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## Committees:

Public Health  
Public Safety  
Appropriations and Budget Subcommittee  
on Public Health and Social Services

## Oklahoma House of Representatives

May 15, 2009

### *Weekly Review*

#### ***Historic Lawsuit Reform Overwhelmingly Passes House***

Following years of dedicated effort, House members overwhelmingly passed historic comprehensive lawsuit reform legislation that represents an agreement with lawmakers, business advocates, doctors, mineral owners and trial lawyers.

The deal will reduce the number of frivolous lawsuits in Oklahoma, which will help lower health care costs for all Oklahomans, recruit and retain Oklahoma doctors and bring more cost certainty to businesses in our state, especially small companies.

Under the compromise, House Bill 1603 will contain the following major provisions.

Vague noneconomic damages (so-called "pain and suffering" awards) would be capped at \$400,000 outside of exceptional circumstances. In rare cases where the cap is lifted, any amount greater than \$400,000 could be paid with a reinsurance policy the state would purchase. The bill creates a task force that will study the details of the policy and payment options prior to implementation.

The reinsurance policy would pay up to \$20 million a year to injured Oklahomans in exceptional circumstances of gross negligence or severe disfigurement. It is estimated such a policy would cost less than \$1 million annually for the additional protection.

In order to have access to the reinsurance policy, doctors are required by the legislation to carry at least \$1 million in medical liability insurance, which covers the majority malpractice cases. There is currently no state minimum requirement for insurance coverage.

The policy is a unique agreement that gives physicians a hard cap for medical liability insurance purposes but allows Oklahomans who have extenuating circumstances to receive awards above the cap.

As a result of that compromise, insurers will be able to sell medical liability insurance to doctors at lower rates because they won't have to build up enormous reserves to cover the rare "jackpot" award that would otherwise bankrupt the company.

One of the main reasons doctor's insurance currently costs so much is the impact of frivolous lawsuits – even though 70 percent of medical liability claims were dismissed between 2004 and 2007, Oklahoma's major doctor's insurance company spent \$50 million defending those cases.

That cost should be significantly reduced following passage of House Bill 1603, allowing for cheaper insurance policies to be sold to doctors.

In turn, those lower insurance rates will make it easier to attract doctors to currently underserved areas of Oklahoma, particularly rural communities. Today, women all across Oklahoma often have to drive to Oklahoma City or Tulsa to deliver a baby because few local doctors will perform that service due to litigation threat and high insurance rates.

House Bill 1603 also contains other reforms. In the area of class-action lawsuits, court shopping for class-action suits would be restricted, and attorney fees could be reviewed.

The bill also requires an expert to certify that a professional negligence case has merit before it can proceed. That requirement would be waived for plaintiffs who cannot afford the costs associated with finding an expert.

Legislative leaders and their representatives negotiated with interested parties all session, including the Oklahoma State Chamber, the Oklahoma State Medical Association, the Physicians Alliance for Tort Reform, Oklahomans for Lawsuit Reform and the various other organizations.

After the deal was announced earlier this week, Gov. Brad Henry called it "a strong piece of reform legislation" and "perhaps the most comprehensive tort bill in state history."

The legislation passed the House with a bipartisan vote of 86-13 and now returns to the Senate for final consideration.

#### 2009 Oklahoma Lawsuit Reform Agreement

The major reforms agreed upon include the following:

Class action reforms as set out below:

Adoption of an expanded federal rule (#2023) as a foundation for class actions in Oklahoma;

Specific procedures and guidelines set out the court must follow in appointing an attorney to represent the class;

Specific findings that must be included in an order certifying a class;

More specific information that must be included in the notice provided to potential class members if a class is certified;

More specific court oversight of the case, particularly regarding dismissals and settlements;

Limiting non-resident membership in state class actions;

Allowing the court to stay, transfer or dismiss a case if it should be heard in another court;

Requiring the appellate court to immediately review certification orders using the de novo standard;

Allowing the appellate court to also review orders determining whether the class has exhausted administrative procedures;

Requiring the case to be stayed while an appeal of the certification order is pending;

Providing that settlements in which coupons are awarded, the attorney shall also receive his fee in coupons; and,

Providing specific guidelines the court must follow in awarding attorney fees to the attorney representing the class, which includes allowing the court to appoint an independent attorney to represent the class during the fee hearing.

