



MISSOURI SENATE

JEFFERSON CITY

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Legislative Topic
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Medicaid, Tort Reform, Workers' Comp

The Missouri Senate has polished off its final week prior to legislative spring break. It was a very busy week. Last Monday, legislative session started off in the afternoon, but was not adjourned until 3:30 a.m. Tuesday morning. I had the pleasure of presiding over the Senate from 11:00 p.m. until about 2:00 a.m. I'm curious how many Senators have ever presided over the Senate on two days without ever leaving the Senate Chamber!

We completed two very important bills and sent them to the Governor for his signature. They include Workers' Compensation Reform and Litigation (tort) Reform legislation. It is amazing that these bills have been done so quickly. Normally, major legislation of this nature is not finished until the final days of the legislative session, which is in May. I, along with many of my colleagues, promised to put these necessary reforms high on our priority list. I'm thankful to report that we delivered on those promises. The bills await the Governor's signature.

The Senate also completed a very difficult task of making modifications in our bloated welfare bureaucracy. This bill now moves to the Missouri House for consideration and debate.

I have provided more detailed information on these bills below.

The Missouri General Assembly will return to session after Easter. I hope all of you have a very blessed Easter.

Workers' Comp—SB 1

- workers' compensation bill says a work accident has to be the "prevailing factor" for an injury to be eligible for compensation. Current law says the injury has to be a "substantial factor." This change is important to overcome court decisions that allow compensation for just about anything, even if the incident giving rise to an injury occurred no where near the work place.
- Allows employers to have employees use vacation or sick days while being tested for injury.
- Denies compensation if the workers are fired for post-injury misconduct.
- Reduces the amount a worker can collect if they are injured while in violation of safety regulations.
- Limits what lawyers can collect from injured workers.
- Requires a strict interpretation of the workers' compensation laws and by requiring workers to prove their injury was actually the result of a work-related incident.
- Increases the number of workers' compensation judges from 26 to 40, and establishes a review process that allows judges to be voted off the bench by a panel, rather than serving for life.
- Places more evidentiary value on a doctor's "objective" findings than a victim's subjective complaint of pain in determining the severity of an injury.
- Denies compensation for workers injured as only an incidental part of their work, such as while driving to or from work.
- Denies compensation for workers injured if they are legally drunk while injured.

TORT REFORM: HB 393

- Lowers cap on non-economic damages, which are allocated for pain and suffering. Currently the cap is \$579,000, but the Senate's version of the measure lowers the cap to \$350,000. The cost-of-living adjustment made to the cap every year is also eliminated.
- The legislation also prohibits "venue shopping," a practice in which trials are moved to jurisdictions known for awarding plaintiffs with extremely generous amounts.
- Senate language now states that defendants can only be responsible for the economic, not non-economic, damages beyond their percentage of liability if the jury determined them to bear 51 percent or more of fault, and the other defendant(s) cannot cover their part. With the new liability threshold at 51 percent, we are closer to a proportionate distribution of liability for the defendant *and* justice for the plaintiff.

MEDICAID, SB 539

- No children currently eligible to be enrolled in Medicaid will lose benefits. All children's coverage and optional benefits are preserved.
- * Closes a loophole that allowed the wealthy to qualify for Medicaid. Some elderly individuals were liquidating their assets and buying annuities. This allowed them to go onto Medicaid and still preserve the value of their estate for their children. This transferred the burden of care onto the backs of all taxpaying Missourians. It is not the state's obligation to pay for medical services in order for a wealthy family to protect their inheritance.
- Continues to provide prosthetics, eyeglasses, podiatry and dental services, hospice care and other devices and services for most adults, but no longer as an entitlement program. Rather, these items and services will be available only as the state is able to appropriate funds for them. This is necessary to prevent the state from being left open to lawsuits as they have been in the past.
- Creates an income limit for adoptive parents to continue to qualify for subsidies for adopting children out of foster care. The subsidies will continue to be available to families earning up to 200 percent of the federal poverty level. For example, a couple with two adoptive children could still earn up to about \$40,000 and receive tax-free adoption subsidies ranging from \$225 to over \$600 per month, per child.
- * Changes income eligibility thresholds for the elderly and disabled to receive Medicaid to the level they were at just three years ago. These levels are more generous than during the Carnahan Governorship and only takes us back to the level of funding instituted by Governor Holden in 2001.
- Allowing recipients to be charged co-payments on a sliding scale basis for all services except mental health and personal care assistance. Children, pregnant women and the blind are exempt and still receive services with no co-pays.
- * Requires a complete overhaul of Missouri's current Medicaid program by placing an expiration date on the current system of mid-2008.
- * Creates a commission of five senators and five representatives to recommend innovative Medicaid reforms by January 1, 2006.
- * Requires annual eligibility reviews for all Medicaid recipients. Federal law mandates annual eligibility reviews for continued Medicaid coverage, yet this has not been done in Missouri. At this point, more than 40% of our Medicaid recipients have not had their eligibility reviewed. Last year \$1.3 million was spent on recipients who turned 19 and were no longer qualified for Medicaid services. These reviews will also help stop abuse by out-of-state recipients seeking Missouri Medicaid benefits. A simple review to ensure that those receiving Medicaid are state residents and otherwise eligible for the benefits could save the state over \$40 million in fraudulent coverage.
- * **PRESCRIPTION DRUGS** Creates a state-funded prescription drug program for seniors to cover costs not picked up by the new federal Medicare prescription drug benefit. This would replace the state's SeniorRx Program, which expires at the end of the year.

* IN-HOME CARE Transfers oversight of some in-home personal care services for the disabled to the Department of Health and Senior Services, instead of the Department of Elementary and Secondary Education.