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Legislative Committee Considers Anti-Nonsubscriber Proposals

Three bills by Rep. David Leibowitz (D-San Antonio) that have the effect of making nonsubscription less attractive have received a public hearing in the House Business and Industry Committee. Representatives of the Alliance provided testimony against all three measures.

The first, HB 35, was heard on March 2nd. The bill would require nonsubscribing employers to report certain information to the Division of Workers' Compensation, including medical costs, income benefits and settlements related to occupational injuries. Alliance Chair Margaret Greenshield of James Avery Craftsmen; Alliance Vice-Chair Sandra Carson of SYSCO; and Associate Advisory Committee Chair Blake Stock of The Combined Group testified that the legislation would negatively affect nonsubscribers by placing additional reporting requirements on them in hopes of building opposition to an employer's ability to nonsubscribe. The bill was referred to a subcommittee for further consideration.

HB 32 and HB 33 were considered by the House Business and Industry Subcommittee on Workers' Compensation and Homeowners Association Issues on March 24th. HB 32 creates a cause of action under the Labor Code against nonsubscribers for alleged retaliatory "discrimination" actions or discharge of employees who have filed an injury-related negligence claim or who have taken part in a legal proceeding against their employer. HB 33 requires the Division of Workers' Compensation to adopt rules to collect nonsubscriber benefit data and requires a nonsubscriber to provide certification to DWC that they do not use arbitration agreements prior to injury.

Greenshield and Donna McElroy of the Cox Smith Law Firm testified in opposition to the bills on behalf of the Alliance. Both emphasized the benefits of arbitration and the federal laws that provide anti-discrimination and anti-retaliation protections for employees including ERISA, FMLA, OSHA and ADA.

Also registering in opposition to the bills were the Texas Association of Business, National Federation of Independent Business, Associated Builders and Contractors, Texas Automobile Dealers Association, Texas Restaurant Association, Texas Hotel and Lodging Association, Texas Retailers Association, Texas Association for Home Care, TXANS, CHRISTUS Health, and HEB Grocery. Rick Levy of the Texas AFL-CIO registered in support of

the proposals.

The bills remain pending in the subcommittee and could be voted on at future meetings. Members of the Subcommittee on Workers' Compensation and Homeowners Association Issues are as follows:

Rep. Gary Elkins (R-Houston)
Rep. Joe Deshotel (D-Beaumont)
Rep. Kirk England (D-Grand Prairie)
Rep. Jim Keffer (R-Eastland)
Rep. Sylvester Turner (D-Houston)

Texas Department of Insurance Proposes Survey on Nonsubscriber Information

The Research and Evaluation Group (REG) of the Texas Department of Insurance has published its proposed research agenda for 2009, which includes a proposal to survey the type of benefit information that is currently collected by nonsubscribers for occupational injuries and illnesses and a survey of the methods used by nonsubscribers to evaluate the cost and quality of their benefit programs. REG adopts an agenda each year to study various aspects of the workers' compensation system and also performs the nonsubscriber survey.

The proposed agenda was published in the *Texas Register* on March 6th, and comments can be submitted to the agency until April 6th. The agency will take comments into consideration and adopt a final agenda with a response to all comments. The Alliance will be developing comments on behalf of its members. If you would like to participate in this effort, please contact Richard Evans at Richard@txlobbysolutions.com.

National Commission of State Workers' Compensation Laws Proposed

U. S. Congressman Joe Baca (D-California) has proposed HR 635, which would authorize the creation of a National Commission on State Workers' Compensation Laws. The proposal would give the commission the responsibility of examining state laws to determine if they provide an adequate, prompt, and equitable system of compensation and medical care for injury or death arising out of or in the course of employment.

A similar commission was authorized under the creation of OSHA with members appointed by President Nixon in 1971. The panel made broad recommendations that included higher disability benefits, compulsory coverage, and unlimited medical care and rehabilitation benefits. Most states adopted the recommendations.

Since that time, workers' compensation laws have remained within the

purview of the states, with each adopting and revising their respective workers' compensation laws based on its own preferences and needs. Major reforms to the Texas workers' compensation system were adopted by the state legislature in 2005.

Concerns have been raised that Rep. Baca's proposal would unnecessarily increase the federal bureaucracy and create federal regulation in an area where states are currently providing adequate oversight. If you would like to make your voice heard on this issue, the Alliance urges you to contact your Congressman and let him or her know of your opposition to HR 635. You can find the contact information for your Congressman at:

<http://www.fyi.legis.state.tx.us/>

Record Number of Bills Filed in the 81st Legislative Session

March 13th marked the "filing deadline" for the current legislative session. By rule, the 60th day is the final day that a legislator may file legislation. Introducing legislation after the deadline requires the permission of a four-fifths majority of the members within the chamber where the measure would originate.

This session, a record number of bills has been introduced with 4,720 proposals being offered in the House of Representatives, compared to 4,140 during the 2007 session. Members of the Texas Senate have introduced 2,465 bills during the current session, compared to 2,050 in 2007.

Even though the number of bills filed has increased significantly, the pace of the session has been slower than in previous years. The selection of new leadership in the House of Representatives and the inherent changes that follow, a presidential inauguration, and political wrangling over a voter identification bill in the Senate have contributed to the slower than usual start. Despite the more deliberate pace, the final two months will likely be marked with lengthy committee hearings and floor debate positioning the Legislature to once again complete its business by passing hundreds of the record number of proposals introduced.

Spotlight on Leadership: Lt. Governor David Dewhurst

Lt. Governor David Dewhurst was first elected to the office in 2002 and was re-elected in 2006. He is now presiding over the Senate for the fourth Regular Session, in addition to seven Special Sessions.

He has worked to bring together Democrats and Republicans to pass legislation that has created new jobs, improved schools and protected the public safety. In 2007, Dewhurst led the effort to pass one of the toughest Jessica's Laws in the nation. The law, part of the Lt. Governor's Texas Children First Initiative, imposes tough new penalties against child predators, including life in prison without the possibility of parole.

Before his election to the office of Lt. Governor, Dewhurst served as Commissioner of the Texas General Land Office from 1999-2002. During his tenure, he reduced the workforce and budget and returned money to the taxpayers of the State. He certified almost \$1 billion in below-market interest rate loans to veterans to honor their service and to stimulate the Texas economy and helped protect the environment and increase tourism by restoring Texas' beaches and bays.

In the aftermath of the September 11th terrorist attacks, Dewhurst was appointed by Governor Rick Perry as Chairman of the Governor's Task Force on Homeland Security.

The Lt. Governor is a native Texan who received his BA degree from the University of Arizona, where he played college basketball. He served as an officer in the U.S. Air Force, the Central Intelligence Agency, and the U.S. State Department. A successful businessman, he founded Falcon Seaboard, a Texas-based diversified energy and investment company. Lt. Governor Dewhurst has recently announced his engagement to Patricia Hamilton Bivins.

Future Board Meetings

All are 1:00 p.m. (CST) conference calls unless noted:

- **April 15, 2009**
- **May 20, 2009**
- **June 17, 2009**
- **July – No meeting**
- **August 19, 2009-Annual Meeting (Dallas)**
- **September – No meeting**



The Texas Alliance of Nonsubscribers

An employer-driven, nonprofit trade association dedicated to ensuring that nonsubscription interests are better prepared, more cohesive, and strategically proactive in preserving their choice to manage occupational injury claims.

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