



APRIL 27, 2005

TORT REFORM ISSUES LONG ADVOCATED BY AIF MOVE THROUGH THE PROCESS

HOUSE BILL 1513-RELATING TO CIVIL JUSTICE REFORM

On Tuesday, April 26, 2005, the House of Representatives began consideration of House Bill 1513 by Representative Don Brown (R-DeFuniak Springs) relating to venue, sellers' immunity from liability and the abolishment of joint and several liability. The bill is and has been strongly supported by AIF and the Florida Coalition for Legal Reform and contains many of the important tort reform provisions AIF has been advocating for a very long time – most importantly the elimination of joint and several liability.

The bill stops venue shopping by specifically designating the places where a lawsuit can be brought. The practice of searching for a venue more inclined to award higher verdicts is curtailed by this legislation.

In the area of products liability, Representative Brown explained that the bill protects small businesses from lawsuits in cases where a consumer is harmed or suffers damages due to a product defect. The bill will provide immunity to the retailer that purchases a product from the manufacturer, sells it to the consumer and the seller had no knowledge of any defect should the defect cause injury. However, if personal service cannot be obtained against the manufacturer in Florida, then the retail establishment selling the product is not immune from suit.

The abolishment of joint and several liability will insure that the person who causes the harm pays for the harm they cause. It eliminates the right to force the "deep pocket", usually a business, from having to pay a majority of the damages when it has not caused the damages. The "deep pocket" will only be responsible for paying its *prorata* share of the economic damages it individually caused.

Representative Jack Seiler (D-Pompano Beach) who voted against the bill in Judiciary Committee expressed concern regarding the venue portions of the bill. Representative Brown explained that the bill is about choice, because it allows a plaintiff to sue a defendant where the company's principal office is located; where the injury occurred or where the property at issue is located.

Representative Chris Smith (D-Fort Lauderdale) expressed a belief that the bill promotes bad public policy, as the bill does not encourage retailers to sell safe products. Representative Brown countered that the bill does not provide blanket immunity to retailers as liability may be found if the seller knew or should have known that the product was defective and likely to cause injury, manufactured or assembled the product, altered the design of the product, or made an express warranty of the product's safety.

Representative Tim Ryan (D-Dania Beach) attempted to argue that the repeal of joint and several liability was no longer needed, because current Florida law limits the imposition of the doctrine. Representative Brown noted that the statutory formulas are complicated and it is time to go back to the simple and fair concept of holding individuals liable only for the damage that they cause.

Representative Arthenia Joyner (D-Tampa) asked if the bill would require a plaintiff to sue a manufacturer from China in federal court and travel to China to collect. Representative Brown explained that the bill does not require a plaintiff to engage in such efforts, for if a plaintiff is unable to locate the manufacturer, then the retailer is still on the hook for damages.

Representative Curtis Richardson (R-Tallahassee), who fought this bill in committee continued to express his concern with the bill. He stated the bill has the practical effect of forcing cases into an "overworked" federal court. Representative Brown disagreed, noting that the bill is not about forcing plaintiff's into federal court, but is rather only about ensuring cases are filed in the proper venue.

Next, Representative Kevin Ambler (R-Tampa) who also voted against this bill in the House Judiciary Committee asked if the repeal of joint and several liability would exempt, from liability, multiple intentional tortfeasors acting in concert to cause damage or harm. Representative Dennis Ross (R-Lakeland) noted the repeal of joint and several liability only applied to negligence cases, not cases involving intentional torts.

Representative Ari Porth (D-Coral Springs) and Representative Yolly Roberson (D-Miami) each asked Representative Brown to explain who would pay for a plaintiff's damages in cases where a defendant has no insurance. Representative Brown explained that the bill requires the proper apportionment of fault; even if the tortfeasor has no insurance, it is unfair to hold a party responsible for more than their fair share of liability.

At 5:45 p.m., a motion was made to temporarily postpone House Bill 1513. Accordingly, the bill was added to the Calendar for April 27, 2005.

Today, the House again considered House Bill 1513. Speaker Alan Bense (R-Panama City) began the amendatory process after instructing the members that questions and debate had already taken place the day before. There were three amendments offered to House Bill 1513. The first amendment, offered by Representative Brown clarifies the definition of the term "principal place of business" and added a statutory cross-reference. The amendment was adopted without debate.

The second amendment, offered by Representative Dan Gelber (D-Miami Beach) provided that in a strict liability suit against the seller of a product, the seller has a right to produce an indemnification against the manufacturer. Representative Brown and Representative Fred Brummer (R-Apopka) urged the chamber to vote the amendment down, as it would weaken the bill. The majority of the House members agreed and the amendment failed.

The third amendment, offered by Representative Kevin Ambler (R-Tampa) sought to prohibit the allocation of fault to a nonparty and inclusion of the nonparty on the jury verdict form by reintroducing the *Fabre* decision. Representative Seiler declared that the amendment would prevent frivolous lawsuits because *Fabre* encourages attorneys to include nonparties in litigation. Representative Brown countered, observing that *Fabre* held that fault should be apportioned amongst all wrongdoers, regardless of whether they are parties to the lawsuit. Representative Brown also noted that in 1999, a panel of prominent judges in the state, testifying before the Legislature, observed that *Fabre* has not had a negative impact on the courts ability to move cases through the system. Representative Brown stated that if the members adopted this amendment, then they were not engaging in true tort reform. The amendment failed and the bill was rolled to third reading, meaning that the House must still take a final vote on the bill. This is the first time the repeal of joint and several liability has reached this far in the Legislative history of this issue.

