department of State that a proposed rule will require legislative ratification.

What You Need to Know:

- Directs an agency to state in their notice of rulemaking whether the agency expects the rule to require ratification. Ratification is required when a proposed agency rule will cost \$1 million or more over a 5-year period;
- Authorizes an agency to withdraw a rule before it becomes effective if it has not been ratified within 90 days of submission to the Legislature for ratification;
- Clarifies language declaring when a rule becomes effective if ratification is required;
- Clarifies that neither emergency rules nor rules adopting federal standards are subject to ratification; and
- Shortens the time allowed for a challenge after publication of a revised statement of estimated regulatory costs.
- Prior to the passage of this law, the applicant bore the ultimate burden to prove its entitlement to the requested license, permit, or conceptual approval. The petitioner initiating the action will now possess the burden of ultimate persuasion.

Effective Date: June 24, 2011

This law will provide earlier notice to the public and the Department of State that a proposed rule will require legislative ratification.

Limited Liability Companies – Chapter No. 2011-77

Last year, the Florida Supreme Court held that Florida's statutory charging order provision is not the exclusive means by which a judgment creditor can execute a judgment against a debtor owning all of the interest in a single-member limited liability company and held that a court may order a judgment debtor to surrender all right, title, and interest in the debtor's single-member limited liability company.

What You Need to Know: This law provides, with one exception, that a charging order is the "sole and exclusive remedy" by which a judgment creditor may satisfy a judgment from a judgment debtor's interest in a limited liability company. The exception arises in situations where a limited liability company has only one member and the court finds that distributions under a charging order will not satisfy the judgment in a reasonable time.

Effective Date: May 31, 2011



Pest Control – Chapter No. 2011-192

Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not specifically address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving phone calls and soliciting business.

What You Need to Know: This law will authorize the Department of Agriculture and Consumer Services to issue a license to operate a customer contact center for the sole purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. This measure also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the Department of Agriculture and Consumer Services, and establishes a licensing fee, a biennial renewal fee, and a late filing fee.

- Pest control businesses that choose to obtain the pest control customer contact center license or the limited certification for commercial wildlife management personnel license will incur fees associated with these licenses.
- This law also provides for increases in the minimum requirements for insurance coverage to conduct pest control businesses. Pest control businesses that do not currently have the proposed minimum insurance requirements will need to meet these requirements, resulting in additional costs.

Effective Date: July 1, 2011

Expands the types of assets which can be in a charitable organization's portfolio.

Corporations Not For Profit – Chapter No. 2011-170

The Florida Uniform Management of Institutional Funds Act became law in 1990 and was updated in 2003. It is based upon the Uniform Management of Institutional Funds Act promulgated by the National Conference of Commissioners on Uniform State Laws.

What You Need to Know: The law creates the Florida Uniform Prudent Management of Institutional Funds Act to replace the Florida Uniform Management of Institutional Funds Act. Among its key provisions, this law:

- Makes significant enhancements to provisions currently contained in the Florida Uniform Management of Institutional Funds Act;
- Applies to all charitable institutions, not just those associated exclusively with educational purposes;
- Expands the types of assets which can be in a charitable organization's portfolio;
- Allows pooling of institutional funds for purposes of managing and investing;
- Delineates factors to be considered prior to expenditure of funds;
- Provides new procedures for releasing restrictions on small institutional funds; and
- Provides for modification of restrictions on the use of endowment funds.

Effective Date: July 1, 2012

Consumer Protection – Chapter No. 2011-156

This law is very similar to recently enacted federal law, enacted to counter “negative option marketing,” which refers to a category of commercial transactions in which sellers interpret a customer's failure to take an affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services.

What You Need to Know: This law prohibits a post-transaction third-party seller from charging a consumer for a good or service sold over the Internet unless specific disclosures are made and the seller receives the informed consent of the consumer.

- Requires a post-transaction third-party seller to provide a simple mechanism for a consumer to cancel a purchase of a good or service and stop any recurring charges.
- Prohibits an initial merchant from disclosing a consumer's credit card number, debit card number, bank account number, or other account number, or disclose other consumer billing information, to a post-transaction third-party seller.

