

**Task Force on Commerce, Insurance and Economic  
Development**

**Spring Task Force Summit**

**Pittsburgh, PA**

**May 6, 2016**

## Task Force on Commerce, Insurance and Economic Development Tentative Meeting Agenda

Spring Task Force Summit 2016 | Pittsburgh, Pennsylvania  
Friday, May 6, 2016  
2:00 - 5:00 PM

- 2:00 PM**      **Call to Order**  
Welcome and Introductions
- 2:05 PM**      Panel Discussion: Taxpayer Funded Lobbying Disclosure – Ensuring Public Transparency
- 2:35 PM**      Presentation: An Update on Autonomous Vehicle Technology and Legislation
- 3:10 PM**      Model Policy Discussion: Statement of Principles on Workers’ Compensation
- 3:25 PM**      Presentation: Throwing the Franchise Model in Jeopardy – The NLRB’s Joint Employer Standard, the McDonalds Lawsuit and Further State Action
- 3:50 PM**      Presentation: Responsible Alternatives to State Workers’ Compensation
- 4:05 PM**      Discussion of Model Policies for 5-Year Sunset Review (Retain, Amend or Sunset)
- Hurricane Mitigation Promotion Act
  - State Council on Competitive Government Act
  - Prohibition Against the Regulation of Nutritional Information Dissemination
  - Resolution in Support of the Transportation Infrastructure Finance Innovation Act
- 4:20 PM**      Presentation: Bridging the Infrastructure Gap – How States Can Use Public Private Partnerships (P3s) to Address Infrastructure Needs
- 4:50 PM**      **For the Good of the Order**
- 5:00 PM**      **Adjournment**

To access an electronic copy of these documents, please visit:  
<http://www.alec.org/task-forces/commerce-insurance-and-economic-development/>

## Workers' Compensation Subcommittee Tentative Meeting Agenda

2016 Spring Task Force Summit | Pittsburgh, PA  
Friday, May 6, 2016  
9:30 - 10:30 AM

**9:30 AM**      **Welcome and Introductions**

**9:40 AM**      **Discussion and Vote: Draft ALEC Statement of Principles on State Workers' Compensation Reform**

*In addition to going over the reworked Statement, we will consider submitted amendments and, if so moved, take a vote on the finalized Statement to send it to the Civil Justice and Commerce, Insurance and Economic Development Task Forces for consideration.*

**10:30 AM**      **Adjourn**

To access an electronic copy of these documents, please visit:  
<http://www.alec.org/task-forces/civil-justice/>

## ALEC DRAFT Statement of Principles on State Workers' Compensation Reform

### Preamble

Government policy should encourage fair and sustainable workers' compensation laws that provide quality medical care and benefits to injured workers, and focus on workplace safety and successful return-to-work programs.

In many states, injured workers are receiving inconsistent treatment that is not in-line with solid evidence-based medical guidelines and are, at times, becoming trapped in a system that discourages workers from returning to work in an expeditious manner. Innovative reform of workers' compensation laws is necessary to restore a system intended to protect workers and return them to the workforce in a fair and timely manner.

Effective solutions must be directed at delivering quality recovery to injured workers, enabling workers to return to work quickly, and inherently controlling key cost drivers. To ensure speedy and meaningful return to work, employees unable to perform preinjury jobs need access to temporary alternate work with the same employer, reemployment assistance when viable work options don't exist with their employer, and vocational rehabilitation only when substantiated and reasonable necessity can be shown.

Because of the variance of state workers' compensation laws, there is no one-size-fits-all solution; thus, ALEC has opted to develop this Statement of Principles to identify major areas of concern and offer guidelines for reform. Many of the primary needs for reform can be categorized into four areas: Appropriate Medical Care, Agency Red Tape, Unnecessary Litigation, and Court Interpretations of the Law.