STATUS OF OTHER TORT REFORM ISSUES MOVING TODAY

HOUSE BILL 785 -RELATING TO ASBESTOS-RELATED CLAIMS

The House of Representatives also considered three other pieces of important tort reform legislation. HB 785 by Representative Dan Gelber (D-Miami Beach), limits the liability of a successor corporation's asbestos-related liabilities incurred as a result of a merger of consolidation with another company was rolled to third reading without debate.

HOUSE BILL 1925-RELATING TO CLASS ACTION LAWSUITS

Additionally, HB 1925, relating to class action lawsuits by Representative David Simmons (R-Altamonte Springs) was considered. Representative Simmons offered three amendments to the bill. The first amendment adds legislative findings as to the need for class action reform. The amendment was adopted without debate. The second amendment, clarifies the content of the notice that the plaintiff is required to give a defendant before instituting a lawsuit. The amendment was adopted without debate. The third amendment, simply provides that a settlements presented to the court will conform the requirements of Federal and Florida Rules of Civil Procedure and the bill. This amendment was adopted without debate as well.

Representative Seiler attempted to introduce a strike-all amendment that would have removed the right to cure portion from the bill. The amendment failed and now the bill is headed to third reading.

HOUSE BILL 551-RELATING TO VEHICLES/FINANCIAL RESPONSIBILITY

Finally, the House considered HB 551, by Representative Alan Hays (R-Umatilla). House Bill 551 revises definition of "rental company" for purposes of exclusion from exemption from application of certain limits of liability. HB 551 expands the definition to include certain related rental or leasing companies & certain holders of motor vehicle title or equity interest in motor vehicle title under certain circumstances. There were no amendments or debate; the bill has now rolled to third reading.

None of these issues could have moved to this point in the House without the leadership of Speaker Alan Bense who has made tort reform his priority issue this session. Governor Jeb Bush has also championed this issue and has made it clear that tort reform is a major priority to him. Representative Don Brown in filing HB 1513 with some of the more controversial issues in it deserves to be recognized and acknowledged for his incredible efforts. Representative Dennis Ross also stepped up to the plate once again to continue the effort to move this bill out of the House to the Senate.

Other tort reform issues that have already passed the House and are on their way to the Senate are: premises liability; limiting the legal expansion of the definition of duty by a utility company and asbestos. See AIF Daily Brief April 21, 2005

The full House is expected to take up tort reform early next week if not before. It is expected that tort reform bills in the Senate being ushered through by Senator Webster will also start to move next week. Next week is the last week of scheduled session.

GROWTH MANAGEMENT

HB 1865 Relating to Growth Management by Representative Randy Johnson (R-Winter Garden) was considered on the floor of the House today. Most notably the House plan includes lots of new money. It includes \$1 billion for transportation projects and \$500 million to be split between school construction and water projects. The legislation is funded with \$200 million from DOC stamps and the remainder being diverted from general revenue.

The House plan tries to incentivize counties by setting aside \$450 million for state matches on local projects. An example would be those projects categorized as “capacity relief” to the state system, which would receive a 65 percent state match. “Regionally significant” projects are eligible for a 50 percent match.

Other areas of the state will also be encouraged to organize regional Metropolitan Planning Organizations (MPOs) in order to partner with the Florida Department of Transportation. The regional MPO group will make recommendations and the department will establish criteria to rate and prioritize those recommendations.

The House bill was rolled over to third reading. Informal work on differences between the House and Senate versions is anticipated to be ongoing. The House is attempting to argue that their bill is less punitive to local governments, has a softer edge on concurrency and includes a pay-as-you-go provision for developers. It also places heavy emphasis on urban infill and redevelopment.

AIF supports any piece of legislation which encourages smart, sustainable growth. HB 1865 is only a first step albeit a giant step towards addressing some of the backlog in Florida’s infrastructure needs. Florida’s cities and counties must provide the roads, bridges, and water necessary for businesses to grow and flourish, while at the same time preserving the natural beauty that makes Florida such a unique state.

TAXATION

The Senate unanimously passed SB 1056 Relating to Business Entities by Senator Ron Klein (D-Delray Beach). This bill seeks to harmonize many of Florida's existing statutes relating to business entities with provisions found in business friendly states such as Delaware and Nevada. This bill would effect how corporations, limited liability companies, not-for-profit corporations, and partnerships are regulated by the State.

According to the bill's sponsor the goal of this legislation is to make Florida as attractive to new businesses as possible. The Florida Bar along with other interested parties have been working on these vast reforms for almost two years.

AIF supports efforts by the legislature to bring Florida to the forefront of streamlined, business-friendly corporate environments, thereby making it attractive and as easy as possible for companies to do business in our state.

Other Bills of Interest:

HB 1693 Unemployment Compensation

HB 1693 by Representative Gus Bilirakis (R-Palm Harbor) received a favorable vote from House of Representatives today. The bill enacts federally mandated changes to state unemployment compensation tax law required by the "SUTA Dumping Prevention Act of 2004". Conformity with the new federal law ensures that Florida does not jeopardize its federal grant for the administration of the program, which annually provides \$64 million to the state. SUTA dumping occurs when a business uses mergers, transfers, shell entities, and other schemes to dump an employee from a high rate business entity to a low rate entity for purposes of unemployment taxation. House Bill 1693 makes SUTA dumping a third degree felony, provides for penalties under the Florida RICO Act and provides for civil penalties.

Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

- For more information on all of the important legislative information concerning the business community, go to our "members only" Florida Business Network web site at <http://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.