Effective Date: October 1, 2011



DISCLOSURE

Growth Management

Impact Fees – Chapter No. 2011-149

Soon after ch. 2009-49, L.O.F., became law in 2009, it was the subject of litigation regarding its constitutionality. Specifically, allegations were raised that the Legislature adopted an unfunded mandate and reduced the authority of counties and municipalities to raise revenues in violation of Art. VII, s. 18(a) and 18(b) of the Florida Constitution.

What You Need to Know: SB 410 reenacts existing law created by ch. 2009-49, L.O.F., which amended s. 163.31801, F.S., requiring that, in a challenge to an impact fee ordinance, the government that enacted the ordinance must show, by a preponderance of the evidence, that the imposition or amount of the fee meets the requirements of state legal precedent or 163.31801, F.S.

- Provides that a court may not use a deferential standard.
- The effect of this law is that a court may not use the “fairly debatable” standard of review when evaluating the legality of an impact fee ordinance.

Effective Date: June 17, 2011, and shall operate retroactively to July 1, 2009

The effect of this law is that a court may not use the “fairly debatable” standard of review when evaluating the legality of an impact fee ordinance.

Community Renewal Act – Chapter No. 2011-14 & 2011-15

This law reenacts portions of existing law most closely related to comprehensive planning, land development and affordable housing amended by ch. 2009-96, L.O.F., also known as CS/CS/SB 360 passed by the Legislature in 2009. Soon after the law took effect, it became the subject of ongoing litigation regarding its constitutionality.

What You Need to Know: This measure does not create any new law, but simply reenacts portions of existing law most closely related to comprehensive planning and land development amended by CS/CS/SB 360 in an effort to remove uncertainty and address alleged constitutional defects relating to the single subject requirement in Art. III, s. 6 of the Florida Constitution.

- Reenacts statutory provisions that govern the implementation of various affordable housing practices and procedures by the Florida Housing Finance Corporation.
- Addresses several areas related to comprehensive planning and land development including Urban Service Areas and Dense Urban Land Areas; Transportation Concurrency; Developments of Regional Impact; Financial Feasibility Requirements; School Concurrency; Permit Extensions; Impact Fee Notice and Concurrent Zoning; and Dispute Resolution.

Effective Date: April 27, 2011, and those portions of the bill amended or created by chapter 2009-96, Laws of Florida, are retroactive to June 1, 2009. If a court of last resort finds retroactive application unconstitutional, this bill is to apply prospectively from April 27, 2011, the date the bill became law.



PROCEDURES

Growth Management – Chapter No. 2011-139

Designated as “The Community Planning Act,” this law substantially amends part II of ch. 163, F.S. This law focuses the State’s role in the growth management process to one of protecting important state resources and facilities, and provides local governments with greater local control over planning decisions that affect the growth of their communities. This law preserves part II of ch. 163, F.S., as the minimum standards for Florida’s comprehensive growth management system.

What You Need to Know: This law maintains the required comprehensive plan elements in current law but no longer mandates a public school facilities element. Further, it removes many of the state specifications and requirements for optional elements in the comprehensive plan, but

This law focuses the State's role in the growth management process to one of protecting important state resources and facilities, and provides local governments with greater local control over planning decisions that affect the growth of their communities.

specifically states that a local government's comprehensive plan may continue to include optional elements.

- Repeals rule 9J-5, FAC, and incorporates into the law important and relevant definitions and provisions of the rule relating to the contents of and requirements for elements within a comprehensive plan.
- Deletes the requirement that comprehensive plans be financially feasible.
- Removes the twice a year limit for the adoption of any plan amendments allowing local governments to determine when and if their plans should be amended.
- Prohibits local governments from having referenda for local comprehensive plan amendments.
- Makes concurrency for parks and recreation, schools, and transportation facilities optional for local governments.
- Maintains the state concurrency requirements for sanitary sewer, solid waste, drainage and potable water.
- Grants a four-year extension, in addition to any other extension granted, to all commencement, phase, build out, and expiration dates for projects that are currently valid Developments of Regional Impact.
- Exempts movie theaters, industrial plants, industrial parks and distribution, warehousing or wholesaling facilities, and hotel or motel development from Development of Regional Impact review.