### ***Section 1. Appropriate Medical Care.***

**The Problem:** Under workers' compensation systems, employers cover 100% of an employee's medical and pharmaceutical costs. Employer coverage is key to ensuring the worker gets appropriate medical care and can return to work as quickly as advisable. But for the system to function well in a state economy, the injured must get the right care at appropriate market rates rather than inflated rates. For many years, workers' compensation medical costs have increased at a greater rate than generic medical costs without increasing benefits to the injured worker. Medical care reform should minimize the cost of transferring maximum benefits to the injured worker. Excessive medical procedures, legal actions and regulatory burdens increase transaction costs for the employer without also increasing benefits to the injured.

**Recommended Solutions:** Solutions to such problems must be state specific and begin with identifying the areas of greatest concern. Important issues to explore include:

- **Evidence-based Medicine Guidelines.** These established, nationally-recognized guidelines rely on a critical appraisal of available scientific evidence for diagnosis, treatment, causation, and other aspects of healthcare decision making. When combined with appropriate tools governing

precertification and utilization review, and incorporated into a system that is deferential to treatment within the guidelines, the use of nationally-recognized evidence-based medicine can deliver the most appropriate medical treatment while avoiding wasteful and unnecessarily costly treatment. Evidence-based medicine guidelines also contribute to the speedy resolution of medical disputes thereby minimizing litigation.

- **Elimination or strict regulation of physician-dispensed prescriptions.** Studies have not been able to show that physician dispensing of medications offers any real benefit to the patient. Rather, physician-dispensed or -compounded medications cost more money and may be associated with longer work absences than pharmacist-dispensed medications.
- **Drug Formularies.** Nationally-recognized formularies list appropriate prescription drugs chosen based on evaluations of efficacy, safety, and cost effectiveness and are used by medical practitioners to identify those drugs that offer the greatest overall value and are approved for prescription. Formularies help the physician avoid prescription medications, particularly certain opiates, for patients at high risk of developing drug dependence. **Medical Fee Schedules.** A medical fee schedule is a listing of fees, typically the maximum amount of allowable charges, payable to reimburse for various medical services. A number of states now use some form of medical fee schedule as a benchmark control for the pricing of medical services covered by their workers' compensation programs. When fee schedules are reasonable and used in conjunction with treatment guidelines, they can be an effective means of controlling escalating medical costs.
- **Minimizing Doctor Shopping.** Rather than returning to work when recommended by their original treating physician, workers may be encouraged by their attorney to get a second, third and fourth opinion until that opinion recommends additional medical treatments and time away from work. Doctor Shopping, as allowed by many state regulators and eagerly pursued by claimant attorneys, thwarts the original intent of workers' compensation laws and invariably results in additional litigation and increased cost.

## ***Section 2. Agency Red Tape.***

**The Problem:** Where a state's workers' compensation agency has excessive rules and regulations, it can be a significant cost driver in the system. When the state agency unnecessarily interjects itself between the employer and the employee, delays ensue, medical care suffers, satisfaction dwindles, and costs increase.

**Recommended Solutions:** Solutions to problems of regulatory inefficiency are, of necessity, state specific. Generally, however, statutory reforms that bring agency rule-making in line with legislative intent can result in a much improved and more cost-effective workers' compensation system. Problem points to consider include:

- Regulations that increase medical costs unnecessarily
- Regulations that delay return to work
- Regulations with inefficient paperwork requirements that impose excessive time constraints and fines
- Regulations that may create the problems mentioned in the medical care and litigation sections.
- Outdated paper-only record systems. Legislators should consider shifting to electronic records and communications compatible with existing electronic frameworks.

### ***Section 3. Unnecessary Litigation.***

**The Problem:** All Workers' Compensation laws provide no-fault coverage to employees whose injuries arise out of and in the course of their employment. Despite there being no need in a no-fault system to litigate over fault, the systems are often still plagued by needless litigation resulting in millions of dollars in increased costs.