Appeal Bond Cap - \$25 million & no appeal bond required on punitive damage appeals

Mandatory Dismissal for Late Service (180 days)

Summary Judgment – Adopted Federal Rules

Prejudgment Interest Reforms (Shall not begin to accrue until 24 months after commencement of suit) and a reduction in the rate calculation

Joint & Several Liability -- Limits liability to instances where a tortfeasor is more than 50 percent at fault.

Asbestos/Silicosis Reforms

Cap on Non-Economic Damages

In any action arising from a claimed bodily injury, the amount of compensation which a trier of fact may award a plaintiff for noneconomic loss shall not exceed \$400,000.00.

In any civil action arising from a claimed bodily injury, the amount of compensation which the trier of fact may award a plaintiff for economic loss shall not be subject to any limitation.

Properly pleading jurisdiction levels (More closely tied to Federal level)

Peer Review Confidentiality

Certificate of Merit for Professional Negligence

Other significant reforms include:

- Forum non conveniens
- Redefining of "Frivolous" Lawsuits
- Junk Science & Expert Witness Reforms
- Initial Disclosure of Witness Exhibits
- Gun Manufacturers Liability Protection -- Exempts gun manufacturers, distributors and sellers who "lawfully" manufacture, distribute or sell firearms from liability for "any injury suffered." Does not exempt such firearms from product liability if appropriate.
- Common Sense Consumption Act -- Known as the "Cheeseburger Act," this protects against obesity lawsuits against restaurants and food manufacturers.
- Volunteer Liability
- Emergency Volunteer Immunity
- School Protection Act
- Admissibility of non-wearing of Seat Belts (exempts children under 16)
- Agri-Tourism Liability Reform

### ***Pro-Life Legislation Closer to Becoming Law***

Legislation preventing an abortion based on the sex of the unborn child and requiring online reporting of the abortions performed in the state is one step closer to becoming law.

House Bill 1595 creates the Statistical Reporting of Abortion Act, which requires physicians who perform abortions to report certain information to the Oklahoma State Department of Health.

The bill would also ban abortions based on gender selection and/or preference.

The Health Department would be required to issue regulations related to abortion and the reporting forms available on its website if this legislation becomes law.

Physicians in the state will also be notified about the requirements to report abortion-related information.

Finally, the measure directs the department to publish certain annual abortion reports on its website and to ensure compliance with the provisions of the act by conducting periodic inspections of places where abortions are performed.

The reporting will allow lawmakers to know exactly how many abortions are being performed in Oklahoma and why they are occurring so they can possibly adjust policy to further reduce the number of abortions in Oklahoma.

The bill passed the House with a vote of 88-6 and now returns to the Senate for final consideration.

### ***Human Cloning Ban Clears House***

Legislation to ban human cloning easily cleared the Oklahoma House of Representatives this week.

A revised version of House Bill 1114 makes it illegal “for any person or entity, public or private, to perform or attempt to perform human cloning; participate in an attempt to perform human cloning; ship, transfer, or receive the product of human cloning for any purpose; and “import the product of human cloning for any purpose.”

The legislation would not restrict scientific research involving the use of nuclear transfer or other cloning techniques to produce molecules, DNA, cells, tissues, organs, plants, or animals.

House Bill 1114 passed the Oklahoma House of Representatives on an 83-0 vote today. It now proceeds to the state Senate.

### ***New Protections for Farmers & Ranchers Become Law***

Legislation providing new legal protections for Oklahoma farmers and ranchers has been signed into law.

House Bill 1482, by state Rep. Dale DeWitt, would make it illegal to file a "nuisance" lawsuit against any agriculture producer for improving facilities if the farm has been in operation for at least two years.

Under the bill, if a lawsuit is ruled "frivolous" by the court, the defendant would be allowed to recover all court costs from the litigant.

House Bill 1482 passed the Oklahoma House of Representatives 96-4 and cleared the Senate 40-2. Gov. Brad Henry signed it into law this week.

### ***New Law Cracks Down on Unlicensed Drivers***

A new state law will increase the penalty for drivers with suspended licenses.

House Bill 2263, by state Rep. Mike Christian, R-Oklahoma City, creates the "Gaje Jeffrey Florence Act." The bill passed unanimously in both the Oklahoma House of

Representatives and the state Senate before being signed into law by Gov. Brad Henry this week.

The legislation is named in honor of a six-year-old boy killed in Oklahoma City in 2007. A non-U.S. citizen whose license was suspended at the time backed into Gaje's own driveway where he was playing, killing him.