Effective Date: June 2, 2011

Affordable Housing – Chapter No. 2011-189

The Florida Housing Finance Corporation (FHFC) is the state entity primarily responsible for encouraging the investment of private capital in residential housing and stimulating the construction and rehabilitation of affordable housing in Florida. This law revises statutes which govern the implementation of affordable housing programs, practices and procedures administered by the FHF.

What You Need to Know: This law removes the statutory limitation on documentary stamp tax revenues that go into the State and Local Government Housing Trust Funds and prohibits the use of affordable housing funds for new construction activities until July 1, 2012.

Effective Date: July 1, 2011

Health Care

Medical Malpractice – Chapter No. 2011-233

In 2003, the Legislature adopted ch. 2003-416, L.O.F., in response to dramatic increases in medical malpractice liability insurance premiums and the “functional unavailability” of malpractice insurance for some physicians.

What You Need to Know: This law creates an “expert witness certificate” that an expert witness who is licensed in another jurisdiction must obtain before providing an affidavit in the pre-suit portion of a medical negligence case or testifying in the case. A physician, osteopathic physician or dentist who provides deceptive, or fraudulent expert witness testimony related to the practices of medicine or dentistry may be disciplined.

- Current law prohibits medical malpractice insurance contracts that contain any right of the



**STATUTORY
LIMITATIONS**

physician or dentist to “veto” any admission of liability or offer of judgment made within policy limits by the insurer. This law allows such contracts and requires all medical malpractice contracts to say whether the insured has a veto.

- Provides that records, policies, or testimony of an insurer’s reimbursement policies or reimbursement decisions relating to the care provided to the plaintiff are not admissible in any civil action. Also, a health care provider’s failure to comply with, or breach of, any federal requirement is not admissible in any medical negligence case.
- Requires a claimant in a medical malpractice action to execute an authorization for release of health information to be furnished with the pre-suit notification.
- Provides additional immunity from civil liability for volunteer team physicians.

Effective Date: October 1, 2011

Medicaid Reform – Chapter No. 2011-134 & 2011-135

Medicaid is a state and federal partnership established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. The program’s history is characterized by significant growth in caseload and expenditures.

What You Need to Know: The law recreates the Florida Medicaid program as a statewide, integrated managed care program, and requires AHCA to obtain and implement state plan amendments or federal waivers necessary to implement the program. Further, it creates part IV of Chapter 409, F.S., entitled “Medicaid Managed Care,” comprised of new sections 409.961 through 409.992, F.S. The statewide managed care program has the following characteristics:

- Mandatory participation for most populations, voluntary participation for some (including persons with disabilities on the home and community-based services waiver), and some populations are excluded;
- Competitive selection of qualified managed care plans that meet strict selection criteria;
- Eleven regions for selection of a limited number of plans;
- Varying models of managed care, including health maintenance organizations and provider service networks;
- Specific plan accountability measures;
- Negotiated payments based on risk-adjusted rates;
- Customized benefits to allow meaningful recipient choice; and
- An opt-out option for recipients to use their Medicaid dollars to purchase other forms of coverage.

Effective Date: October 1, 2011

Provides an opt-out option for recipients to use their Medicaid dollars to purchase other forms of coverage.

Insurance

Commercial Insurance Rates – Chapter No. 2011-160

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business. In Florida, the Office of Insurance Regulation (OIR) regulates insurance. The OIR reviews and approves or disapproves rates charged by insurance companies. However, insurance companies writing specified types of commercial insurance do not have to file rates with or obtain approval for the rates charged from the Office of Insurance Regulation.

Reforms to Florida's property and casualty insurance market are vital for the restoration of the private residential insurance market.

What You Need to Know: This law allows five new types of commercial insurance to be exempt from the rate filing and approval process. The new types of commercial insurance exempted are:

- Fiduciary Liability;
 - General Liability;
 - Nonresidential Property, but not collateral protection insurance;
 - Nonresidential Multiperil;
 - Excess Property; and
 - Burglary and Theft.
- The law expands the current rate filing and approval exemption for commercial motor vehicle insurance. Under this law, all commercial motor vehicle insurance is exempt from the rate filing and approval process, rather than only commercial motor vehicle insurance covering a fleet of 20 or more vehicles.

