



February 20, 2015

*Monday, February 23rd, will be the 20th legislative day, and will mark the halfway point of the 2015 Georgia legislative session. The lawmakers will meet Monday through Thursday next week. The current schedule projects final adjournment for April 2.*

### **State Board introduces bill to address exclusive remedy issue.**

House Industry and Labor Chairman Mark Hamilton today introduced legislation to address problems created by the Court of Appeals decision in *Pitts v. City of Atlanta*. Introduced on behalf of the State Board of Workers Compensation, HB 412 is the first bill from the State Board in over 20 years likely to face serious opposition.

Two competing claimant lawyer groups are opposed to the exclusive remedy provision, while GWCA and other employer groups support the measure. The provision in code section 34-9-11(a) reads as follows, with new language underlined:

*"The rights and the remedies granted to an employee by this chapter shall exclude and be in place of all other rights and remedies of such employee, his or her personal representative parents, dependents, or next of kin, and all other civil liabilities whatsoever at common law or otherwise, on account of such injury, loss of service, or death; provided, however, that the employer may be liable to the employee for rights and remedies beyond those provided in this chapter by expressly agreeing in writing to specific additional rights and remedies: provided, further, however, that the use of contractual provisions generally relating to workplace safety, generally relating to compliance with laws or regulations, or generally relating to liability insurance requirements shall not be construed to create rights and remedies beyond those provided in this chapter.*

The Pitts decision implies that exclusive remedy may not apply in third party situations where there is a breach of contract, even if the contract does not relate to workers compensation. HB 412 would further limit the scope of the decision and clarify that contract provisions cannot void the exclusive remedy provision unless specifically provided for in the contract language.

Since passage of major reform measures in 1992, workers comp stakeholders have been able to develop consensus bills through the State Board's advisory council -- until this

year. Now the two claimant lawyer groups are vying to see which can be more aggressive.

It's a new, less certain, era for Georgia workers compensation, and employers must be engaged to prevent a claimant lawyer "takeover" of the system. *GWCA members are urged to contact their legislators in support of HB 412.*

### **HB 412 -- the rest of the story.**

In addition to the exclusive remedy provision, HB 412 includes several provisions developed and agreed upon by the State Board's advisory council. It would increase the maximum weekly income benefit from \$525 to \$550. Another \$25 increase is likely next year to keep the maximum close to two-thirds of the state average weekly wage. The maximum temporary partial disability benefit would increase from \$350.00 per week to \$367.00 per week.

GWCA has long supported increases in the *statutory* maximum benefit that are close to two thirds of SAWW, while opposing any indexing of the benefit that would make annual increases automatic.

HB 412 would also set the death benefit at 400 weeks times the weekly benefit rate. This would increase the maximum death benefit from \$150,000 to \$220,000. The death benefit had not been increased in many years.

In addition, the bill would move the sunset date for the Subsequent Injury Trust Fund from 2020 to 2023, and move oversight at that time from the State Board to the Department of Insurance. It would also allow the SITF to continue assessments at the current rate to avoid a shortfall in reserves.

HB 412 strikes a provision in the current law providing for optional "conformed panels of physicians." Georgia employers are not using the optional conformed panels.

### **Work based learning bill features comp discount.**

Legislation introduced by Rep. Eddie Lumsden of Rome would provide an optional five percent credit against workers compensation insurance premiums for employers who provide certified work based learning opportunities for students. The option of whether to grant the credit would rest with the insurer.

HB 402 will likely remain in the House Industry and Labor Committee this session, as Chairman Mark Hamilton seems to prefer the vetting of workers compensation bills through the Advisory Council to the State Board of Education.

### **Occupational disease bills not moving.**

Two bills to provide that "there shall be a rebuttable presumption that any firefighter's occupational disease was contracted in the line of duty" are still in their respective committees. The two companion bills would define occupational disease as hypertension, heart disease, respiratory disease, and in some cases, cancer.

These diseases are often the result of genetics, aging, or life style, and should not be covered by workers compensation unless they can be determined to be job-related.. Although these bills are limited to fire-fighters, expansion to private sector jobs would be the next "logical" step.

SB 29 is in the Senate Insurance and Labor Committee, and the identical HB 216 is in the House Industry and Labor Committee.

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