



State: Fla.

Lawmakers Ironing Out Compromise Comp Reforms as Clock Ticks: Top [2017-05-04]

A floor vote on a Senate bill that would cap attorney fees and make other changes to the Florida workers' comp system was delayed again Wednesday as lawmakers worked to negotiate a compromise with the House version.



Rep. Danny Burgess

Katherine Betta, Senate deputy chief of staff for communications, said [SB 1582](#) was "temporarily passed" for a second day as lawmakers jockeyed to resolve differences with [House Bill 7085](#), which passed the House 82-37 on April 19.

The two major sticking points between the bills are the amount at which hourly fees would be capped for claimants' attorneys and the state's rate-making system.

SB 1582 would allow judges of compensation to depart from the statutory fee schedule for workers' lawyers and award maximum hourly fees of \$250. HB 7085 would cap fees at \$150. The Senate version also would convert Florida into a loss cost system instead of an administered pricing system that requires all workers' comp insurers to charge the same rates.

"They have been having conversations for the last couple days to try to resolve differences. I guess time will tell," said Carolyn Johnson, director of business, economic development and innovation for the Florida Chamber of Commerce.

Insurers and business interests support the House bill by Rep. Danny Burgess, R-Zephyrhills. Workers advocates support the Senate bill by Sen. Rob Bradley, R-Fleming Island. Burgess is an attorney in private practice and focuses on business and contractual law, while attorney Bradley focuses on government law at Kopelousos, Bradley & Garrison in Orange Park.

Stakeholders have made workers' compensation reforms a priority since the state Supreme Court ruled in April 2016 that the statutory fee formula passed by the Legislature in 2013 is unconstitutional because it did not allow reasonable fees in some cases.

The decision in *Marvin Castellanos v. Next Door Co.* triggered most of a 14.5% rate increase that went into effect Dec. 1 and is projected to raise system costs by \$1.5 billion in the first year through funded and unfunded liabilities as claimants' attorneys are able to reopen cases to collect reasonable fees.

Even if lawmakers were to compromise and cap the hourly fee at \$200, it most likely would remain unconstitutional, said Maitland claimants' attorney Geoff Bichler.

"I would expect that regardless of the effort to compromise on this and come up with a good bill, there's always going to be some constitutional issue on a fee cap that is arbitrary. And the lower they go, the more likely the court would find the cap arbitrary," Bichler said. "At this point, legislators are not talking to stakeholders. They're grappling with this among themselves, trying to figure out what this is going to look like, and it's anybody's guess.

"Overall, I think it's a shame we had to be focused all this time on attorney fees and not on enhancing benefits for injured workers," he said. "Instead, attorney fees sucked the air out of the room."

Bichler said he favors the Senate bill mainly because it would shift Florida to a competitive rate-making state, in which a rating bureau could publish only loss costs and not manual rates.

That type of deregulation would permit insurers to set their own rates without first seeking approval of state regulators, according to John F. Burton, professor emeritus of Cornell and Rutgers universities and a national expert on workers' compensation for a half century.

Burton said in a telephone interview Wednesday that he pitched deregulation to Florida lawmakers and stakeholders last August at the 71st Annual Workers' Compensation Educational Conference in Orlando, and that insurers "were not happy."

"Florida stands out as one of few states that have not deregulated to some extent," Burton said. "Its neighbors, the Gulf states, have already deregulated. On average, those states that went to full deregulation reduced rates by about 11%, compared to what they would have been if the state had stayed with administered pricing.

"It's a pretty substantial savings. It doesn't make sense to me: Here's an average 11% savings in a state so concerned about the cost of workers' compensation," he said of Florida. "Competition works."

Lawmakers were grappling with several workers' compensation bills Wednesday to resolve them before the regular session ends on Friday. The session will be extended to one day, Monday, to solve budgetary legislation only, House Speaker Richard Corcoran, R-Land O' Lakes, said from the floor Wednesday.

The House on Wednesday voted unanimously to pass [HB 1107](#), which keeps confidential by exempting from the state's open records laws personal identifying information of injured and deceased employees.

Sponsored by Rep. Ben Albritton, R-Wauchula, the bill prohibits regulators from disclosing worker names, dates of birth, home or mailing addresses, email addresses or telephone numbers.

An exception is made to the injured worker or surviving spouse and dependents; to party litigants in matters pending before the Office of Judges of Compensation Claims; pursuant to court orders or subpoenas; and for insurers and state agencies investigating fraud.

“Such information is of a sensitive, personal nature, and disclosure of such information about an injured or deceased employee is an invasion of that employee’s privacy or the privacy of his or her family,” the bill states.

“Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers and others. The harm caused to such an employee or his or her family by the release of this information outweighs any public benefit derived from its release,” it says.

HB 1107, as amended by minor Senate language tweaks, passed the Senate 37-0 on Tuesday. It must return to the House to resolve differences between the two versions passed by each chamber.

The Associated Industries of Florida issued a cryptic statement Wednesday in support of HB 1107, calling it the antidote to “one of the abuses” that employers face, presumably from attorneys and other special interests allegedly trolling for clients.

“AIF ... encourages Governor (Rick) Scott to sign HB 1107 that addresses one of the abuses Florida’s employers face within our state’s workers’ compensation system,” said Tom Feeney, president and CEO of Associated Industries of Florida. “By exempting public records relating to injured or deceased workers, this relief is one way to clear the burdensome pressures in the system to get injured workers healthy at affordable rates to employers.”

The Senate is expected to take up other comp bills this week:

- [HB 1007](#) would require every insurer to designate at least one primary anti-fraud employee, require the adoption of anti-fraud plans and require insurers to report those plans to regulators. It passed the House by a 119-0 vote on Tuesday.
- [SB 1014](#) would exempt from public records requirements all of the information required by insurers to meet the requirements of HB 1007 and its Senate companion, [SB 1012](#), which is also on the agenda for a full Senate vote.