Effective Date: October 1, 2011

Property & Casualty Insurance – Chapter No. 2011-39

Reforms to Florida's property and casualty insurance market are vital for the restoration of the private residential insurance market. Without such changes, which are essential to reducing Citizens Property Insurance Corporation and its potential deficit taxes, Florida's property insurance market cannot remain viable.

What You Need to Know: This law makes numerous changes to the laws related to property and casualty insurance, primarily residential property insurance. The law addresses the following major issues:

- Makes changes to the types of losses that can be reimbursed from the Florida Hurricane Catastrophe Fund.
- Increases surplus requirements for property insurance companies to obtain and maintain a certificate of authority to transact insurance.
- Makes significant changes to the regulation of public adjusters in residential property and condominium unit owner property insurance claims.
- Starting June 1, 2011, the law requires notice of an initial claim, supplemental claim, or reopened claim made against property insurance due to hurricane or windstorm damage to be filed within three years of the date of the hurricane causing damage.
- Changes the statute of limitations for property insurance claims to five years starting from the date of loss, rather than when the property insurance contract is breached.
- Continues to require the Office of Insurance Regulation to review and approve rates to ensure the rates are not excessive, inadequate, or unfairly discriminatory.
- Maintains current law requiring the insurer to pay replacement costs up front with no repair required for total dwelling losses.
- Although the law continues to require property insurers to cover catastrophic ground cover collapse and offer sinkhole loss coverage, significant changes are made to this area of law.

Effective Date: May 17, 2011



Legal & Judicial

Negligence – Chapter No. 2011-215

Crashworthiness cases are a form of product liability lawsuits in which the plaintiff claims that a defect in the manufacture or design of an automobile caused or enhanced injuries suffered during an automobile accident. Florida courts do not allow juries to hear evidence relating to the initial cause of the automobile accident because the court views the initial accident and the subsequent enhanced injury as two separate incidents.

What You Need to Know:

- In a product liability action alleging that injuries received by a claimant in an accident were enhanced by a defective product, the trier of fact must consider the fault of all persons who contributed to the accident when apportioning the fault among them;
- A jury in a crashworthiness case must be appropriately instructed by the trial judge on the apportionment of fault; and
- These changes apply to all cases that have not been tried.

Effective Date: June 23, 2011

Emergency Management – Chapter No. 2011-43

Current law empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of emergency is imminent. The state's response to public health emergencies is also provided by law and empowers the State Health Officer to declare a public health emergency.

What You Need to Know: This law provides immunity from civil damages relating to the provision of temporary housing, food, water, or electricity for persons who, gratuitously and in good faith, provide such housing, food, water, or electricity to emergency first responders or their immediate family members in response to a declared emergency or public health emergency.

- Immunity does not apply if the person acts in a manner that demonstrates a reckless disregard for the consequences of another.
- The immunity expires six months after the declaration or extension of the state of emergency.

Effective Date: July 1, 2011

Judgment Interest – Chapter No. 2011-169

Under current law the Chief Financial Officer is required to annually set the rate of interest that is payable on judgments. The rate is calculated by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months and adding 500 basis points to the averaged federal discount rate.

What You Need to Know: This law requires the Chief Financial Officer to adjust the statutory rate of interest payable on judgments or decrees on a quarterly basis by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 (instead of the previously mandated 500) basis points to the averaged federal discount rate. This will allow judgments to be paid with lower interest rates by non-prevailing parties based on market conditions impacting interest rate fluctuations.

Effective Date: July 1, 2011

A jury in a crashworthiness case must be appropriately instructed by the trial judge on the apportionment of fault.



Property Rights – Chapter No. 2011-191

In 1995, the Florida Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act (act) to provide a new cause of action for private property owners whose property has been inordinately burdened by a specific action of a governmental entity that may not rise to the level of a “taking” under the State or Federal Constitutions. The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.

