



Tuesday, March 29, 2005

Legislature Acting On Seven Bills To Provide 'Meaningful' Civil Justice Reform

A number of key civil justice reform bills are making steady progress in the 2005 session of the West Virginia Legislature. The bills, ranging from eliminating third-party bad faith lawsuits to providing additional liability limits for health care providers, are advancing in the legislative process. Six of seven civil justice reform bills have cleared their house of origination, and likely should receive additional consideration during the final 12 days of the 2005 regular session.

"The state's business community is working in a united manner to help advance these bills," said Steve Roberts, Chamber President. "We also have good support from our local chamber partners, who are working to educate small businesses about these bills and are encouraging their members to call their local legislators."

Roberts noted that the seven bills comprise a package that will produce meaningful reform in the area of civil justice. "These bills tackle a number of key legal issues facing different segments of the state's business community," he noted. "The bills, if approved, also will help to address problems that small businesses are having with property and casualty insurance."

The 60-day session of the West Virginia Legislature will end on Saturday, April 9.

Civil Justice Reform Bills

- **Third-Party Disputes** – S.B. 418
Enact legislation to end third-party bad faith private causes of action in our state. This legislation would empower the Insurance Commissioner to be the exclusive remedy to resolve claims by individuals against insurance companies for bad faith. This is an approach taken in 44 other states. This would deter unnecessary lawsuits and improve the insurance climate. The current system deters insurance carriers from providing insurance in our state and drives up the cost of everyone's insurance.
STATUS: Passed the state Senate.
- **Joint and Several Liability** – S.B. 421
Enact legislation that would require a person to be held responsible for only the degree of fault and amount of damages as determined by a jury (up to 50 percent). A person should not be responsible for what he didn't do – not up to 100 percent under the current "joint and several" liability approach, which encourages plaintiffs to go fishing in the deepest pockets, regardless of who is really to blame for an injury. ([Click to read background paper on this issue](#))
STATUS: Passed the state Senate.
- **Deliberate Intent** – S.B. 744
Enact legislation that will restore the law to true deliberate intent. Litigation has increased against employers where alleged conduct of the employer was neither intentional nor deliberate. This increased litigation drives up the cost for employers and makes insurance unavailable.
STATUS: Passed the state Senate.
Labor, Business Agree On Deliberate Intent Injury Bill
[The Register-Herald, March 28, 2005](#)
'Deliberate Intent' Standard Sharpened By Senate
[Associated Press, March 29, 2005](#)
- **Right To Cure** – S.B. 456
Enact legislation that would restrict lawsuits if a merchant cures a complaint within 30 days. In West Virginia, lawsuits are filed against a merchant even when the merchant is working to correct the problem. When a merchant

makes a written offer to correct complaints, then litigation should not start until the merchant has had at least 30 days to cure the problem.

STATUS: Passed the state Senate.

- **Judgment Interest** – H.B. 2775

West Virginia should follow the actions taken in many other states and amend Section 56-6-31 so as to trim the judgment interest rate to 3 points above the 5th district Federal Reserve rate. The current judgment interest is set by statute in West Virginia at 10 percent.

STATUS: Passed the House 88-11-1; headed to the state Senate.

- **Employer's Reference Immunity** – H.B. 2015

The ability to obtain reliable and accurate job performance information about prospective employees has a direct impact on critical business concerns such as quality, workplace safety, customer satisfaction and customer safety. However, the proliferation of costly lawsuits stemming from the job reference process has led numerous businesses to adopt non-disclosure or "no comment" policies, allowing only "name, rank and serial number" information to be shared. To protect employers against litigation and the public and co-workers from dangerous individuals and to facilitate the sharing of accurate reference information, lawmakers should enact proposals that would provide civil immunity for employers who provide job reference information in good faith. Thirty-eight (38) other states have enacted "Employment Reference Immunity" type laws including Ohio, Maryland, Virginia, Kentucky, North Carolina and Tennessee.

STATUS: Passed the House; pending in Senate Judiciary.

- **Innocent Prescriber Bill** – H.B. 2011

The bill would state that no health care provider is liable to a patient or third party for injuries sustained as a result of the ingestion of a prescription drug or use of a medical device that was prescribed by the health care provider in accordance with instructions approved by the U.S. Food and Drug Administration regarding the dosage and administration of the drug, the indications for which the drug should be taken or device should be used, and the contraindications against taking the drug or using the device.

STATUS: On Second Reading in the House.

News:

Both Chambers Consider Tax Reductions For Timber, Natural Gas

[Associated Press, March 28, 2005](#)

West Virginia Bar Nearing Completion Of Judicial Selection Study

[Metronews, March 28, 2005](#)

Employee Health Care Could Also Be Problem

[Sunday Gazette-Mail, March 27, 2005](#)

Medicaid Cuts Could Be Tough On W.Va.

