

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
WEEKLY UPDATE**



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FOR THE WEEK OF APRIL 23-27

WORKERS' COMPENSATION REFORM

On Thursday, April 26, *Reps. Dennis Ross (R-Lakeland), Leslie Waters (R-Largo) and J.D. Alexander (R-Winter Haven)* guided the workers compensation reform bill, CS/HB 1927, safely past a stack of hostile amendments on the House floor. The bill now is in good shape for a final House vote, which is likely to be next week. Rep. Ross persuasively and concisely batted away amendments written to strike critical provisions in the bill such as; elimination of the Social Security standard on permanent total disability; restrictions on changes of doctors and specialty examinations; and changes in the psychiatric impairment standard. *Rep. Tim Ryan (D-Dania Beach)*, an attorney, tried unsuccessfully to reinstate hourly fees for the attorneys and to increase their fees. *Rep. Jack Seiler (D-Fort Lauderdale)*, also an attorney, offered several damaging amendments which failed.

On Tuesday, April 24, The Senate Banking & Insurance Committee passed out CS/HB 1188. The bill, by *Chairman Jack Latvala (R-St. Petersburg)*, survived over thirty amendments that, if adopted, would have left the system worse off than when the committee started its work. Senator Latvala was completely conversant with the many complex and sometimes arcane legal aspects of the bill and managed the committee's debate like a chairman should. Assisting the Chairman with the many hostile amendments was *Senate Majority Leader Jim King (R-Jacksonville)*.

The provision in the bill related to reducing the cost of attorneys' fees to the system is not as effective as it could be, we will be advocating that this provision be strengthened in the few remaining days of session.

It is important to remember that Florida's employers pay the highest rates in the nation. If the proposed amendments had been adopted, the bill would have increased costs substantially over what is being paid today while failing to fix any of the real problems with the system.

The biggest difference between the Senate and House products relates to how they handle exemptions under current law for the construction industry. AIF supports the Senate approach, which is to simply eliminate all exemptions. The exemptions, which were originally crafted to assist small construction companies, have been so completely and brazenly abused over the past several years it is estimated that over a

billion dollars in premium is owed but not being paid into the system. The House addresses the problem by establishing corporate officer exemptions and requiring that sole proprietors and partnerships get coverage by 01-01-04.

AIF supports substantive and effective reform of the workers' compensation system. Florida's employers pay the highest rates in the nation and no relief is in sight. The House and the Senate are on the cusp of passing a bill that reduces spiraling attorneys' fees, dramatically reduces waste and fraud, limits delays in the system while increasing benefits to the injured employee.

ELDER CARE REFORM

On Friday, April 27, the Senate passed its elder care bill, CS/CS/CS/SB 1202 by Sen. Ginny Brown-Waite (R-Brooksville) and sent it to the House. The measure passed 34-4. Sens. Tom Rossin (D-Royal Palm Beach), the Democratic leader, Mandy Dawson (D-Fort Lauderdale), Sen. Debbie Wasserman Schultz (D-Pembroke Pines), Daryl Jones (D-Miami) and Kendrick Meek (D-Miami) voted no. The Senate bill is now on its way to the House for consideration.

There are some differences between the Senate and House versions. Sen. Campbell (D-Tamarac) is the author of one problematic provision in the Senate bill, which creates a joint underwriters association (JUA). However, on Thursday, Sen. Locke Burt (R-Ormond Beach) had the bill amended to activate the JUA only after the insurance commissioner finds that insurance is not generally available to nursing homes and assisted living facilities. Another difference is that the House bill establishes that provisions in the bill related to limiting punitive damages are applied retroactively to assist nursing homes in withstanding the roughly \$1 billion in lawsuits still pending. The Senate bill simply establishes that the limits on punitive damages be effective May 15, 2001.

Senate President John McKay (R-Bradenton) said the bill should not be simply labeled a nursing home bill because it goes much further in improving care for the elderly in Florida. It increases state regulation of the homes and raises standards for nursing assistance and provides other needed quality of care reforms. The bill embraces the absolutely necessary combination of quality of care and tort or lawsuit reform. AIF supports the bill and thanks Senate President John McKay, Senator Ginny Brown-Waite and many others in the Senate for their tireless efforts on this complex, demanding issue.

On Monday, April 23, The House Council for Healthy Communities approved the nursing home reform bill, HB 1879 after adopting a series of amendments that gutted key provisions in the bill. The handwritten amendments were available only to the council members, and the general audience knew only what the members explained about their contents. One amendment offered by *Rep. Ken Littlefield, (R-Zephyrhills)*

removed the retroactive application of the limit on punitive damages. The limits would begin July 1, 2001. Despite objections that the retroactive requirement was the only way nursing homes could work through \$1 billion in pending claims and be able to buy insurance again, the amendment was adopted without objection. *Council Chair Nancy Argenziano (R-Crystal River)* who led the charge to push through the amendments, offered an amendment to treat Assisted Living Facilities (ALF) differently from nursing homes in litigation, applying to ALF's considerably weakened legal protections.