What You Need to Know: This law will amend the act to provide that a temporary impact on development which is in effect for longer than one year may, depending on the circumstances, constitute an “inordinate burden.”

- A property owner seeking compensation must present, at least 150 days (changed from 180 days) prior to filing an action under the act, a written claim to the head of the governmental entity and a bona fide, valid appraisal that demonstrates the loss in fair market value to the real property.

Effective Date: July 1, 2011

Extraterritorial Reciprocity in Workers’ Compensation Claims – Chapter No. 2011-171

The law creates s. 440.094, F.S., establishing that Florida employees injured while temporarily working for their employer in another state will receive benefits under Florida’s Workers’ Compensation Law (Ch. 440, F.S.)

What You Need to Know: Out-of-state employees injured while temporarily working in Florida (and their employers) are exempted from Florida’s Workers’ Compensation Law and will receive benefits under the workers’ compensation law (or similar law) of their home state, if the following conditions are met:

- The employer has furnished coverage under the workers’ compensation law (or similar law) of the employer’s home state that covers the employee’s employment while in Florida;
- The extraterritorial provisions of Florida’s Workers’ Compensation Law are recognized in the employer’s home state; and
- Florida employees and employers are exempted from the workers’ compensation law (or similar law) of the employer’s home state for injuries that occur while Florida employees are temporarily working in the employer’s home state.

Effective Date: July 1, 2011

Taxation

Local Business Taxes – Chapter No. 2011-78

In 1972 the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments were then authorized to levy occupational license taxes according to the provisions of the “Local Occupational License Act.”

What You Need to Know: The law creates an exemption from local business taxes for an individual who engages in or manages a business, profession, or occupation as an employee of another person. The law provides that the exempt employee is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax.

- Provides that the exemption created by the law does not apply to business taxes imposed by municipalities or counties on individual employees pursuant to a resolution or



The law creates an exemption from local business taxes for an individual who engages in or manages a business, profession, or occupation as an employee of another person.

ordinance adopted prior to October 13, 2010, and the local authority may continue to impose and collect the tax.

Effective Date: July 1, 2011

Retirement – Chapter No. 2011-68

Unsustainable costs associated with Florida’s Retirement System have summoned the need for dramatic reform to the current system. This law makes several changes to the Florida Retirement System (FRS).

What You Need to Know:

- Effective July 1, 2011, the law requires a 3 percent employee contribution for all members of the FRS. Members of the Deferred Retirement Option Program are not required to make the 3 percent employee contribution.
- For employees initially enrolled in the pension plan on or after July 1, 2011, the law increases the years of service required for vesting from six to eight years of creditable service. For existing members, vesting remains at six years of creditable service.
- For employees initially enrolled in the Florida Retirement System pension plan on or after July 1, 2011, the law increases the normal retirement age and years of service requirements.
- Revises the definition of “average final compensation” to mean the average of the eight highest fiscal years of compensation for creditable service, for purposes of calculating retirement benefits.
- The law maintains the Deferred Retirement Option Program; however, employees entering the Deferred Retirement Option Program on or after July 1, 2011, will earn interest at a reduced accrual rate of 1.3 percent.
- The law eliminates the cost-of-living adjustment for service earned on or after July 1, 2011; however, the current 3 percent cost-of-living adjustment will be reinstated if funding is available.

Effective Date: June 30, 2011

Corporate Income Tax – Chapter No. 2011-229

Florida imposes a 5.5 percent tax on the taxable income of corporations doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes. This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year in question. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the “piggyback bill.”

What You Need to Know: The law updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986, by adopting the Internal Revenue Code as in effect on January 1, 2011. However, it does contain provisions that do not adopt the federal bonus depreciation and enhanced expensing provisions for certain capital items.

- This is accomplished by allowing a corporate taxpayer to take advantage of the federal depreciation and expensing provisions over a seven-year period instead of just one year.
- This spreads out the timing of the fiscal impact of the federal legislation, while still allowing corporate taxpayers the ability to take advantage of the enhanced federal provisions for federal tax purposes.

Effective Date: June 24, 2011

For employees initially enrolled in the Florida Retirement System pension plan on or after July 1, 2011, the law increases the normal retirement age and years of service requirements.



