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FLORIDA'S "BAD FOR BUSINESS" LAW IS BAD FOR WORKERS TOO

by John R. Smith

Are we really a nation of laws, or should we be ruled at the whim of those who happen to be in power at a given moment? Are only politically correct businesses entitled to "equal protection of the law" and to "due process?" How many jobs will be lost by Florida workers as businesses become aware of the ramifications of the state's Medicaid Third-Party Liability Act?

These are just a few of the questions that should be addressed in the debate now raging within the legislature about whether to retain Florida's third-party liability law—a law described in the *St. Petersburg Times* as "dishonest, convoluted, and probably unconstitutional." Outwardly aimed only at the tobacco industry (which has replaced real estate developers as everyone's favorite whipping boy), this law makes it easy for Florida government to sue any business whose product can statistically be shown to contribute to a person's health costs where such costs

are eventually paid through Florida's Medicaid programs.

Could this law really "only" be used against tobacco companies? Not likely. That's because the 14th Amendment of the U.S. Constitution provides for the "equal protection of the law," a rule that, in effect, prohibits applying a given law to a specific person or industry simply because those in power wish to do so. Indeed, once this matter gets before the courts—and suits have already been filed—those provisions of the U.S. Constitution that mandate "due process" and "equal protection of the law" will very likely force the state of Florida either to abandon its discriminatory attack on the tobacco industry (by which time, of course, Florida taxpayers will have already incurred a huge legal bill), or to bring suit against all businesses whose products can statistically be shown to increase health care costs covered by Medicaid.

Will this hurt jobs? Absolutely. Let's look at the prime target,

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• the tobacco industry. That industry
• is not limited to manufacturers located
• in faraway North Carolina; it also in-
• cludes retailers (such as supermar-
• kets, drugstores and convenience
• stores) who sell tobacco products.
• Many jobs in those kinds of busi-
• nesses will be at risk. And what about
• bakeries and candy stores? After all,
• donuts and candy are loaded with fat
• that causes heart problems that—you
• guessed it—increases health care
• costs. What about such products as
• lawnmowers or chainsaws or ham-
• burgers or babybeds? All of these
• products supposedly cause various
• kinds of health care costs, some of
• which eventually are paid by Florida
• Medicaid. Sue 'em all!

• So what does Florida's Medic-
• aid Third-Party Liability Act mean to
• the people of Florida? First, new busi-
• nesses will be loath to come to Florida
• in the face of such a hostile environ-
• ment. That means fewer new jobs.
• Second, many existing businesses
• could be forced to downsize, to close

their doors, or even to leave the state.
That means a loss of existing jobs and
a shrinking tax base. And last, even
Florida businesses that don't cut jobs
or leave the state will, at the very least,
pass along their liability costs to their
customers. That means higher prices
for everyone.

The bottom line is that Florida
workers, consumers and taxpayers—
you and I—are the real "third-party"
that will pay for this truly bad for busi-
ness law.

(As a point of personal disclo-
sure, I don't use tobacco, and the
James Madison Institute has not re-
ceived nor sought contributions from
the tobacco industry.)

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*John R. Smith is vice president of the
James Madison Institute.*

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