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FOREWORD

THE 1988 LEGISLATIVE SESSION

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WITH any endeavor, deliberative thought should explore the path that has been set upon. Without such reflection, revealing our past direction, it is unlikely that we would reach a future destination and instead, would condemn ourselves to circle what we seek. In Florida's process of legislative government, it is essential that a thorough review of our work accompany our continuing efforts to make this great and growing state all that it can be for every citizen. The *Review of Florida Legislation* provides a unique and thoughtful examination of the course we are taking for Florida. The articles in this issue address our efforts from the 1988 legislative session. The following is a brief preview of some of these articles.

I. AIDS

By 1991, it is projected that between 270,000 and 310,000 Americans will have Acquired Immune Deficiency Syndrome (AIDS), which will become the leading cause of death for Americans between the ages of twenty-five and forty-five. The myriad of legislative and legal issues surrounding this disease received intensive treatment from the Florida Legislature in 1988.

Beginning in 1985, Florida's Legislature responded to the AIDS epidemic with lawmaking on such topics as public health, education and testing. Prior to 1988, however, the Legislature had not considered a comprehensive package for AIDS-related issues. The startling projections for the future and the escalating public concern demanded a thorough legislative review.

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In 1987, the Florida House's Legislative Task Force on AIDS received testimony on a variety of issues, including health care treatment and delivery, education, testing, counseling and confidentiality, insurance, funding, discrimination and employment-related issues, as well as public health and criminal justice issues. That same year, the Senate formed a Select Committee on AIDS. In 1988, the efforts of both houses resulted in the passage of a major legislative initiative. The intent of the legislation is to ensure a careful balance of medical necessity, the right to privacy, and protection of the public from harm in AIDS-related programs and requirements.

The legislation requires massive educational programs, including statewide education by the Department of Health and Rehabilitative Services, and education of health care and other licensed professionals, barbers, cosmetologists and masseurs, health and child care facilities, state employees, law enforcement officers, correctional inmates and staff, and students.

The many issues related to testing—such as the importance of voluntary testing and the need for informed and confidential uses of the test—are addressed, as are issues related to hospitalization, patient care networks, and community-based care. The legislation also addresses discrimination in housing, public accommodations, governmental services, and employment, as well as in real estate transactions and insurance practices.

This landmark legislation is a nationally acclaimed effort to deal with the effects and repercussions of the disease. It has already served as a model for other states. In the future, the Florida Legislature will undoubtedly face issues relating to funding, children with AIDS (especially the growing numbers of babies born with the disease), and further refinements of the 1988 legislation as the state grapples with planning for the far-reaching impact of this disease.

II. MEDICAL MALPRACTICE

In 1986, the Florida Legislature created the Academic Task Force for Review of the Insurance and Tort Systems. Composed of the presidents of three universities and two businessmen, this Task Force conducted a thorough review of Florida's tort system and liability insurance industry. However, the Task Force did not limit its review or its recommendations solely to the insurance and tort systems. Their response also relied heavily upon improved regulation of the health care professions.

The 1988 Legislature implemented several of the recommendations of the Task Force, which form the basis of the 1988 medical malpractice legislation. Among the themes of the legislation are: restoring

public confidence in the quality of medical care, maintaining and improving availability of physician services to the general public, improving the dispute resolution process for medical incidents, and alleviating the medical malpractice insurance crisis in Florida.

Some highlights of this legislation are as follows:

Regulatory Reform. The 1988 legislation creates a Division of Medical Quality Assurance within the Department of Professional Regulation to police the licensing of health care providers and to assure that quality medical services are provided. Additionally, the Division is responsible for investigating physicians charged with unprofessional conduct and, if appropriate, taking disciplinary action.

Prompt Resolution of Meritorious Claims. This provision embodies two concepts. First, the legislation is designed to prevent plaintiffs from filing unwarranted claims and to prevent defendants from filing unwarranted defenses. The legislation accomplishes this objective by mandating comprehensive pre-suit investigation by both the plaintiff and defendant. If the pre-suit investigation requirements are not met, the court is empowered to dismiss a claim or strike a defense and impose sanctions on the violating party. Second, the legislation seeks to encourage the parties to submit their dispute to voluntary binding arbitration proceedings by providing incentives to both the claimant and the defendant, thereby decreasing the costs associated with litigation.