The required tie-in to the workforce system provides opportunities for skills assessment and a quicker return to the workforce through a greater emphasis on job search activities.

Unemployment Compensation – Chapter No. 2011-229

Providing a comprehensive revision of the state's Unemployment Compensation system, this law breaks down barriers between an Unemployment Compensation claimant and the workforce system for job placement immediately following the Unemployment Compensation claims eligibility process. The required tie-in to the workforce system provides opportunities for skills assessment and a quicker return to the workforce through a greater emphasis on job search activities.

What You Need to Know: This law reforms the unemployment compensation (UC) law in the following manner:

This law changes qualifying requirements (effective August 1, 2011) by:

- Requiring claimants to participate in an initial skills review using an online education or training program as part of reporting for benefits;
- Requiring claimants to make a systematic and sustained effort to find work, and to contact at least five prospective employers each week or report in person to a One-Stop Career Center to meet with a representative for re-employment services each week; and
- Requiring claimants to file continuing claims by Internet, rather than by phone or mail.

The bill changes the criteria by which claimants are disqualified from receiving benefits by:

- Changing the standard to show misconduct from “willful” (a high standard) to “conscious” (a lower standard);
- Changes the definition of misconduct to specify certain acts of misconduct that would disqualify an individual from benefits, such as absenteeism;
- Adds a disqualification for any weeks in which an individual receives severance pay from an employer (effective August 1, 2011);
- Expands disqualification to include being fired for all crimes committed in connection with work (rather than only those punishable by imprisonment) (effective August 1, 2011); and
- Adds a specific disqualification for individuals who are incarcerated or imprisoned (effective August 1, 2011).

The law creates a sliding scale for benefits beginning in 2012 by correlating the maximum weeks of benefits available with the rate of unemployment.

- The maximum amount of benefits available is 23 weeks when the unemployment rate is 10.5 percent or greater, and this scales down to 12 weeks of benefits when the unemployment rate is 5 percent or less.
- Codifies the executive order extending the temporary state extended benefits program and amends the program to conform to new federal law.
- Eliminates the payment of benefits by mail (effective August 1, 2011).

Related to unemployment taxes, this law:

- Allows employers to continue to have the option to pay their taxes in installments over 2012, 2013, and 2014;
- Provides tax relief for employers beginning in 2012 by adjusting the tax calculation;
- Increases the number of employee leasing companies who may obtain tax information for their clients by filing a memorandum of understanding, instead of filing a power of attorney for each client, with the Department of Revenue.

Effective Date: June 27, 2011



Constitutional Amendments



Health Care Services – Amendment 1

What You Need to Know: This is a joint resolution proposing the creation of s. 28, Art. I of the Florida Constitution to preserve the freedom of Florida residents to provide for their own health care. If adopted by the voters at the 2012 General Election, this resolution will take effect January 3, 2013. The joint resolution:

- Prohibits a law or rule from compelling a person or employer to purchase, obtain, or otherwise provide for health care coverage;
- Permits a person or employer to pay directly for lawful health care services without being penalized or taxed;
- Permits a health care provider to accept direct payment for lawful health care services without being penalized or taxed; and
- Prohibits a law or rule from abolishing the private market for health care coverage of any lawful health care service.

Ad Valorem Tax Exemption for Deployed Service Members – Amendment 2

What You Need to Know: This joint resolution would implement Amendment 2 (now Art. VII, s. 3(g) of the Florida Constitution), which provides a partial ad valorem tax exemption on homestead property for Florida military personnel who are deployed outside the United States. If approved by 60 percent of persons voting in the November 2012 General Election, these provisions will take effect on January 1, 2013:

- A disabled veteran age 65 or older applying for the discount will no longer be required to provide proof that he or she was a Florida resident at the time of entering the United States military, but would still need to prove that the disability was combat-related and that he or she was honorably discharged.
- A disabled veteran who qualifies for this homestead property tax discount receives a discount equal to the veteran's percentage of disability, as determined by the United States Department of Veterans Affairs.