[Sunday Gazette-Mail, March 27, 2005](#)

Pharmaceutical Advocate Bill Gains 'Troubling' Amendment

One of Governor Manchin's bills that would establish the Office of Pharmaceutical Advocate has been amended in the House of Delegates, and now the bill will provide for an entire set of circumstances that will constitute restraint of trade or antitrust, according to Brenda Nichols Harper, Chamber Vice President and General Counsel.

The bill (H.B. 2852) would implement the recommendations of the West Virginia Pharmaceutical Cost Council created during the 2004 regular session of the Legislature. These recommendations include the creation of the Office of the Pharmaceutical Advocate. This Office would be headed by a Pharmaceutical Advocate. This would be a cabinet level position with managerial and administrative duties over the Office. An advisory council to be known as the Pharmaceutical Advocate Advisory Council is also created to offer input and guidance to the Office and the Pharmaceutical Advocate.

The troubling amendment is a provision that states if a manufacturer decides it is no longer cost-effective to produce a pharmaceutical product, then it commits an act that is construed to be “fixing, controlling, maintaining, limiting or discontinuing the production, manufacture, sale or supply of any pharmaceuticals for the purpose or with the effect of fixing, controlling or maintaining the market price of the pharmaceutical.” This was language that was in the original H.B. 4084, which was introduced and considered during the 2004 legislative session. This language ultimately was removed by the state Senate and the House concurred. Now it has reappeared this session.

“What this amendment means is that if a company decides it cannot afford to sell its product at the artificially low FSS price or that it wants to discontinue production of a product because they cannot produce and sell it profitably, they may well be engaging in conduct that constitutes antitrust and therefore be subject to severe penalties, not to mention treble damages for each violation,” Harper explained.

State DEP Water Survey Begins March 31

For those companies or entities that use more than 750,000 gallons of water a month, starting tomorrow they will be required to complete a survey from the West Virginia Department of Environmental Protection. In 2004, the West Virginia legislature passed Senate Bill 163, the Water Resources Protection Act. The purpose of the Act is to gather information regarding the quantity and use of surface and groundwater resources in the State. The West Virginia Department of Environmental Protection has been charged with implementing the requirements of the Act.

One of the main components of the Act is a survey of large quantity water users in the State. A large quantity water user is any company or business that uses greater than 750,000 gallons of water during any given month within a calendar year. Completion of the survey is mandatory for any company or business that meets the above definition. Completion of the survey also will satisfy the mandatory registration requirement for all large quantity water users.

The online survey will be launched March 31 (check the DEP’s web site starting March 31 to complete the survey: www.dep.state.wv.us). DEP will be holding a series of regional meetings across the state to help water users understand the survey. The dates for these are: April 18 (Wheeling), April 19 (Morgantown), April 20 (Martinsburg), April 26 (Beckley) and April 27 (Parkersburg). The survey will need to be completed and submitted electronically no later than July 1, 2005.

A final status report of all tasks required by the Act, including water use survey information, will be presented to the legislature by Dec. 31, 2006. For more information, contact the DEP by calling Kathy Emery, Mike Stratton or Mike Arcuri at (304) 926-0495

Provided are links to the Secretary of State’s office for information on two rules pertaining to this survey: penalties (<http://www.wvsos.com/adlaw/proposed/documents/60-6.pdf>) and confidentiality (<http://www.wvsos.com/adlaw/proposed/60-07.pdf>).

West Virginia Waste Conference Scheduled

This year’s West Virginia Waste Conference will be held on April 19, 2005, and the conference is expected to be another sell-out event. The annual conference is sponsored by the West Virginia Waste Roundtable, West Virginia Chamber of Commerce, W.Va. Department of Environmental Protection, W.Va. Solid Waste Management Board and the Air & Waste Management Association.

The one-day conference provides a basic RCRA waste review and an employee training/information to West Virginia businesses and other interested persons. Two panels will make up the morning session. One panel will focus on areas of hazardous waste, and the second will deal with OSHA employee training. The afternoon panel will cover spill reporting, waste sampling and specific solid and industrial wastes.

This fast-paced conference provides a great deal of useful information. A number of the panelists are inspectors, and opportunities for questions are expected to be plentiful. This year’s meeting promises to be as exciting and as informative as previous conferences.

Registration for the conference is limited to 125 persons, so early registration is encouraged. The registration fee of \$125 for large employers (>25 employees) and \$75 for smaller employers (<25 employees), will include a course notebook breakfast, breaks and lunch.