**Recommended Solutions:** Solutions will focus on more efficiently delivering care without excessive litigation. While each state workers' compensation law is different, solutions to this problem must begin with identifying the specific areas within a state's law that foster excessive litigation. Consider:

- **Liberal Construction Provisions:** Many state statutes provide that workers' compensation laws must be liberally construed in favor of the employee. As enacted, the provisions were intended to protect the employee by liberally construing the laws in their favor. However, these provisions are often used to justify liberal constructions of the facts in a case, allowing cases with little proof of injury to recover and encouraging abuse. Needless litigation can be substantially reduced by simply eliminating that statutory provision, and in its place, provide for strict construction of the law and a preponderance of the evidence test for burden of proof.
- Court decisions or statutory provisions that expand the opportunity for litigation in a no-fault system that should provide appropriate medical care for injured workers with minimal transfer costs

### ***Section 4. Court Interpretations of the Law.***

**The Problem:** In many states, a commonsense reading of the workers' compensation law would not suggest the need for statutory reform. However, activist judiciaries in some states have taken great liberties in interpreting workers' compensation laws and many statutes now greatly broaden their original intent.

**Recommended Solutions:** States wishing to reform their laws will have to evaluate relevant judicial decisions and identify the areas where courts have broadened the scope of workers' compensation laws thereby inflating costs. Solutions may:

- **Reform liberal construction provisions.** As mentioned above, liberal construction provisions are often used to liberally construe the facts rather than the law. Where this method is employed, pay great attention to any subsequent expansions of the law as they may lack merit.
- **Reaffirm statutes of limitations.** Where courts allow actions after the statute of limitations has expired, it's important to consider the implications of the decision and offer statutory reversals.
- **Uphold Subrogation limitations.** Decisions greatly limiting or even denying employers or their insurance carrier their statutory right to subrogate against a third party responsible for causing injury to their employee result in greatly increased cost to employers and double recovery by the worker.
- **Strengthen the Exclusive Remedy.** As workers' compensation systems are no-fault, they are also generally the exclusive remedy for those injured in the workplace. However, the exclusive remedy tenet is continually threatened by excessive litigation.

- **Reaffirm Meaningful Causation Standards.** Several states have enacted a commonsense requirement that any physical impairment or disability must have arisen out of and in the course of employment.

DRAFT

## PROHIBITION AGAINST REGULATION OF NUTRITIONAL INFORMATION DISSEMINATION

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### **Section 1.**

(1) A municipality may not regulate the dissemination of nutritional information or the content required to be placed on a menu, menu board, or food tag by a restaurant, eating establishment, or other food facility.

(2) An ordinance or regulation that violates Subsection (1) is void.

### **Section 2.**

(1) A county may not regulate the dissemination of nutritional information or the content required to be placed on a menu, menu board, or food tag by a restaurant, eating establishment, or other food facility.

(2) An ordinance or regulation that violates Subsection (1) is void.

### **Section 3. {Severability clause.}**

### **Section 4. {Repealer clause.}**

### **Section 5. {Effective date.}**

*Approved by ALEC Board of Directors on June 7, 2011.*

## RESOLUTION IN SUPPORT OF THE TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT

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**WHEREAS**, the “Transportation Infrastructure Finance and Innovation Act” (TIFIA) program was created by the United States Congress to provide credit assistance, such as low-interest direct loans to leverage scarce public funds and support projects that utilize a specific local revenue stream for repayment to nationally or regionally significant surface transportation projects; and

**WHEREAS**, it is in the economic interest of the State of [insert state] and the United States to encourage local investment in nationally and regionally significant infrastructure, create jobs in near and long term, and improve the quality of life for hard-working families and businesses who rely on major highways to access employment, customers, and their families; and

**WHEREAS**, TIFIA is a highly successful federal program that as of July 2010 had provided financial assistance to 27 projects in 13 states and territories totaling \$7.9 billion, and leveraging a total project investment of \$29.4 billion; and

**WHEREAS**, TIFIA is currently oversubscribed having received more applications for assistance relative to funding available under the program; and

**WHEREAS**, the TIFIA program remains one of the critical methods available in this country to advance major transportation projects by leveraging private sector funding;

**THEREFORE BE IT RESOLVED**, by the Assembly and the Senate of the State of [insert state], that; it is critical that Congress provide, at a minimum, the current authorized level of funding to TIFIA for the upcoming fiscal year and work with the US Department of Transportation to identify opportunities to expand TIFIA; and

**BE IT FURTHER RESOLVED**, that the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to the Majority Leader in the Senate, to each Senator and Representative from [insert state] in the Congress of the United States, to the Secretary of United States Department of Transportation, and to the author for appropriate distribution.

