

## GOVERNOR'S ADVISORY COMMITTEE

### BACKGROUND

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The Governor's Advisory Committee is a five-member committee appointed by the Governor for terms of five years. The current composition of the Committee is:

1. One attorney experienced in the practice of representing claimants (William Smith of Columbia, South Carolina);
2. One attorney experienced in the practice of representing Defendants (William E. Shaughnessy of Greenville, South Carolina) (current Chairman of the Advisory Committee);
3. One member representative of industry (John Seibert, formerly of Capital City Insurance Company);
4. One member representative of labor (James Sanderson, Jr., president of the AFL-CIO, Local 7898 of the United Steelworkers Union of America, Georgetown, South Carolina); and
5. One member representative of the general public (Millicent C. Williams of Columbia, South Carolina).

The Committee is required to meet at least quarterly to consider improvements in the workers' compensation laws and to monitor the effectiveness of existing law. Recommended changes in the existing law are to be made to the General Assembly on an annual basis.

Following years of inactivity, the inaugural meeting of the reconstituted Advisory Committee took place in Columbia, South Carolina on October 14, 2008. Topics which were identified by the Committee as points of interest for further study were:

1. Choice of physician;
2. Objective standards of awards;
3. Regulation of attorney's fees;
4. Restrictions of awards for medical treatment;
5. Treatment of illegal aliens under the South Carolina Workers' Compensation Act;
6. Increase in funeral benefits under the South Carolina Workers' Compensation Act;

7. Workers' Compensation Research institute;
8. Updated South Carolina Workers' Compensation brochure; and
9. More stringent regulation / penalties for employers who are evading their workers' compensation responsibilities or who are misclassifying employees.

It was immediately recognized by the Committee that the effect on premium rates of the 2007 legislative changes would not likely be appreciated until 2009 or 2010 and, therefore, the predominant focus of the Committee since the inaugural meeting has been Item 9 above (more stringent regulation / penalties for employers who are evading their workers' compensation responsibilities or who are misclassifying employees).

The Committee recognizes that a sizeable percentage of the premium tax is utilized to fund the South Carolina Uninsured Employer's Fund which, in fiscal year 2007 and 2008, paid out approximately ten million dollars to injured employees of employers who did not purchase workers' compensation coverage in violation of the S.C. Workers' Compensation Act. (The yearly payout has almost doubled in the last five years and, should that rate of increase continue, the increase could cause the premium tax to increase beyond the current level.)

The problem is particularly onerous in the construction industry. The State of South Carolina, in failing to prescribe and enforce stringent penalties for employers who do not provide coverage in violation of the S.C. Workers' Compensation Act or who misclassify are in effect:

1. Allowing a competitive advantage in the bidding process to employers who are in violation of the Act;
2. Subsidizing employers who are being dishonest and don't play by the "rules."

Proposals which will likely be forthcoming from the Committee to the Legislature are:

1. Increasing fines and penalties for non-complying employers;
2. Providing for criminal prosecution for employers who willfully refrain from complying with the coverage requirements of the S.C. Workers' Compensation Act;
3. Granting authority to the Commission to seek "stop-work" orders on jobsites where employers are not in compliance with the coverage requirements of the S.C. Workers' Compensation Act;
4. Allowing employers, in the construction industry, who lose a competitive bid to a non-compliant employer to sue that non-compliant employer;
5. Requiring proof of workers' compensation coverage for public competitive – bidding building projects.