State Government Revenue Limitation – Amendment 3

What You Need to Know: The joint resolution proposes to amend the Florida Constitution to replace the existing state revenue limitation, which is based on Florida personal income growth, with a new state revenue limitation based on inflation (Consumer Price Index) and changes in population. If approved by 60 percent of the voters in the 2012 general election, the resolution provides that the provisions will first apply to the 2014-2015 state fiscal year. The joint resolution:

- Replaces the existing state revenue limitation based on Florida personal income growth with a new state revenue limitation based on changes in population and inflation;
- Requires excess revenues to be deposited into the Budget Stabilization Fund, used to support public schools by reducing property taxes used to fund education, or returned to the taxpayers;
- Adds fines and revenues used to pay debt service on bonds issued after July 1, 2012, to the state revenues subject to the limitation;
- Authorizes the Legislature to increase the revenue limitation by a supermajority vote; and

Questions?

Please contact José
Gonzalez, Vice
President of
Governmental
Affairs, at
850-224-7173 or
jgonzalez@aif.com

- Authorizes the Legislature to place a proposed increase of the revenue limitation before the voters, requiring approval by 60 percent of the voters.

Homestead/Non-Homestead Property – Amendment 4

What You Need to Know: The joint resolution places a constitutional amendment on the ballot in November 2012. If approved by the voters, the proposed amendment would do several things related to property taxes:

- The proposed amendment would delay until 2023, the repeal, currently scheduled to take effect in 2019, of constitutional amendments adopted in 2008 which limit annual assessment increases for certain non-homestead real property;
- Reduces the current limitation on annual growth in the assessed value of certain non-homestead property from 10 percent to 5 percent; and
- Clarifies that the non-homestead assessment limitation does not apply to improvements made to the property.

State Courts – Amendment 5

What You Need to Know: The Joint Resolution proposes an amendment to the Florida Constitution relating to Florida's Supreme Courts. If approved by 60 percent of the voters in the 2012 general election, the resolution will take effect on January 8, 2013. The resolution:

- Adds a requirement that a Supreme Court justice selected by the Governor must be confirmed by the Senate to take office;
- Provides for the repeal of a court rule by general law (a simple majority), provided that the Legislature gives reasons for the repeal; and
- Would allow the House of Representatives, at the Speaker's request, to review all investigative files of the Judicial Qualifications Commission, which are currently confidential.

Abortion/Public Funding/Construction of Rights – Amendment 6

What You Need to Know: The Joint Resolution proposes an amendment to the Florida Constitution to prohibit the spending of public funds for any abortion or for health benefits coverage that includes the coverage of abortion. If approved by 60 percent of the voters in the 2012 general election, the resolution provides the proposed amendment will take effect on January 8, 2013.

The prohibition on the spending of public funds for any abortion or for health benefits coverage that includes the coverage of abortion does not apply to:

- Expenditures required by federal law;
- A case in which a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, which would, as certified by a physician, place the woman in danger of death unless an abortion is performed;
- An abortion due to a pregnancy resulting from rape; or
- An abortion due to a pregnancy resulting from incest.

Religious Freedom – Amendment 7

What You Need to Know: The Joint Resolution proposes an amendment to the Florida Constitution relating to religious freedom. If approved by 60 percent of the voters in the 2012 general election, the resolution will take effect on January 8, 2013. The resolution:

- Repeals a limit on the power of the state and its subdivisions to spend funds “directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution;” and
- Provides that government may not deny the benefits of any program, funding, or other support on the basis of religious identity or belief, except to the extent required by the First Amendment to the United States Constitution.

“Other New Laws”

Here are some “other” laws that passed the 2011 Legislative Session that may be of interest to Florida’s citizens

For more information visit aif.com

Open House Parties – Chapter No. 2011-161

This law enhances the open house party offense to a first degree misdemeanor for a second or subsequent open house party conviction. Further, it provides a first degree misdemeanor penalty for a violation of the open house party law that causes or contributes to causing serious bodily injury or death to a minor.

Effective Date: July 1, 2011

Possession of Stolen Credit or Debit Cards – Chapter No. 2011-184

Provides that a person commits a third degree felony if a person knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another without the cardholder’s consent with the intent to impede the recovery of the credit or debit card by the cardholder.

