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No. 13

## Tort Reform: Lengthy Debate, No Action

This week, the Senate began debating tort reform legislation (H.3375), an issue brought to the forefront by the business community. The business community was very pleased with the House-passed version of tort reform, which garnered 100 votes from both Republicans and Democrats. However, the Senate Judiciary subcommittee and full committee amended the bill to a version the business community is firmly opposing.

Specifically, the business community opposes an amendment to the cap on punitive damages, which renders the cap essentially meaningless. South Carolina is the only southeastern state without a cap on punitive damages. Additionally, the Senate Judiciary Committee's version of the legislation renders the admissibility of the non-use of seat belts complicated and ineffective in most cases. The legislative repeal of the *Branham v. Ford Motor Company* decision is also strongly opposed and would place South Carolina in a small minority of states that employs the consumer expectations test. The business community supports requiring circuit court solicitors to seek the approval of the attorney general before bringing civil actions.

The Senate spent much of the week debating an amendment offered by Senate Rules Chairman Larry Martin (Pickens) and Senate Majority Leader

Harvey Peeler (Cherokee). The amendment would return the tort reform legislation to the version originally introduced by House Speaker Bobby Harrell (Charleston) and Senators Martin and Peeler, a measure strongly supported by the business community. The South Carolina Chamber of Commerce encourages a roll call vote on the Martin/Peeler amendment so South Carolina employers know exactly where each senator stands on tort reform.

Senator Martin also spent much of the week defending the need for the comprehensive legislation to improve South Carolina's civil litigation climate and ultimately the overall business climate. Other senators, such as Senate Finance Committee Chairman Hugh Leatherman (Florence), helped Senators Martin and Peeler defend the need for a strong tort reform bill saying it is a key component of economic development. In fact, Senator Leatherman said that in many of his recruiting visits around the world, the state's legal climate is often a main consideration for companies looking to locate a new facility.

The Senate will continue the tort reform debate Tuesday. The Senate Finance Committee will begin work on the FY 2011-12 state budget, so tort reform debate is expected to be limited. **The South Carolina**

### THUMBS UP THUMBS DOWN

**Thumbs Up:** To Governor Nikki Haley for weighing in on the tort reform debate by sending a letter to every senator encouraging passage of a strong tort reform bill to increase South Carolina's competitiveness with neighboring states.

**Thumbs Up:** To Senator Larry Martin (Pickens) for his unwavering support of South Carolina employers and his leadership in advocating for the business community's tort reform legislation.

**Thumbs Up:** To Senator Ray Cleary (Georgetown) for his amendment restricting seasonal workers from collecting unemployment benefits, a measure that could save the UI Trust Fund tens of millions of dollars annually.

## COMPETITIVENESS AGENDA

Description	Bill No.	Position	Status
Angel Investment Act	H.3779	Support	Passed House Ways and Means
Business License Fees	H.3472	Support	In House Ways and Means
Charter Schools	H.3241	Support	Passed House; On Senate Floor
Department of Administration	H.3066	Support	Passed House; On Senate Floor
Gov. Restructuring – Jointly Electing Gov./Lieut. Gov.	H.3152	Support	Passed House; In Senate Judiciary Committee
Gov. Restructuring – Superintendent of Education	H.3070	Support	Passed House; In Senate Judiciary Committee
Highway Funding	S.37/S.101	Support	In Senate Finance Committee
Regulatory Relief	S.420	Support	Passed Senate Judiciary Subcommittee
Spending Limits	H.3368	Support	Passed House; In Senate Finance Committee
Tort Reform	H.3375	Oppose as amended	Passed House; On Senate Floor
WorkKeys Certificate	H.3043	Support	In House Education and Public Works Committee

**Chamber urges business leaders to call or email their senators and encourage them to support the Martin/Peeler amendment.** Votes on H.3375, tort reform legislation, will be scored in the South Carolina Chamber's 2011 *Legislative Scorecard*.

In related news, this week the Oklahoma legislature passed and Governor Mary Fallin signed a law enacting a hard cap of \$350,000 on non-economic damage awards, moving Oklahoma ahead of many states related to its civil litigation climate.

## Unemployment Insurance Bills Move Forward

After weeks of testimony and debate in a Senate Labor, Commerce and Industry (LCI) subcommittee, the full LCI Committee passed S.478, legislation authored by Senator Greg Ryberg (Aiken) that is a technical clean-up bill from 2010 changes to the Unemployment Insurance (UI) tax rate structure. It was widely anticipated some scenario providing tax relief to higher taxed employers in rate classes 13-20 would be offered and debated during the committee

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meeting. However, no senator made any proposal for tax relief, setting up lengthy debate on the Senate floor.

With no consensus on any one scenario, time is running out to pass the legislation and implement changes before the first tax payments from employers are due April 30. The Senate is likely to spend at least the next week debating tort reform, with the state budget and redistricting battles to quickly follow.

S.478 will correct what is being dubbed "the anomaly," which put some businesses with a positive UI cash balance over the last seven years into rate classes 13-20. The legislation would correct the problem for one year. The other major component of the bill would decrease the new employer entry rate from 13 to 12 so the state is not put at an economic development disadvantage with neighboring states.