On Tuesday, April 24, thanks to *Reps. Jerry Maygarden (R-Pensacola) and Allan Bense (R-Panama City)*, HB 1879, was placed back on track. The House Fiscal Responsibility Council on Tuesday approved the nursing home bill after adopting amendments by Maygarden and Bense to undo the damaging amendments pushed through the Council for Healthy Communities on Monday by *Council Chairman Nancy Argenziano (R-Crystal River)*. The bill now goes to the House floor for consideration next week.

AIF strongly supports nursing home care reform found in the Senate and House bills that both couple together two key and essential elements; quality of care reform and lawsuit reform. One of the reasons tax cuts became questionable for this session is the skyrocketing costs associated with Medicaid. Currently, Medicaid dollars are going to nursing homes through the front door and excessive and frivolous lawsuits are drawing those same dollars out the back door. Medicaid funding comprises a mix of state and federal dollars, dollars that come from Florida's citizens and employers. Unless we pass lawsuit reform that will restore fiscal stability to the nursing home care community, Florida is facing the human tragedy of bankrupt nursing homes and a fiscal crisis for the state budget. Quality care reform and lawsuit reform are inseparable and a must, for our seniors and for the state's budget and economic health. We are gratified that the Senate and House bills do address these intractable problems facing our elder care providers and citizens.

Sales Tax Holiday

On Friday, April 27, the sales-tax holiday bill, HB 251 by Rep. Beverly Kilmer (R-Marianna), was cleared for a final vote in the House although budget considerations may reduce the holiday from 10 days to two or three. This tax break, in combination with a reduction in the intangibles tax on stocks and bonds, will comprise the estimated \$175 million in tax breaks the Senate President and Speaker of the House agreed to earlier this week. The sales tax holiday, where consumers pay no sales tax on certain items, has been wildly popular and typically has been applied during the "back-to-school" shopping season.

AIF supports this innovative break from Florida's sales tax for consumers.

Unified Communications Tax

On Friday, April 27, CS/HB 1889 by the Fiscal Policy and Resources Council and many others, written to consolidate seven taxes and fees on various communications sources into a single tax also was considered on second reading and cleared for a final vote sometime next week.

On Tuesday, April 24, The Senate Appropriations Committee approved CS/SB 1878, the Senate version of the House bill, by *Sen. Jim Horne (R-Orange Park)*. The Senate bill is now available for consideration on the Senate floor and is on the Special Order Calendar.

The current laws governing taxation of communications services in Florida are not keeping pace with converging industries, advancing technology and bundling of services. When most of the laws were written, there was one telecommunications company providing all your communications needs. But, there have been many changes since then. Instead of one provider in a geographic area, there are many different companies providing a varied array of electronic communications services.

An equitable and efficient solution is a single, unified tax imposed by the State and administered by the Department of Revenue on all electronic communications services. This would include wire line and wireless telecommunications, paging, data communications, cable TV, and satellite TV. The new unified tax is intended to be revenue neutral for the state and local government. Customer bills will be easier for consumers to understand since there is but one state tax and not five different ones, each with a different tax base. The 2000 Legislature actually passed the unified communications tax, but the 2001 Legislature *will have to pass the new tax rate*.

AIF supports the effort to establish a unified communications tax statewide. A unification of the communications tax base under one simplified services tax would provide equity among the telecommunications service providers, a tax process the consumer can understand and a more predictable revenue stream for the state and local governments.

Election Reform

On Friday, April 27, the Senate passed its major elections reform bill, CS/SB 1118 by the Ethics and Elections Committee, 34-1. Among other things, it eliminates the runoff primary and ends the wildly unpopular punch card ballots.

On Thursday, April 26, the bill was read a second time on the Senate floor for the purpose of considering amendments. The Senate rejected an amendment to preserve

the little-known second or “runoff” primary required under current law in state elections. Currently, in a first election primary, which may have many candidates, if one candidate does not receive more than 50% of the vote, a second primary is held between the two top finishers. Historically, the second primary has suffered from a virtual boycott by voters, with turnout being in the single digits. Members of the Senate, many of whom benefited from or survived the second primary process, had understandable affection for the process and sought to preserve it by amendment. The amendment failed.

CABINET REORGANIZATION

On Wednesday, April 25, CS/HB 681 by *Rep. Leslie Waters (R-Largo)* was read a second time, rolled over for third and final reading and passed by the House by a vote of 113 yeas and 1 nay. The bill provides a reorganization of the Florida Cabinet that would feature an elected Chief Financial Officer who would execute the constitutional duties currently held by the Comptroller and Treasurer & Insurance Commissioner.

