



ASSOCIATED INDUSTRIES OF FLORIDA

The Voice of Florida Business Since 1920



2009 SESSION PRIORITIES

Legal & Judicial

Workers' compensation, a traditional priority of AIF, is one of the most important issues for Florida businesses and their employees. It has the potential to once again dominate the legislative landscape in 2009. Florida law requires employers to purchase coverage to ensure that workers who are injured on the job have ready access to medical care, receive monetary benefits while they are unable to work, and get the vocational assistance they need to return to work as quickly as possible.

Landmark reforms, led by AIF and the *Workers' Compensation Coalition for Business and Industry* to the Florida workers' compensation system in 2003 resolved a crisis producing unaffordable rates for employers, widespread fraud, and poor compliance with comp insurance requirements. Florida's comp rates were some of the highest in the country and a barrier to the creation of jobs and successful competition with bordering states for important new business and industry. The Florida Legislature tackled this crisis in a deliberative, broad-based package by focusing on cost-drivers that were clearly out-of-line with workers' comp systems in other states, including the abuse of hourly attorneys' fees.

- **Safer Workplaces** – On-the-job injuries have declined almost 30 percent in Florida over the past 5 years.
- **Available and Affordable Coverage** – By January 2009, rates will have dropped an average 61.4 percent since 2003, saving approximately \$3 billion to Florida employers.
- **Faster Recovery and Return To Work** – Benefit levels are comparable to our neighboring state as more than 80 percent of all work injuries are resolved without litigation, and there has been no decline in the percentage of attorney involvement since 2003.

The Legislature's goal of creating a market of affordable and available workers' compensation coverage has been realized over the past 5 years since the passage of this reform, with average rates decreasing around 60

percent in most industries. The cornerstone to these cost savings has been reduction in litigation and attorney fees. Before this law passed, lawyers regularly collected thousands of dollars in fees on most litigated cases, even if their clients only received minimal benefits. Such occurrences had virtually disappeared from the system since the new law was passed.

However, the Florida Supreme Court recently issued an opinion in *Murray v. Mariner Health* that nullifies the current statutory provision of attorney fees and essentially reverts back to the costly litigation climate that employers, carriers, and legislators fought so hard to defeat. It is already clear that the resurrection of the hourly fee awards will stop the rate decreases Florida employers have received. The National Council on Compensation Insurance (NCCI), Florida's rate-making entity, has already predicted that rates will increase over 18 percent in the next two years, simply because of this ruling. Within a few months, the system will likely be headed back down the spiraling litigation path that created the chaos and crisis that necessitated the 2003 reforms.

Similarly, the issue of **court funding** is one that has the potential to negatively affect Florida's business climate. Overall judicial funding is a critical need for Florida's business community. Although legal filing fees for many types of cases, both personal and business related, were increased in 2008, those increased fees have not been used to fund the courts themselves. The fees have been collected from the litigants, but there has been little or no transparency to articulate how those dollars have been spent. As the courts coffers are dwindling, cases are taking longer to get to trial; and court personnel are being laid off or forced to seek employment elsewhere. The courts have been forced to constantly and continually make cuts in the same manner as other state agencies, but with less ability to sustain those cuts. This is particularly more troubling and difficult since the court personnel include so many constitutionally protected officers whose salaries cannot be reduced and positions cannot be eliminated.

Ideally, Florida's judicial system should embrace a specialized business court system to produce standardized procedures and consistency in rulings in complex business to business litigation matters. Unfortunately, the establishment of such innovative and efficient programs is little more than a fantasy in Florida where the judicial branch of government is equated to nothing more than a state agency from a state budgeting standpoint with only .07 percent of the state's budget. Proper and immediate funding of the judicial branch will ensure that the courts are equipped to handle the existing cases in which Florida's citizens are engaged and more frequently create

and implement creative efficiencies, such as establishing business courts, to improve the state's economic standing with our neighboring competitors.

Associated Industries of Florida will focus on the following Legal and Judicial Issues for 2009:

Workers' Compensation

AIF SUPPORTS efforts to pass workers' compensation legislation that clarifies the intent of the 2003 reforms and prevents Florida's workers' compensation system from deteriorating to pre-2003 status. Florida's economy cannot handle a workers' compensation crisis. We urge legislators to fight diligently and swiftly to avert this very real potential. The Florida Supreme Court has engaged in policy-making and has returned the system to its pre-2003 state. This move must be countered legislatively or the exact same crisis will result again. Florida's business community is once again united and committed to working with the Florida Legislature to develop a fair and equitable resolution of this attorney fee ambiguity so that our workers' compensation market remains healthy and our economy continues to grow and prosper.

Court Funding

AIF strongly encourages the Florida Legislature to fund the court system adequately and swiftly at a level equivalent to the judiciary's status as the third equal branch of government. A new mechanism for proper judicial funding, such as a dedicated trust fund for court fees, must be established to ensure that the legal needs of Florida's citizens and businesses, involved in over 4 million cases each year, are met in an efficient and just manner.

Protect Repeal of Joint & Several Liability

AIF OPPOSES the weakening or repeal of any of the 2005-06 legal reform laws. AIF will be ready to defend any proposals to undo the repeal of joint and several liability. As passed, **HB 145** repealed the remaining vestiges of joint and several liability in apportioning economic damages in negligence cases and replaced that system with a comparative fault approach. As a result, a party's degree of liability is limited to its degree of fault. Florida's business climate is facing tough challenges in the form of soaring property tax bills and property insurance rates. The repeal of joint and several liability has created a more stable legal climate that is fair and predictable. AIF will do whatever it takes to ensure that businesses in Florida only pay their "fair share" of damages, and we will continue to be the leader on tort reform issues as we have been for the last 33 years.

Additional Medical Malpractice Reforms

AIF SUPPORTS efforts by the Legislature to help control the cost of healthcare by enacting policies to slow the cost-drivers of medical inflation. One such policy where the Legislature can impact the rising cost of care is to enact greater medical malpractice reforms. Florida's legal climate encourages defensive medicine, diverts money from care to the legal system, and is a disincentive to doctors living and working in Florida. Greater legal protections for health care professionals are necessary. The following are two recommendations for the Legislature:

1. Establish sovereign immunity for physicians who provide mandated emergency services and care. The open-ended liability inherent in treating emergency patients has caused a shortage of specialists who are willing to subject themselves to the long hours and late nights involved in being on-call.
2. Pass legislation that would require out-of-state physicians to obtain an expert witness certificate to testify in Florida. Expert witness testimony not only plays a key role in the outcome of a medical malpractice case, it also impacts the way medicine is practiced in Florida.

Public Notice Laws

AIF SUPPORTS legislation that removes an exemption to S. 865.09(3)(d) for publication of a fictitious name in a newspaper. The current exemption language does not provide notice to individuals who do not have access to the internet and removed a protection placed in the statutes that was created to further the public policy of providing notice to the public. The removal of this exemption increases the opportunity for public to receive important information and protects the public by providing information on the parties who are doing business in their area. AIF recommends that to ensure protection of due process, no government entity that is required to provide notice of its actions to the public be the only entity that publishes that notice. **In addition, AIF supports legislation that requires limited liability companies to notify creditors when making a sale of all of its assets, or substantially all of its assets.** This proposal would ensure that there is enough time for a creditor/customer to contact the seller to determine if their rights are protected prior to the sale.

AIF Lobby Team Members Assigned to the Area of Legal & Judicial Include:

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