*Approved by the ALEC Board of Directors on June 7, 2011.*

## STATE COUNCIL ON COMPETITIVE GOVERNMENT ACT

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**{Title, enacting clause, etc.}**

### **Section 1. {Definitions.}**

In this chapter:

- (1) “Council” means the State Council on Competitive Government.
- (2) “Local government” means a county, municipality, special district, school district, junior college district, or other legally constituted political subdivision of the state.

### **Section 2. {Competition, Innovation and Creativity in State Services.}**

The state shall encourage competition, innovation, and creativity among service providers to improve the quality of the state’s services.

### **Section 3. {Composition of Council.}**

(A) The State Council on Competitive Government consists of the following individuals or the individuals they designate:

- (1) the governor;
- (2) the lieutenant governor [or senate president\*];
- (3) the comptroller [treasurer, auditor, or appropriate state management position\*];
- (4) the speaker of the house of representatives;
- (5) the director of the state’ general services agency [or similar position\*];
- (6) the state chief information officer [or similar position\*]; and
- (7) the director of the state’s workforce commission [or similar position[\*]].

(B) The governor is the presiding officer of the council.

(C) If the speaker of the house of representatives is not permitted by the constitution to serve as a voting member of the council, the speaker serves as a nonvoting member.

#### **Section 4. {Meetings.}**

(A) The council shall meet as often as necessary to perform its duties.

(B) The council is subject to:

(1) the {insert state} open meetings law [insert appropriate state chapter reference on state transparency law if applicable]; and

(2) the {insert state} open records law [insert appropriate state chapter reference on state transparency law if applicable].

#### **Section 5. {General Powers.}**

In performing its duties under this chapter, the council may:

(1) adopt a rule governing any aspect of the council's duties or responsibilities;

(2) hold a public hearing or conduct a study; and

(3) consult a private commercial source.

#### **Section 6. {Selection of Service Provider through Competition.}**

(A) The council shall identify commercially available services being performed by state agencies and study the services to determine if they may be better provided by selecting the service providers through competition with other state agency providers of the services or private commercial sources.

(B) If the council determines that a service identified under Subsection (A) may be better provided by selecting the service provider through competition, the council shall require the state agency providing the service to engage in any process, including competitive bidding, developed by the council to select a service provider through competition with other state agency providers of the service or private commercial sources.

(C) In performing its duties under this chapter, the council may:

- (1) require a state agency to conduct a hearing, study, review, or cost estimate, including an agency in-house cost estimate or a management study, concerning any aspect of a service identified under Subsection (A);
  - (2) develop and require state agencies to use methods to accurately and fairly estimate and account for the cost of providing a service identified under Subsection (A);
  - (3) require that a service identified under Subsection (A) be submitted to competitive bidding or another process that creates competition with private commercial sources;
  - (4) prescribe, after consulting affected state agencies, the specifications and conditions of purchase procedures that must be followed by the comptroller and a state agency or a private commercial source engaged in competitive bidding to provide a service identified under Subsection (A);
  - (5) award a contract to a state agency providing the service, another state agency, a private commercial source, or a combination of those entities, if the bidder presents the best and most reasonable bid, which is not necessarily the lowest bid; and
  - (6) determine the terms of a contract for service or interagency contract to provide a service identified under Subsection (A).
- (D) To the extent the council determines is feasible, a local government may voluntarily participate in a contract awarded by the council or a state agency under this chapter. A local government that purchases a good or a service under a contract awarded under this chapter is considered to have satisfied any state law requiring the local government to follow a competitive purchasing procedure for the purchase.

