

Business Column For Use In Newsletters

Maintaining a successful business is a difficult challenge even in the best of times. When your own state government blatantly works against you, though, it becomes the worst of times and makes running a business almost impossible.

You may have heard that Florida recently adopted a law that allows the state to sue any business or industry to recover payments made to Medicaid recipients allegedly harmed by that business' product. If you've heard those things, you heard right. I write this as a warning. It happened in Florida. It can happen anywhere. And members of my association are seriously considering relocating their businesses because of this absurd law.

If you also heard that this law only applies to the tobacco industry, you heard wrong. There are no restrictions in this law, which means the state can sue any industry it believes caused it to have to pay Medicaid recipients. That could be sugar (tooth decay problems or obesity). That could be the housing industry (exposure to radon). It could be any industry.

Supporters of this law claim that it will allow them to recover millions and millions of dollars Florida taxpayers have spent on Medicaid payments. The truth is quite different. An analysis by the Commonwealth Foundation, a Virginia think tank, shows that this law would recover little, if any money for the taxpayers. In Florida, for example, for every \$100 recovered, the state would get just \$20. Here in (name of state), the state treasury would actually (gain, lose) \$ _____. And that would come only after what is estimated to be years of protracted legal wrangling. Nationally, according to the Commonwealth Foundation, the average state would win just 10 to 15 cents on the recovered dollar, while trial lawyers would win as much as three times that amount!

The money argument is specious, at best. From an economic point of view, the ramifications of this law are obvious. The risk of doing business in a state with this kind of law would be far too high, so business would not locate there, which means jobs would not be created.

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It is also a threat to long-established legal doctrines. In Florida, the law takes away traditional defenses from defendants. It simply says you cannot use those defenses. For example, the law allows the state to recover damages without showing that the products that caused the injury were actually produced by the defendant involved. It also states that the "issue of causation and damages ... may be proven by use of statistical analysis." That means, if the odds are your product could have caused the damage, you can be found guilty and must pay.

You may be wondering, if this law is so bad, why did it pass? Who gains? Trial lawyers gain and, according to the *Wall Street Journal*, it was a group of 100 plaintiffs trial lawyers who hatched this idea in a meeting, then carried it to the state capitol and got it passed. What do they gain? The trial lawyers will get 30-40 percent of any eventual judgment. In every state, according to the analysis by the Commonwealth Foundation, that means the lawyers will get more money than the taxpayers!

As to how it was passed, I urge you to pay attention to this tactic. In Florida, the bill was introduced on the afternoon of the second to last day of the legislative session, a time when it was barely noticed. It wasn't until after it passed, that many legislators realized what they had voted for.

My message to you is simple: It can happen anywhere -- if you allow it to. Contact your legislators. Make them aware of the plaintiff attorneys vested interest in this kind of legislation, and make sure they know you don't like the idea one bit. If you want more information, please contact me at _____.

And remember, it can happen anywhere.

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