For more information on the conference, please contact Carroll Cather, WVDEP - 926-0499 ext. 1317 or email her at ccather@wvdep.org. A registration form is available by calling the West Virginia Chamber office (304) 342-1115.

Congressman Rahall, ARC Create E-Commerce Training Initiative *11 Learning Centers To Be Created In Southern W.Va.*

U.S. Rep. Nick J. Rahall (D-WV) along with Anne B. Pope, Federal Co-Chair of the Appalachian Regional Commission (ARC), were in Hinton and Beckley March 24 to announce a new small business development initiative for southern West Virginia. The efforts of Congressman Rahall and the ARC will help small businesses in southern West Virginia obtain access to broadband technology and increase their profit by opening their doors to the global economy through the Internet.

"This new initiative, which I have worked hand-in-hand with ARC to develop, puts technology to work to put West Virginians to work," said Rahall. "We are cutting the ribbon today on new avenues in the world of e-commerce for our small businesses. Using the business services available from the Internet means profit and job creation for Main Street West Virginia, we can not only better compete, but we will excel. The three "T's," transportation, technology and tourism, all can be well served with this initiative."

"This E-Commerce Initiative will help to bring the spirit of e-commerce to our Main Streets through providing hands-on, interactive classes designed to help grow small businesses through e-commerce," said Rahall. "I am committed to helping our small businesses in southern WV increase their bottom line, develop new sources of revenue, reduce the cost of supplies and services, better serve existing customers, and perhaps most importantly, enter new markets."

"E-commerce education projects, such as the one being launched in Hinton, will be invaluable in helping to expand the sales opportunities and to improve the overall competitiveness of our state's small businesses," said **Steve Roberts, President of the West Virginia Chamber of Commerce**. "The ARC's new program will tie in perfectly with the long-term goals of the Chamber's new West Virginia Small Business Technology Education & Competitiveness Initiative. I commend Congressman Rahall for working with ARC to bring this new program to West Virginia."

Rahall announced in Historic Hinton today that the ARC is pledging an investment of \$200,000 towards this new E-commerce initiative in southern West Virginia. Many public and private partners helped make the grant possible for the expansion of broadband service use by southern West Virginia small businesses.

"Anne Pope, ARC's Federal Co-Chair, worked to make this happen, and made it happen quickly. Anne joined us for our town hall meeting on Technology and Economic Development in Appalachia in Hinton last year and saw the progress we were making. She understands the importance of e-commerce to small business in Appalachia. I commend her for her vision and her practical approach leveraging government services with the private sector to produce benefits for the public, especially jobs."

Rahall said, "This initiative would not have been possible without the help that ARC and I were able to secure from Amazon.com, Microsoft, Mission West Virginia, Region 1 Workforce, Verizon, WVU Extension Service and, of course, the West Virginia Chamber of Commerce. Bringing all these groups to the table was the key to getting this initiative started and helping the small businesses of West Virginia succeed in the 21st Century."

This initiative will be rolled out to 11 counties in southern West Virginia by the end of 2005. "This is a small business builder for all of southern West Virginia. It will create new jobs in our area and help our local businesses reach the global marketplace. I encourage anyone with a small business to take advantage of this program," concluded Rahall.

Fifth Annual 'Teaming to Win' Career Expo Set

The 2005 Teaming to Win Career Expo will be held April 7 at the West Virginia High Technology Consortium (WVHTC) Foundation in the I-79 Technology Park in Fairmont, W.Va. The themes showcased in the Expo are "Take a Walk to Opportunity" and "Network or Not Work."

The Fifth Annual Teaming to Win Career Expo is an efficient, low-cost recruitment, marketing and networking tool for participating companies. The event will be held from 10:00 a.m. to 2:00 p.m. in the main conference room of the Alan B. Mollohan Innovation Center.

For registration and career expo information, go to the Teaming to Win web site at www.teamingtowin.com. For those unable to attend, an online Expo will be hosted by WVJobs.org (www.wvjobs.org), which will run for 30 days from the date of the conference. For further information, contact Tammy Rebrook at (304) 285-4056 or via email at trebrook@prologic-inc.com.

Upcoming Events:

West Virginia Self-Insurers Association Annual Conference

Privatization: What does this mean for Self-Insurers?

April 18-19, 2005, Charleston Marriott, Charleston

This year's program focuses on the privatization plan, transfer of self-insurance regulation to the Insurance Commission, as well as presentations from medical and legal experts. For more information, contact Kate McCoy at 304-353-8174.

West Virginia Waste Conference

April 19, 2005, Embassy Suites, Charleston

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Prepared by [Malone Consulting Services](#)