



Colorado Automobile Dealers Association

Business Adverse Legislation

By CAR lobbyist Jeremy Cottrell

Increasing fees, taxes, litigation and liabilities to business have culminated in a costly legislative session for many of Colorado's businesses. An early veto of HB-1072, that if passed would have enabled unions to organize more easily overshadowed many of the smaller injuries to businesses. Many critics cite the session as "death by a thousand cuts" for many business owners within Colorado.

The most prominent bill, HB-1072, effectively eliminating the second vote requirement regarding union organization, sailed through both houses despite a substantial organization and opposition by business leaders and many chambers of commerce from all over the state. Much to the surprise and delight of the business community Gov. Ritter vetoed the bill soon after it reached his desk, though he said he supported the bill's intent.

By offering "patient choice", HB-1176 seeks to broaden employee physician choice when workers' compensation injuries are covered, but in doing so the legislation will increase costs of an otherwise well-reformed employer-paid insurance program. Already a good number of options exist for employees when seeking to choose a workers' compensation physician. However, expansion of the process that already affords an effective election of physicians will become a new cost-driver for workers' compensation premiums for employers.

In conjunction, HB-1034 creates additional expense by allowing each person in a workers' compensation program to seek a second opinion and diagnosis from another doctor. Evidence in the form of testimony showed that these instances were specifically characteristic of increased fraudulent activity. While this may be needed in a small percentage of cases, generally this will amount to higher rates by means of repetitive unnecessary procedures.

In addition, workers' compensation costs will likely increase due to HB-1008, which effectively shifts the burden of proof from the worker to the employer. Known as the "Firefighter Cancer Bill" the bill, if it becomes law, would assume that cancer contracted by Firefighters is a direct result of workplace conditions. It would be up to the employer to prove otherwise. This essentially switches the burden of proof from those bringing an action to those who pay workers' compensation. It is very easy to see how this theory may be applied to a variety of other occupations in the future. While noble in cause, it is dangerous to allow this sort of precedent by automatically placing liability on employers for any type cancer, whether it is work-related or not. It is believed that police officers will bring their version of this bill next session for heart disease and stress-related illnesses.

Another bill attempting to solve a social woe is SB-36. By mandating medical insurance coverage for mental health disorders, employers can be sure that renewal health care coverage premiums will accelerate more rapidly than usual. As the bill has traveled through the session,

it's overly broad definition of "mental illness" has been slightly narrowed to remove eating disorders such as bulimia and anorexia from its breadth. However, the contents of what still remain are certainly not palatable.

These cumulative attempts at improving the current health care insurance problem all seem to lead to one common result; higher premiums. Strangely, it would seem that is the source of the problem in the first place. The abuse of the system has led to such an increase in cost that most employers and employees are discouraged from even attempting to participate in employer-based healthcare coverage.

Increasing home costs and home insurance was adversely affected by HB-1338. This "anti-Homebuilders Bill" seeks to negate the customary practice of allowing a vendor to "cure" before claiming a breach and filing a suit. The bill empowers homeowners to sue homebuilders for a wide variety of building and construction-related issues without any notification or opportunity for the homebuilder to repair the defective issue.

Most recently, SB-117 goes against the traditional idea of a loser paying the prevailing party's attorneys' costs in an employee versus employer setting. Currently, one powerful deterrent to bringing a lawsuit is the possibility that the loser incurs not only his costs but also that of his opponent. In this setting, an employee has little downside in filing a lawsuit against an employer since he bears no risk of increased financial liability.

Lastly, the trend toward "recapture of industry dominated boards" has been made apparent with the decimation of the Oil and Gas Commission. Roughly five bills have targeted the Oil and Gas Commission and their operations, authority, and effectiveness. By tipping the balance of domination on the board from industry to public it removes the expertise and efficient representation of one of Colorado's largest job producers and largest tax revenue bases. Discouraging the efficient exploration and deportation of energy will result in a domino effect of cost increases and tax decreases for the state.

This session has also brought about increases in drivers licenses, license plates, energy rate programs, and the raiding of money from the state's transportation fund which is essential for maintenance, repair, improvement, and expansion of Colorado roadways.

The death by a thousand cuts has begun by assailing established and reasonable business supportive law. Bit by bit, we are seeing a degradation of plausible commerce adversely affected throughout the state. Current disregard for major streams of business could result in widespread negative consequences of greatly decreased revenue and diverted business development later.

Ushering a new era of Colorado business by hamstringing its ability to succeed doesn't seem to be smiling favorably on the future of economic prosperity. Thus far business-friendly legislation is scarce. Laws increasing medical insurance coverage, home building costs, home insurance costs, increasing employment litigation, increased energy costs, and rerouting major streams of tax revenue to other states would seem to be an ironic twist to fostering the Colorado promise.