

# The Problem:

The current South Carolina Workers' Compensation System is having a detrimental impact on job creation and is stifling business growth in the state.

In 2001, the employers of this state spent \$387,981,574 on workers compensation premiums. In 2005, these employers spent \$664,955,355 on workers compensation premiums. That's an increase of nearly \$277 Million! Given the fact that the average per capita income for South Carolina is \$21,500.00, simple math shows us that equates to a loss of over 12,800 jobs. Instead of hiring new employees, employers were paying increased workers' compensation premiums.

In addition, workers' compensation losses are 30% to 40% higher than those of our neighboring states and insurance companies are refusing to write new workers' compensation policies or are leaving the market altogether. It is also important to note that 40% of the businesses impacted in South Carolina are self-insured and do not rely on the private insurance market.

Let's be clear. This is not simply an insurance issue; rather, this is a jobs issue. Certainly, insurance rates have a major impact on the financial health of a business, but when considering workers' compensation insurance rates, it is important to bear in mind that they are a symptom of a more fundamental problem – a flawed workers' compensation system that lacks fairness, accountability, predictability and common sense.

# Restructuring The Workers' Compensation System In South Carolina.

## Our Mission:

The primary mission of our Workers' Compensation legislation is to create a fair, transparent and accountable system that protects the rights of employees, while ensuring and encouraging jobs and economic opportunity for all South Carolinians.

# Restructuring The Workers' Compensation System:

Better For  
Employees.

Better For  
Business.

Better For  
South Carolina.



## ■ Job Creation

- Workers' Compensation rates have increased 17, 12, and 18.4 percent in the last three years, respectively. Therefore, a business paying \$100,000 in workers' compensation rates three years ago is now paying, on average, \$155,151.00 per year for workers' compensation. Now, multiply that by the number of companies in South Carolina.

- The Result: Businesses have less money to pay for capital investments, pay raises, and jobs. Workers' compensation rates significantly contribute to the state's 6 percent unemployment rate.

## ■ Economic Development

- Companies that are considering expanding or locating in South Carolina take into consideration the cost of doing business in our state. With rising unprecedented workers' compensation rates, the state is not only losing business to neighboring southeastern states, but also to foreign countries, such as India and China.

## ■ Why are the rates increasing at an alarming rate?

- Factors that are driving the cost up:

- Out of control awards
- Second Injury Fund
- Supreme Court rulings that unfairly favor plaintiffs
- Awards for non-occupational diseases (arthritis, heart)

## ■ What can we do?

- Introduce and pass a bill that curbs cost to business and supports job creation, which includes:

- Limiting awards
- Dissolving the Second Injury Fund
- Reversing Brown v. Bi Lo, Tiller v. National Healthcare and Dodge v. Brucoli
- Restricting awards for repetitive trauma (non-occupational diseases)

# Legislative Objectives

## Repeal Three Supreme Court Decisions

Recently, the South Carolina Supreme Court has issued rulings that have contributed to the erosion of the workers' compensation system in South Carolina.

- **Tiller v. National Healthcare** – In this case, the South Carolina Supreme Court held that a claimant is not required to provide expert witness testimony to prove causation in a medically complex case. Our legislation will specify that the burden of proof is upon the claimant and require the use of an expert witness to prove causation in medically complex cases.
- **Brown v. BiLo** – The South Carolina Supreme Court held that the Workers' Compensation Act authorizes communication between health care providers and employers, carriers or their representatives by written reports only. In practice, this now requires employers to take depositions from treating physicians to obtain information necessary to defend the claim, driving up cost in the system. Our legislation will permit physicians to communicate with both sides in a workers' compensation case without fear of being sued for breach of patient-physician confidentiality.
- **Dodge v. Brucoli** – The South Carolina Court of Appeals held that the Workers' Compensation Commission has the authority to order the payment of future medical benefits in any non-settled case. In practice, the Court provided the Workers' Compensation Commission the authority to order payment of future medical benefits in the majority of cases rather than those only involving permanent or total disability. Our legislation seeks reasonable limitations on future medical benefits.

## Awards Standards

A major cost driver in the workers' compensation system is the inconsistency and unpredictability of awards by commissioners. Our legislation promotes a standardized approach to determining awards, which would bring stability and predictability and reduce costs.

## Second Injury Fund

The Second Injury Fund was created to encourage the employment of disabled persons. Unfortunately, the fund no longer is serving this noble purpose and must be abolished or limited in scope. In 2004, of the 98,000 employers in our state less than 2,000 received any benefit from the fund. Seventeen states have abolished their Second Injury Fund because of the unpredictable assessments and there is no evidence that Second Injury Funds have ever achieved their stated purpose of fostering the employment or retention of persons with disabilities. Our legislation seeks to restrict the Second Injury Fund from over 30 types of claims to only three.

## Repetitive Trauma

South Carolina is starting to see a rise in cases for injuries beyond the original purpose of workers' compensation known as "repetitive trauma" claims. The system has eroded into not just paying for the worker's injury but also paying for issues related to the natural aging process. Our legislation will define injuries as only those of a traumatic event or unusual strain occurring during a single work shift.

## 50% Back Rule

Employees with an impairment rating of 50% or higher for their back receive total and permanent disability. The back is the only area where this occurs. Employees with 50% impairment to the back are able to perform other duties in many cases. Our legislation seeks the elimination of the 50% back rule.

## Fraud

Employee and Employer insurance fraud drives up cost for everyone. The intentional misclassification and/or under reporting of payroll is a misdemeanor in our state. Our legislation seeks to increase the penalties for insurance fraud.