SB/CS 164 & 1970 by *Senators Latvala (R-St. Petersburg) and Geller (D-Hallandale Beach)* provides that the legislatively assigned duties of regulating insurance, banking, and financial services be under the elected Chief Financial Officer who would *appoint* the commissioners overseeing those three departments. The bill awaits consideration by the Senate on third and final reading.

The Governor and Cabinet would oversee three commissioners who would perform the regulatory and statutory duties related to a commission for banking, a commission for insurance and a commission for financial services.

An executive director, appointed by the Governor and Cabinet, and approved by the Senate would nominate the three commissioners. They would be subject to final approval by the Governor and Cabinet.

AIF supports the approach recommended by Comptroller Milligan as embodied in the House proposal.

Gun Manufacturer’s Civil Liability

SB 412 by *Sen. Charlie Bronson (R-Indian Harbour Beach)* received final passage by the House with a vote of 78 yeas and 35 nays. The bill prohibits civil actions against firearms and ammunition manufacturers, distributors, dealers and trade associations by certain governmental entities under certain circumstances. The right to sue the firearm entities for damages, abatement, or injunctive relief resulting from the lawful design,

marketing, or sale of firearms to the public is prohibited. The specified entities prohibited from bringing such suits are the state or its agencies and counties, municipalities, special districts, or other political subdivisions of the state. The bill does not prohibit an individual person from bringing a suit for breach of contract, breach of express warranty, or injuries resulting from a defect in materials or workmanship.

Protecting gun manufacturers from a legal assault is only the first step in insuring that our own governments, lacking the political will or wherewithal to ban or regulate products, which is their rightful jurisdiction, will not use legal artifice to plunder private, lawful industries. On the trial attorneys' and county, municipal and state governments "hit list" are industries such as alcoholic beverage manufacturers, fast food chains, and any other business that has, at some time, produced something that may have been subject to misuse or abuse. This is a good start.

BUDGET NEGOTIATIONS

Budget negotiations tend to be an insulated obsession of Tallahassee, but they mean a great deal to the Florida's employers when tax cuts are at stake. The size of the tax cuts, which was the main sticking point between the House and Senate in hammering out a deal, was agreed to yesterday. On Tuesday, April 24, the *Senate President, John Mckay (R-Bradenton)* and *Speaker of the House, Tom Feeney (R-Oviedo)* agreed to "split the baby" with a tax cut of roughly \$175 million. Originally, the Senate's position was no tax cuts at all. The House budget provided for approximately \$350 million in tax cuts. The \$175 million, will be comprised of a shortened "tax free" holiday for back-to-schools shoppers and an adjustment in the exemptions for those subject to the intangibles tax on stocks and bonds.

AIF is glad to see the Legislative leadership saw fit to further reduce the intangibles tax. This is a punitive and confiscatory tax. As we have said before, this tax is double or even triple taxation on income. It inhibits the movement of capital essential to the growth and expansion of business, chases away companies from relocating in Florida and it is simply unfair. We are deeply appreciative of what the governor and legislature has done in recent years, moving aggressively to reduce the burden of taxation and we are glad to see their continued efforts this session.

Constitutional Amendments Election Procedure

On Thursday, April 26 the Senate amended SJR 1426 by *Sen. Bill Posey (R-Rockledge)* to require that constitutional amendments be approved by 60 percent of the

voters, rather than the original language of the bill which called for 66 percent. The current law provides that a simple majority is enough to pass a constitutional amendment. On Friday, April 27, after some discussion, the consideration of the bill was delayed.

Election Reform

CS/SB 1118 by the Committee on Ethics and Elections was passed by the Senate by a vote of 34 - 1. The election reform bill was crafted in response to the well-documented problems Florida experienced during November's elections.

On Thursday, April 26, in consideration the bill, CS/SB 1118 on second reading, an amendment to preserve the little-known second or "runoff" primary required under current law in state elections. Currently, in a first election primary, which may have many candidates, if one candidate does not receive more than 50% of the vote, a second primary is held between the two top finishers. Historically, the second primary has suffered from a virtual boycott by voters, with turnout being in the single digits.

Members of the Senate, many of whom benefited from or survived the second primary process, had understandable affection for the process and sought to preserve it by amendment. The amendment failed.

GOVERNMENT & PRIVATE ATTORNEYS' CONTRACTS

On Monday, April 23, HB 1383 by *Rep. Jim Kallinger (R-Winter Park)* won approval in the House State Administration Committee. The bill, entitled the Reasonable Attorney Fees for Taxpayers Act, establishes exactly what it says, reasonable attorney fees. As the press revealed after the election legal battle in November and the tobacco litigation fight a few years ago, private attorneys can and do cart away a lot of money when the state contracts with them for legal representation. The bill establishes some parameters for fees and reporting requirements so the state is not left paying for questionable or undocumented fees.

This report was prepared by Curt Leonard, Manager – Governmental Affairs at Associated Industries of Florida (AIF) and Jere Moore, AIF Reporter. Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

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