



February 18, 2016

The Georgia General Assembly has completed 23 of its allotted 40 legislative days, and will be in session five days next week. That sets up Monday, February 29th, as legislative day 30, the deadline for all bills to clear their House of origin

Amended firefighter bill clears committee.

The House Industry & Labor Committee this week passed a substitute version of HB 216, the bill that originally would have created a rebuttable presumption that certain occupational diseases contracted by firefighters are compensable under workers compensation. GWCA objected to the presumption, which struck at the fundamental premise that workers compensation is for injuries and illnesses that are clearly job-related. Moreover, there would be no logical reason for a presumption to exist only for firefighters.

The substitute version of the bill does *not* include a presumption. It would allow firefighters to recover workers compensation benefits for cancer if they can show the following:

- (A) a direct causal connection between the conditions under which the work is performed and the disease;
- (B) that the disease followed as natural incident of exposure by reason of employment;
- (C) that the disease is not of a character to which the employee may have had substantial exposure outside of the employment;
- (D) that the disease is not an ordinary disease of life to which the general public is exposed: *provided, however, that for firefighters, as defined in Code Section 25-4-2, the disease of cancer, otherwise considered an ordinary disease of life, is shown by a preponderance of the competent and credible evidence, which shall include medical evidence, to have been attributable to the firefighter's performance of his or her duties as a firefighter, and*
- (E) that the disease must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence.

The bill would add the italicized language above to 34-9-280(2) of the Georgia Code, and all five of the elements in A through E must apply for the cancer to be compensable.

An earlier version of HB 216 would have eliminated the presumption but made all "diseases of life" compensable for all employees on a preponderance of evidence that the

disease is job-related. GWCA objected to this alternative because the evidence standard was too low for diseases that typically result from aging, genetic factors, or lifestyle.

HB 216 will likely clear the House Rules Committee and pass the full House of Representatives before the crossover deadline. It's prospects in the Senate are unclear at this point.

State Bar wants more settlement leverage for plaintiff lawyers.

A House Judiciary subcommittee this week took up legislation that would make Georgia the first state to reject judicial reforms adopted by the U.S. Supreme Court. Instead, HB 1017 would greatly expand discovery of electronically stored information, giving plaintiff lawyers access to vast amounts of data currently "off limits" due to the existing "proportionality" standard.

Courts currently require that discovery be proportional to the value of the case, which limits a plaintiff lawyer's ability to force a settlement by using discovery to drive up costs. Drafted by the State Bar of Georgia, HB 1017 would require a defendant to file a protective order showing why a demand for discovery was excessive. This shifts the burden of proof away from the plaintiff lawyer and onto the defendant, whether that defendant is a corporation, a small business, or an individual. As one opponent testified before the subcommittee, this bill "fuels the weaponization of the discovery process."

HB 1017 also fails to provide any certainty or guidance on what to keep or discard, or how long information should be kept. This was a major goal of the federal rules adopted by the U. S. Supreme Court, which clearly recognized the need as emails alone now number an estimated 205 billion a day.

After more than three hours of testimony from opponents of HB 1017, the subcommittee held the bill for further study. In all likelihood the subcommittee will consider the bill again next week.

House passes State Board's bill.

The House of Representatives has passed HB 818, the legislation developed by the Advisory Council to the State Board of Workers Compensation. The bill now resides in the Senate Insurance and Labor Committee.

HB 818 would increase in the maximum weekly income benefit from \$550 to \$575, approximately two-thirds of the state's average weekly wage. There are corresponding increases in the temporary partial disability benefit from \$367 to \$383, and the death benefit from \$220,000 to \$230,000.

The bill would also make administrative law judges subject to the Georgia Code of Judicial Conduct and clarify that the State Board has the discretion to deny self insured status.

Other bills of interest.

SB 338 -- Hill of Marietta: would require the State Board of Workers Compensation to issue a "certificate of state law applicability" to businesses with fewer than three employees. Still in Senate Insurance and Labor Committee.

SB 347 -- Bethel of Dalton: to make comprehensive revisions to captive insurance company statute, including definitions of types of captive insurance companies and regulation of captive insurance companies. Referred to Senate Insurance and Labor.

HB 402 -- Lumsden of Rome: would provide an optional five percent credit against workers compensation insurance premiums for employers who provide certified work-based learning programs for teenage students. Passed House and referred to Senate Insurance and Labor Committee.

HB 536 --Nimmer of Blackshear: carryover bill from 2015 would provide that any workers' comp claim filed with the State Board for which neither medical nor income benefits have been paid shall be dismissed with prejudice by operation of law if no hearing has been held within two years of date of injury. Still in House Industry and Labor Committee.

GWCA members are encouraged to contact their state representatives and senators on any issues of concern. Contact information is available at www.legis.ga.gov. There you can find your legislators' office and phone numbers as well as committee assignments. You can also download copies of legislation and see committee rosters and meeting schedules

###