Under the new law, an individual driving with a suspended license can face additional penalties, including an extension of the suspension, one year in the county jail and a fine of up to \$2,000.

If an individual driving with a suspended license is in an accident that results in bodily injury to another person, the driver would face up to five years in jail and a fine of up to \$3,000. If the accident results in a death, the crime is a felony punishable by up to five years imprisonment and a fine of up to \$5,000.

### ***Truth in Medical Advertising Signed into Law***

Patients will be protected from deceptive medical advertising following Gov. Brad Henry's signature of House Bill 1569 this week.

The legislation ensures doctors are truthful in any advertising and is one of the first in the country of its kind.

House Bill 1569, by Rep. Colby Schwartz, is a transparency bill that seeks to prevent non-licensed people from holding themselves out as genuine medical professionals. The bill requires doctors to list their specialty and license in any advertising and also in their office so it is clearly visible to potential patients.

The legislation is a compromise bill reached in agreement with doctor and physician associations to ensure legitimate medical professionals are not impacted by the restrictions. Doctors will be required by the law to list their specialty in the advertisement and office, which shows what medical license they hold.

The law goes into effect Nov. 1, 2009.

### ***Legislation Encouraging Compressed Natural Gas Usage in Oklahoma Passes House***

Legislation encouraging Oklahomans to use local alternative energy sources is one step closer to becoming law.

House Bill 1949, which is part of House Speaker Chris Benge's ongoing statewide energy initiative effort, extends an existing tax credit on the purchase of a qualified clean-burning motor vehicle for five years for compressed and liquefied natural gas and electric cars.

The credit is equal to 50 percent of the cost of a conversion of vehicles to operate on a qualified fuel, as well as those originally equipped to do so.

The legislation also includes a tax credit for businesses seeking to build infrastructure to fuel such vehicles, along with a \$2,500 tax credit for consumers installing home-fueling stations. Speaker Benge said he hopes this new credit will help double the number of publicly available CNG fueling stations across the state.

The conference committee report for HB 1949 passed the House overwhelmingly with a vote of 90-4 and now returns to the Senate for final consideration.

### ***House Adopts Resolutions Opposing Changes to Federal Energy Policy***

This week, lawmakers voiced opposition to a federal cap-and-trade system on greenhouse emissions and opposition to a repeal of tax incentives for oil and gas exploration with two resolutions to be distributed to the president and members of the U.S. Congress.

House Concurrent Resolution 1035, by state Rep. Mike Thompson, R-Oklahoma City, refers to President Barack Obama's proposal to implement an economy-wide cap-and-trade system to reduce greenhouse gas emissions by 80 percent by 2050. On March 31, 2009, Congressman Henry A. Waxman and Edward J. Markey released a draft of the American Clean Energy and Security Act of 2009, which includes language implementing a cap-and-trade system.

Experts believe the proposed cap-and-trade system would increase Oklahoma families' utility bills by \$1,000 to \$3,100 per year if it is approved.

House Concurrent Resolution 1036, also by Thompson, notes that Oklahoma is an energy state, where more than 76,000 Oklahomans or 3.3 percent of the workforce in 2007 were directly employed by the oil and natural gas industry. Directly or indirectly, the oil and gas industry supports one in seven jobs in Oklahoma.

Both resolutions were adopted by the House and pending Senate approval will be distributed to the president and all members of the U.S. Congress.

### ***Lawmakers Stand Up for Gun Rights***

State lawmakers also voiced bipartisan opposition to federal efforts to impose a regime of national gun registration and licensure.

House Concurrent Resolution 1032, by state Rep. John Enns, urges Congress to "oppose and defeat" the Blair Holt's Firearm Licensing and Record of Sale Act of 2009.

The resolution notes the Second Amendment of the U.S. Constitution guarantees the rights of citizens to own firearms and that U.S. House Resolution 45, referred to as "Blair Holt's Firearm Licensing and Record of Sale Act of 2009," would make it a federal felony to possess a firearm without a license.

The federal legislation would also allow felony charges against crime victims who do not report the theft of a weapon within three days.

House Concurrent Resolution 1032 passed the Oklahoma House of Representatives on an 86-9 vote.

As I proudly represent District 80, I will always strive to be pro-business by reducing the burdens of government regulation on the Free enterprise system. Should you have any questions or concerns, please feel free to contact me at 1-800-522-8502.



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