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State: Fla.

House Panel Revising Bill That Would Cut Comp Costs by Nearly \$200 Million a Year: Top [2017-04-06]

The Florida House Commerce Committee today will hear a workers' compensation reform bill that is projected to cut costs by at least 5%, or \$182 million a year.



Bill Herrle

[House Bill 7085](#) was undergoing amendments late Wednesday to make the measure more amenable to the business community, according to representatives for the Florida Chamber of Commerce, the National Federation of Independent Business and the American Insurance Association.

The National Council on Compensation Insurance estimates that the legislation would result in a “significant decrease” in overall workers’ compensation costs. The ratings agency defines “significant decrease” as 5% or greater, or a minimum of \$182,250,000, according to a House staff [analysis](#).

The three-hour committee hearing begins at 1:30 p.m. in Webster Hall, 212 Knott Building, 404 S. Monroe St., at the Capitol complex in Tallahassee.

Bill Herrle, executive director of the NFIB’s Florida office, said bill sponsor Rep. Danny Burgess, R-Zephyrhills, who chairs the House Insurance and Banking Subcommittee and is a member of the Commerce Committee, was working with stakeholders on amendments.

An entirely new bill could emerge before the hearing, he said.

“We may very well be in agreement with it then,” Herrle said. “We hope to see from them a more aggressive stance on the cost driver of attorney fees. If we see that in it, we’ll support it. We still prefer a plaintiffs-paid system.”

Burgess did not return two telephone calls for comment. However, the Legislature's online information system showed that he made [three amendments](#) to his bill after 5 p.m. Wednesday.

One amendment would require all claimant attorney fee agreements to include a notice in 14-point bold type that claimants are responsible for their own attorney fees. Another would prohibit judges of compensation claims to approve any attorney fee of more than \$150 per hour in cases that depart from the statutory fee schedule, which fixes fees at a percentage of benefits awarded.

HB 7085, as originally drafted, would have allowed judges to award claimants' attorney fees of up to \$250 an hour, subject to an annual adjustment based upon a change in the statewide average wage.

The addition of hourly fees would codify a state Supreme Court ruling last spring in *Marvin Castellanos v. Next Door Co.* that a flat schedule that does not allow for "reasonable" fees is unconstitutional. HB 7085 complies with the ruling by allowing judges to deviate from the usual statutory formula that caps fees at a percentage of benefits awarded.

Judges who depart from the fee schedule would have to consider the time and labor involved, the novelty and difficulty of the case, and the skill required to perform the legal services.

Business leaders were pushing for a lower cap on hourly fees on the eve of the committee hearing.

"Under the bill now, \$250 is high," the NFIB's Herrle said. "The ceiling becomes the floor. That would become the fee."

Burgess' bill also would codify the high court's decision last spring in *Bradley Westphal v. City of St. Petersburg*, and increase the cap on temporary total and partial benefits to 260 weeks instead of the 104 weeks justices declared unconstitutional last spring. One of the amendments filed late Wednesday would allow claimants to petition for an additional 26 weeks of temporary disability benefits if overall maximum medical improvement has not yet been reached.

The Castellanos and Westphal decisions, combined with routine updates of provider reimbursement manuals, triggered a 14.5% rate increase effective last Dec. 1. It represented an increase in annual premiums of \$529 million, although "the actual impact on attorney's fee related costs will not be known for some time," the House analysis states.

Cost savings under HB 7085 could be reduced, NCCI estimates, under provisions that would raise reimbursement rates for outpatient care from 140% of the Medicare Outpatient Prospective Payment System to 200%, and for ambulatory surgical center care to 160% from 112%.

The Florida AFL-CIO said it supports the attorney fee provisions in the bill but that the proposed legislation does not go nearly far enough to reverse losses for injured workers. Since 2003, reforms have reduced worker benefits in 19 areas for a savings of \$345 million, said Rich Templin, the organization's legislative and political director.

"Everybody says this is about attorney fees and money-grubbing lawyers," Templin said. "It's really about access to the courts when an injured worker who has lost everything can go up against an insurance company with an army of attorneys."

"Right now in Florida's system, those reforms basically have given the carriers the ability to collect premiums and never pay anything out," he said. "Our argument is that's not good for the workers or the employers. We're forgetting the grand bargain that's at the heart of workers' compensation. It's between employers and employees. Carriers are ancillary to that agreement."

The unions and trial lawyers also had hoped any reforms would have included medical choice. Right now, injured workers must see doctors assigned by employers/carriers instead of their own physicians.

"I would have loved to see them address a mid-tier benefit, with a return to some kind of wage-loss replacement, and I would also have loved to see some element of medical choice," said Maitland claimants'

attorney Geoff Bichler. "As things stand, there are a multitude of constitutional infirmities that remain ripe for adjudication, and this legislation really fails to address any of them."

Ron Jackson, Southeast region vice president for the American Insurance Association, said before the bill was amended that the \$250-per-hour rate allowed by the bill was too high and that claimants should be required to pay their own attorney fees, as in most states.

Jackson said the AIA also supports using Medicare rates for the workers' compensation fee schedule, "but we'd have to analyze where the reimbursement levels fall."

HB 7085 contains many other provisions, including one that would create a mechanism to fill vacancies on the Three-Member Panel, which oversees the Division of Workers' Compensation, and grants the panel authority to fill gaps in statutory reimbursement when adopting medical reimbursement schedules.

The bill would increase the requirements applicable to petitions for benefits; eliminate carrier-paid attorney fees for services occurring before the filing of a petition; attach attorney fees 45 days, rather than 30 days, following the filing of a petition; and require judges to dismiss petitions for lack of specificity, without prejudice, within 10 days or 20 days, depending upon whether hearings are required.

Carriers would have to report the total amount of attorney fees paid for and the total number of attorney hours spent defending against petitions for benefits.

"If it's just for data collection, that's fine. They're entitled to the data they want to analyze," said West Palm Beach defense attorney H. George Kagan. "But if they want to limit defense fees, that's nonsense."

The Florida Chamber of Commerce said it was awaiting any amendments before commenting specifically on the bill.

"We are expecting amendments (Wednesday) afternoon that will improve HB 7085 after several discussions with Chairman Danny Burgess and House leaders," emailed Carolyn Johnson, director of business, economic development and innovation policy for the Florida Chamber of Commerce.

"We will be reviewing with our members but look forward to supporting efforts to bring stability to Florida's workers' comp system," Johnson said.

The Senate companion for HB 7085, [Senate Bill 1582](#), by Sen. Rob Bradley, R-Fleming Island, passed out of the Banking and Insurance Committee earlier this week and now is before the Appropriations Committee. It has the added provision of taking Florida from an administered pricing state to a loss cost state.

It projects annual savings of 3%, or about \$109 million.

"Neither bill adequately addresses the systemic instabilities created by the Castellanos and Westphal decisions. The bills attempt to codify the decisions without addressing the problems created by the decisions," Logan McFaddin, regional manager of state government relations for the Property Casualty Insurers Association of America, said in an emailed statement.

"The bills do have other sections that improve the Florida system but in the aggregate the bills create very modest savings for Florida businesses following the adopted 14.5% rate increase," McFaddin said.

The Florida Justice Association said "things are way too fluid right now to discuss specific parts of the House and Senate proposals," said Ryan Banfill, FJA communications director.

But Banfill said there are four pillars the association wants with any reforms: a transparent rate-making process; patient choice of physician; a mid-level tier for providing benefits once the doctor has determined the worker has reached maximum medical improvement; and "reasonable" claimants' attorney fees.