Effective Date: October 1, 2011

Clove Cigarettes – Chapter No. 2011-130

Currently s. 859.058, F.S., prohibits the sale, use, possession, or otherwise disposing of cigarettes or similar products that contain cloves, clove oil, or any derivative thereof. This law repeals s. 859.058, F.S., removing the statutory prohibition on clove cigarettes.

Effective Date: June 2, 2011

Firearms – Chapter No. 2011-145

This law specifies that it is not a crime for a concealed firearm permit holder, who is lawfully carrying a firearm in a concealed manner, to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not necessary in self-defense.

Effective Date: June 17, 2011

Animal Cruelty – Chapter No. 2011-42

Makes it a first degree misdemeanor for a person to knowingly engage in sexual conduct or sexual contact with an animal; cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal; or permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control.

Effective Date: October 1, 2011

ASSOCIATED INDUSTRIES OF FLORIDA

516 NORTH ADAMS STREET
P.O. BOX 784, TALLAHASSEE, FL 32302-0784



PRESORTED
STANDARD
US POSTAGE PAID
TALLAHASSEE FL
PERMIT NO 904

To learn more visit aif.com

Other AIF Publications

Keeping You and Your Company *In-the-Know* When it Comes to Florida Government

Employer Advocate

This magazine is an award-winning publication that provides the business community with expert analysis on the issues that are critical to all Florida businesses.

Session Priorities

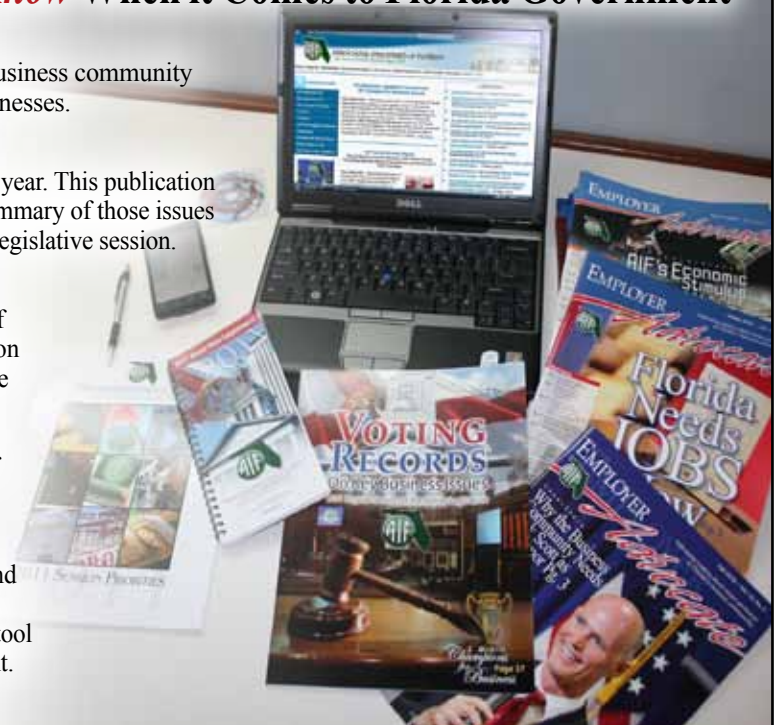
There are literally thousands of bills filed in the state Legislature each year. This publication takes the guesswork out and provides AIF members with a concise summary of those issues for which AIF has taken a position and will be advocating during the legislative session.

Voting Records

Voting Records is the most highly respected and tenured publication of its kind in Florida. For over 30 years business leaders have depended on the *Voting Records* to see exactly what level of support legislators gave the business community on the issues important to them. Every legislator is given a score and ranking based on the number of times they cast a vote in favor of the position AIF is advocating on behalf of members.

Know Your Legislators

Know Your Legislators is a pocket guide that is published each year and provides basic information on state legislators, governor and cabinet members, as well as legislative committees. The guide is an essential tool for those who need to stay informed on the leaders in state government.



ASSOCIATED INDUSTRIES OF FLORIDA • *The Voice of Florida Business Since 1920*