

[back to article](#)

GoUpstate.com

Printed on page perspective

Workers' comp reform: Efficient system is protecting S.C.'s workers

*PAT KNIE
For the Herald-Journal*

Published: Sunday, February 5, 2006 at 3:15 a.m.

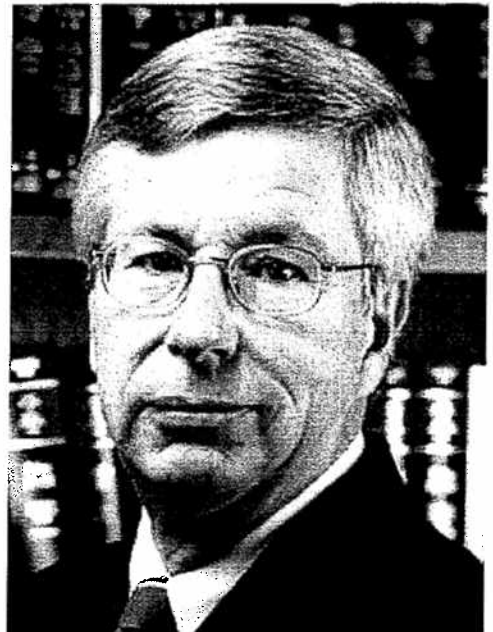
The Chamber of Commerce and other big business groups have convinced Gov. Mark Sanford that sweeping reforms to the current workers' compensation system in South Carolina are necessary. A little history lesson for the governor may be in order.

The current workers' compensation system was enacted in 1936 and is the original "tort reform." Its purpose has always been to protect injured workers and businesses from the time, expense and uncertainty of jury trials for damages and to prevent the burden of injured workers and their families from becoming a burden on society.

Most people are unaware of the fact that businesses cannot be sued by their injured workers for on-the-job accidents. Workers' compensation provides a simple and efficient no-fault system to compensate injured workers.

Workers gave up many legal rights in exchange for workers' compensation. Proposed legislation would defeat the whole purpose of the "no-fault" workers' compensation system and would result in an explosion of litigation, more lawyer involvement in claims, increased costs and more delay.

The bill would take away injured workers' rights to privacy. Medical records often contain personal and private information. All patients have a right to expect that their private medical records will not be released without their knowledge and consent. This right is protected under the Federal HIPAA Law. The governor proposes to do away with that important right.



Currently, injured workers receive compensation for the disability they suffer from an on-the-job injury. Certain injuries, such as loss of a finger, hand or arm, are compensated according to a fixed schedule.

For example, a worker who loses a thumb receives only 65 weeks of compensation. A worker who suffers more than a 50 percent disability of his back is considered totally and permanently disabled.

The governor's bill limits compensation to "medical impairment" rather than disability. It prohibits commissioners from considering a person's age, education or prior work experience in awarding compensation. It also eliminates the 50 percent disability of the back to determine total and permanent disability.

When it comes to disability, one size does not fit all. A 10 percent medical impairment of the back may cause little, if any, disability to Gov. Sanford but may prevent an older, illiterate manual laborer from returning to work.

The supporters of this proposed law claim that the 50 percent rule costs employers a lot of money. According to the National Counsel of Compensation Insurance (NCCI), only .2 percent of all awards are for total disability for any reason. The proposed change in the 50 percent rule is unfair to the most severely injured workers and will have no effect on premiums.

Another catastrophic proposed change in the law involves the definition of "injury." Currently, workers are allowed to recover for repetitive trauma injuries that occur gradually over time such as hearing loss, carpal tunnel syndrome and toxic chemical poisoning. The proposed law would require a specific event that is identifiable by the time and place of the occurrence and basically exclude all repetitive trauma injuries.

Hearing loss and carpal tunnel syndrome develop gradually over months or years of exposure to loud noise or performing jobs that require repetitive twist movements. Symptoms from exposures to toxic chemicals or infectious diseases can take months or years to develop. Eliminating compensation for these types of injuries would be devastating to many injured workers.

The governor's bill would also severely limit access of injured workers to attorneys. Currently, an attorney for an injured worker may charge up to one-third of the award the injured worker receives. This is an agreement that is reached strictly between the attorney and the injured worker but must be approved when a case is settled.

The proposed legislation would so severely limit attorney fees under the contingent fee system that it would be difficult for an injured worker to find a qualified attorney to represent him or her in a workers' compensation claim. The new bill, on the other hand, does not restrict the amount of money that an insurance carrier or employer can pay to their attorney.

It is important to understand that the vast majority of claims do not involve attorneys. Attorneys only become involved when the injured worker suffers a serious injury or when the insurance carrier refuses to provide medical treatment or weekly compensation benefits.

Despite what the insurance industry would have us believe, there is no workers' compensation crisis. The present workers' compensation system needs changes to make the workplace safer and provide increased benefits for workers instead of trying to decrease them. The 32.9 percent rate increase requested by NCCI was rejected by the Department of Insurance. The amount of benefits actually paid to injured workers decreased during 2003-2004, the last year for which data is available.

Currently, the Second Injury Fund protects employers and workers. The fund encourages employers to hire older, more experienced workers who have pre-existing health problems. An employer who knowingly hires a worker with a pre-existing health problem can receive reimbursement from the fund for any increased liability that may result from a subsequent injury. The governor's bill wants to eliminate the Second Injury Fund. Elimination of the Second Injury Fund would also discourage employers from hiring injured veterans when they return from duty in places like Iraq and Afghanistan.

The right to workers' compensation is very important to each and every worker in this state and touches the lives of our factory workers, teachers, police officers, waitresses, truck drivers, nurses and virtually everyone else who gets a weekly paycheck. Unfortunately, the proposed changes in the law would only benefit a favored few, including the Chamber of Commerce, the wealthiest citizens in our state, big business and the insurance industry.

Gov. Sanford has apparently chosen sides. Now it is up to the General Assembly to side with the workers of this state and defeat this unfair legislation.

Pat Knie is a Spartanburg attorney and member of the Board of Governors of the S.C. Trial Lawyers Association.

This story appeared in print on page perspective