Birth-Related Neurological Injury Compensation Plan. In response to the inordinately high insurance premiums encountered by obstetricians, the 1988 Legislature established the Florida Birth-Related Neurological Injury Compensation Plan. This plan provides compensation, irrespective of fault, for certain birth-related neurological injuries. The legislation spreads the burden of financing the plan among obstetricians, other physicians practicing in Florida, and hospitals.

Emergency Room and Trauma Care Liability Reform. From 1983 to 1987, emergency medicine experienced a greater liability insurance premium increase than any other medical specialty. As a result of this increase, many health care providers became unwilling to provide emergency room and trauma care. In an effort to remove the disincentive to providing this care, the 1988 legislation reduces the standard of care required of physicians providing emergency room and trauma care. Additionally, the legislation limits the ability of hospitals and physicians to decrease the amount of emergency and trauma care they provide and establishes more stringent qualifications for witnesses testifying as experts in malpractice actions.

III. SOLID WASTE MANAGEMENT

In the 1980's, concerns about Florida's deteriorating water quality and increasing waste disposal problems prompted legislative action to

clean up contaminated drinking water, establish programs for managing hazardous wastes, replace potentially dangerous underground storage tanks, and restore polluted surface waters. Although efforts had been made since 1974 to address Florida's solid waste management problems, the state's rapid population growth and increased generation of solid waste outstripped the capability for proper disposal. Unfortunately, solid waste management often was pushed aside as the state struggled with other urgent hazardous waste and water quality problems.

Over the last fifteen years, however, the realization grew that many hazardous waste and water quality problems are integrally related to how well solid waste is managed and disposed. This realization, in addition to a variety of problems including contamination of water supplies from landfills, expensive waste disposal options, and the continued waste of reusable materials and virgin natural resources, prompted the Legislature to deal with Florida's solid waste management problem.

The 1988 Solid Waste Management Act is an important start toward properly managing Florida's solid waste. This comprehensive legislation establishes a wide range of activities and programs such as providing grant funding for recycling, requiring government recycling, and requiring local governments to disclose the actual costs of solid waste management to their residents. Other major features of the legislation include:

- Requiring recycling programs in all counties by next year and providing waste reduction goals. These programs will target recycling of newspapers, aluminum cans, glass, and plastic bottles.
- Establishing a solid waste grant program to help local governments fund recycling and composting programs.
- Banning certain types of plastics and packaging and requiring other types of plastics to be degradable.
- Prohibiting the disposal of hazardous or problematic wastes such as lead-acid batteries, whole tires, large appliances, and used oil in landfills after certain dates.
- Requiring the Department of Environmental Regulation to assist local governments in developing sound recycling and solid waste programs.

- Requiring that state agencies recycle certain materials and use products made from recycled materials.
- Creating a Clean Florida Commission to develop an innovative, statewide anti-littering program.
- Imposing tougher penalties for illegal dumping and littering.
- Requiring the development of rules to strictly regulate the generation, transport, and disposal of infectious or biohazardous wastes.
- Using monies from the state's oil overcharge funds to initially fund recycling and solid waste programs. Continued funding will be provided from the use of a portion of the sales tax dealer collection allowance and fees for dealer registration to collect sales taxes.

Because of the breadth and complexity of the Act, it is anticipated that some refinement of the legislation may be necessary if serious problems occur during its implementation. One issue not fully addressed by the Act that may require legislative action is whether the state is adequately permitting and monitoring solid waste management facilities and enforcing against violations of solid waste management laws. Preliminary indications are, however, that the Act is well designed and should not need substantial modification.