Senator Ray Cleary (Georgetown) offered a seasonal employment amendment that would allow businesses that use seasonal labor to apply to the South Carolina Department of Employment and Workforce (DEW) to restrict collections of unemployment benefits for those workers laid-off during their "in season." The amendment could lower benefit payouts, with corresponding tax rate deductions, for the tourism, agricultural, manufacturing and other industries that have some level of seasonal employment. The Chamber supports the inclusion of the seasonal restriction amendment.

This week, the Chamber distributed comments to the LCI Committee stating the need for relief for higher taxed businesses and laying out certain parameters associated with any solution. The Chamber believes the state should not plan to borrow more money from the federal government since it has already borrowed nearly \$1 billion. Also, any changes should not lead to tax shifts from rate classes 13-20 to rate classes 1-12. The lower taxed employers contributed less than 1 percent to the current debt but are being asked to shoulder nearly 25 percent of the payback.

Also this week, the House Ways and Means Committee passed H.3762, offered by House Ways and Means Chairman Dan Cooper (Anderson), to extend the federal loan payback from five to eight years. Because South Carolina began borrowing before most other states in the country, the state now only has seven years to repay the outstanding loan balance.

The House Ways and Means Ad Hoc subcommittee, chaired by House Majority Leader Kenny Bingham (Lexington), is expected to take testimony next week from interested parties. The full House is expected to debate alternate tax structures in the coming weeks, once the ad hoc subcommittee has time to fully debate different tax relief scenarios.

# Distribution Centers Remain Hot Topic

This week, Governor Nikki Haley held a press conference to discuss her position on the Amazon deal. In her remarks, the governor made clear that in the future she will not support changes in tax policy to lure an individual company to the state. However, she also told lawmakers that if they pass safe harbor legislation for Amazon, meaning Amazon would not have to collect the 6 percent sales tax on goods sold to South Carolina residents, she will not veto the legislation.

The Senate Finance Committee has passed S.690, legislation sponsored by Senate Finance Committee Chairman Hugh Leatherman (Florence) that would exempt distribution centers with no retail facilities in the state from corporate income taxes and corporate license fees. The South Carolina Chamber supports the legislation as currently drafted but opposes any provision that would grant a sales tax safe harbor. Retailers across the Palmetto State have objected to a sales tax safe harbor for Amazon because such a

move creates a 6 percent competitive disadvantage for current retailers, small and large. Senator Tom Davis (Beaufort) is objecting to further consideration of the bill on the Senate calendar.

Members of the General Assembly, primarily the Lexington County delegation, continue efforts to preserve the 1,200 plus jobs economic development deal and find alternative proposals to satisfy Amazon's request for the sales tax safe harbor. Other components of the incentive package already agreed on include free land to build the distribution center, reduced property tax rates, jobs tax credits and a repeal of Lexington County Sunday sales restrictions.

Under the current state law's definition of a "distribution center," a distribution center can double as a retail facility as long as it does so 12 days or fewer annually, giving some retailers concern that Amazon would open its doors during the busiest shopping days of the year.

## In Other News...

This week, a Senate Judiciary subcommittee chaired by Senator Luke Rankin (Horry) passed S.420, legislation sponsored by Senate President Pro Tempore Glenn McConnell (Charleston) and Senate Majority Leader Harvey Peeler (Cherokee). The bill provides **regulatory relief** to the South Carolina Department of Health and Environmental Control (DHEC) and the business community and would allow South Carolina to automatically revert back to the previous regulatory standard of federal courts halting the implementation of a federal regulation. The legislation was drafted at the request of the South Carolina Chamber's Environmental Technical Committee and is a key component of the *2011 Competitiveness Agenda*. Others serving on the subcommittee are: Senators Chip Campsen (Charleston), Creighton Coleman (Fairfield), Tom Davis (Beaufort) and Floyd Nicholson (Greenwood).

This week, a House Judiciary subcommittee met to begin debate on S.20, **immigration** legislation primarily focused on law enforcement. The Chamber expressed concerns about a provision included in the bill that would add new fees to wire transfers originating in the state. The provision was deleted by the subcommittee, which is still taking testimony on

the legislation and is likely to meet again next week.

H.3779, commonly referred to as the **Bill Wylie Entrepreneurship Act of 2011**, passed the House Ways and Means Committee. Key sponsors are Representatives Joan Brady (Richland) and Dwight Loftis (Greenville). The legislation would create an Angel Investment Fund. The Chamber supports the legislation as part of the *2011 Competitiveness Agenda*.

Governor Nikki Haley signed legislation allowing the South Carolina Department of Health and Human Services to **cut provider rates to hospitals and doctors** to help manage current deficits in the Medicaid program.

On the federal front, the U.S. Senate voted 87-12 Tuesday to repeal the onerous **1099 reporting requirement**, which would have required any business that purchases more than \$600 worth of goods or services from another business to submit a 1099 tax form to the Internal Revenue Service (IRS) beginning in 2012, a measure to help pay for the deficit created by the health care reform bill. The repeal was supported by South Carolina's United States Senators Lindsey Graham and Jim DeMint. The legislation now heads to President Obama's desk for his signature.