IV. ATHLETE AGENTS

Prior to 1988, athlete agents were not regulated by the state of Florida. The National Collegiate Athletic Association (NCAA) has a voluntary registration program of approximately 1800 agents. Of these, approximately twenty firms and twenty-seven individuals are located in Florida. The NCAA provides that member institutions may establish a three-person panel to advise students regarding professional sports careers. The NCAA acknowledges that the success of this registration program depends almost totally upon how successful member institutions are in getting their student athletes to deal only with registered agents. The NCAA instituted these programs because agents were taking an increasingly active role in the recruiting of student athletes and were offering them cash or other benefits which could jeopardize the students' eligibility.

In 1988, the Florida Legislature enacted legislation requiring athlete agents who operate in this state to register with the Department of

Professional Regulation. This legislation focuses on the relationship between agents and student athletes with remaining collegiate eligibility. It requires the agent and the student to notify the university or college of any contract signed by the student. Violations of the statute subject both the athlete and agent to criminal and civil liability. The institution also is permitted a cause of action against both parties for damages resulting from the student's subsequent ineligibility. The agent is also prohibited from postdating contracts and from offering anything of value to an employee or a coach of an educational institution for referrals that may induce the student to enter into a contract.

V. CRIMINAL DISCOVERY DEPOSITIONS

The Florida Department of Law Enforcement spearheaded a request during the 1988 session to abolish discovery depositions in criminal cases. To this end it published a report outlining alleged abuses by criminal defense attorneys. These alleged abuses included harassing victims and witnesses, scheduling multiple depositions of law enforcement officers at the same time or during off-duty or vacation hours, and using depositions as a delaying tactic. The report estimated that abolishing criminal discovery depositions would result in a savings in manpower hours worth \$37 million.

The criminal defense bar responded that the abuses alleged were very rare and that, in any event, the existing discovery rule provides adequate remedies. Supporters of the status quo further maintained that abolishing discovery depositions would result in "trial by ambush" similar to that which occurs in federal courts, and that any savings resulting from repeal of depositions would be offset by the increased use of other discovery methods and by more and lengthier trials. The defense bar argued that the taking of depositions often provided both the defense and the prosecution a clearer picture of the case and enabled them to reach a satisfactory resolution without trial. They suggested that it would be ludicrous to allow a person to take depositions in a \$500 civil case, but not allow depositions to be taken when the person's liberty is at stake.

House Joint Resolution 1679 requested the Supreme Court of Florida to appoint a commission to study the use of discovery depositions in criminal cases and to recommend changes to Rule 3.220(d) of the Florida Rules of Criminal Procedure—the rule governing depositions in criminal prosecutions—to solve problems of alleged abuses and to reduce the cost of the depositions. The legislation requests the court to institute such changes as are necessary to correct alleged abuses by April 1, 1989.

VI. MOTOR VEHICLE MANUFACTURERS

Florida's Regulatory Sunset Act automatically repeals various state regulations every ten years. Before these repeals, legislative committees spend almost a year studying the regulations and related issues. The practice of sunseting guarantees that the Legislature will periodically review legislation with an eye towards modification or total repeal if necessary.

In 1988, the Legislature elected to continue the regulation of motor vehicle dealers, manufacturers, importers, and distributors provided in chapter 320, Florida Statutes, and made substantial modifications to the regulatory scheme. Significant changes include the creation of a formula under which existing dealers may protest the establishment of an additional dealership or relocation of an existing dealership, specification of the obligations of manufacturers and importers relative to distributor agreements, clarification of the state's jurisdiction over foreign manufacturers of motor vehicles sold or leased in the state, and a requirement that manufacturers report to the Department of Highway Safety and Motor Vehicles on efforts to add new minority dealers.

House Bill 1683 was the result of the second sunset review of motor vehicle dealer and manufacturer regulation. The initial review was completed in the 1980 session. Based on the findings of the 1988 sunset review, the Legislature determined that motor vehicle regulation should be continued with refinements of existing provisions to ensure fairness and protection of the rights of all regulated parties. It deleted unnecessary restrictions and scheduled the entire motor vehicle licensing regulation for review and repeal in ten years.

Since the Act went into effect on October 1, 1988, it remains to be seen whether refinements of its key elements, such as the formula for dealer standing to protest competing dealerships and timeliness for protest hearings, will be proposed. The conduct of "off-premises" sales of motor vehicles is an unresolved issue which may be the focus of legislative proposals in future sessions.

VII. MOTOR VEHICLE INSURANCE

The number of motorists who drive on Florida's roads without adequate insurance is staggering. In Dade County, for example, it is estimated that over sixty percent of all drivers fail to comply with Florida's Financial Responsibility Laws. In response to this problem, the Legislature enacted The Motor Vehicle Insurance Reform Act of 1988. The Act is designed to lower the cost of uninsured motorist coverage and to assure compliance with the Financial Responsibility Laws.

In order to assure compliance with the Act, the Department of Highway Safety and Motor Vehicles is required to better police the reporting, renewal, and expiration of insurance policies. Additionally, insurers are required to report any changes in policy status to the Department.

The Act also makes several substantive changes in automobile policy requirements. For example, by October 1, 1989, all drivers are required to carry property damage liability insurance. Additionally, uninsured motorist coverage is no longer "stackable" and may not be in excess of any sums recovered from the at-fault driver's insurer.

VII. VICTIMS' RIGHTS

In 1987, the Legislature passed Senate Joint Resolution 135, which proposed an amendment to the Florida Constitution granting crime victims the rights "to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused." Anticipating overwhelming voter approval of the amendment in the November election, the 1988 Legislature enacted the Victims' Rights Act. With the passage of this legislation, and with the voters' subsequent adoption of the constitutional amendment, Florida signaled that it would continue to be a leader among states working to elevate the rights of crime victims, a group long neglected by the criminal justice system.

The purpose of the Victims' Rights Act is twofold: to strengthen victims' existing statutory rights; and to implement the broad mandate of the constitutional amendment. First, the Act expands upon a victim's right to be notified of and to participate in the trial and sentencing of the offender, including the right to submit a victim impact statement. Second, it requires that a victim be contacted if the offender escapes or is released from custody. Third, the Act protects victims from intimidation and harassment during all official proceedings involving the offender. Fourth, it permits certain victims to receive compensation and/or restitution for injuries sustained as a result of a crime. It authorizes the Governor to create a direct support organization to raise funds for crime victims through the private sector. Fifth, it places upon law enforcement authorities the affirmative duty to inform victims of their constitutional and statutory rights "as a matter of course at the earliest possible time." Finally, the Act permits the Governor to exercise the power of injunctive relief to insure that state and local authorities comply with the directives of the legislation and constitutional amendment.

There is concern that certain victims' rights measures may encourage victim-based sentencing of criminal defendants, which could result in two defendants who committed similar offenses receiving disparate sentences based upon the victim's appeal to the court. Such a result would conflict with the purpose of uniform sentencing guidelines, which attempt to insure that similar defendants receive similar sentences. Although some scholars have concluded that victim participation at sentencing results in few adverse consequences, this tension nevertheless may be the subject of further legislative treatment.

IX. UNIFORM TRADE SECRETS

A trade secret is commercially valuable information which can take many different forms. Many businesses choose to rely on state trade secret laws for protection, since federal patent laws require public disclosure if the patent is declared invalid or if it expires. If a patent is invalidated, the inventor risks a complete loss of benefit or advantage because of such disclosure.

Until 1979, the states had been left to develop trade secret laws on their own by statute or common law, with the apparent result that trade secret law developed unevenly. In 1979, the Uniform Law Commissioners approved the Uniform Trade Secrets Act and recommended its adoption by all states. In 1988, Florida adopted the Uniform Trade Secrets Act to bring clarity, simplicity and uniformity to this area.

The Act provides for injunctive relief, with certain "exceptional" circumstances conditioning the future use of the trade secret. It provides a full range of options for fixing damages, including recovery of attorney's fees. The Act also grants judicial authority to protect trade secrets before, during, and after trial. Finally, the Act includes a statute of limitations, and addresses the Uniform Act's effect on other laws.

X. CONCLUSION

These and other issues reveal the complexity of Florida's needs. As a state legislature, we are pursuing objectives which are not easily obtained. This *Review of Florida Legislation* adds perspective to our map, enabling us to make thoughtful choices for the direction of our state.