**Section 7. {Cost Comparison and Contract Considerations.}**

- (A) In comparing the cost of providing a service, the council shall consider the:
- (1) cost of supervising the work of a private contractor; and
  - (2) cost of a state agency's performance of the service, including:
    - (a) the costs of the comptroller, attorney general, and other support agencies; and
    - (b) other indirect costs related to the agency's performance of the service.
- (B) A bid or contract that the Council determines will be likely to result in staff reduction must include an analysis of health care benefits, retirement, and workers' compensation insurance for a contractor's employees that are reasonably comparable to the health care benefits, retirement, and workers' compensation insurance of the state.

**Section 8. {Duties of Affected State Agencies.}**

A state agency shall perform an activity required by the council in performing its duties or exercising its powers under this chapter.

**Section 9. {Exemption from Purchasing Laws.}**

A contract by the council or a decision regarding whether a state agency is required to engage in competitive bidding is exempt from another state law regulating or limiting state purchasing or a purchasing decision.

**Section 10. {Severability clause.}**

**Section 11. {Repealer clause.}**

**Section 12. {Effective date.}**

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[\*] Insert appropriate state management position. For more information on Texas' state positions on the Council, please see: <http://www.ccg.state.tx.us/background.php>

*Approved by the Tax and Fiscal Policy Task Force at the Spring Task Force Summit, April 28, 2011.*

*Approved by the ALEC Board of Directors, May, 2011.*

## THE HURRICANE MITIGATION PROMOTION ACT

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{Title, enacting clause, etc.}

**Section 1. {Designation.}** The period from May 25<sup>th</sup> to May 31<sup>st</sup> of each year is “Hurricane Mitigation Week.”

**Section 2. {Proclamation.}** The Governor is requested to issue each year, a proclamation calling on:

(A) Individuals, business owners, and commercial property owners within the state to prepare their homes, properties, and communities for the coming hurricane season.

(B) All state agencies to review and update hurricane preparedness plans.

(C) All county and municipal governments as well as the [State Department of Education, The State Department of Emergency Management, the State Department of Commerce, and the State Department of Insurance], to the extent practicable, to focus educational, outreach and other efforts oriented towards hurricane preparedness on the period between May 25<sup>th</sup> and May 31<sup>st</sup> of that year.

**Section 3. {Commission on Hurricane Mitigation.}** There is hereby created a Special Advisory Commission on Hurricane Mitigation. (the Commission.)

(A) The Commission shall consist of twelve members.

(B) The membership of the Commission shall include [the Director of Emergency Management and the Commissioner of Insurance] or their designates.

(C) Six members shall be appointed by the governor one of whom shall have experience or be knowledgeable in the field of insurance, one of whom shall have experience in or be knowledgeable in the retrofitting of homes to better withstand hurricane losses, one of whom shall be a builder of single family homes, one of whom shall be a builder of commercial structures, one of whom shall be the owner of a single family home in [the area of the state served by the state residual wind insurance market or FAIR plan], one of whom shall be the owner of a commercial structure in the [the area of the state served by the state residual wind insurance market or FAIR plan.]

(D) The [Majority Leader of the Lower House], the [Minority Leader of the Lower House], the [Majority Leader of the Upper House], and the [Minority Leader of the Lower House] shall appoint one member of the Commission each.

(E) The Commission shall, one year from the enactment of this statute, and every four years thereafter submit to the governor and make available in electronic form a report that examines and makes recommendations with regard to:

(1) The areas of the state most vulnerable to hurricane damage and the appropriate ways to reduce this damage.

(2) The status of the state's own preparedness for against hurricane damage.

(3) The strengths and weaknesses of [the statewide building code/building codes around the state/land use policies] with regard to protecting the residents from hurricane damage.

(4) Steps the state should take to improve its preparedness for hurricanes.

(F) [There is authorized to be appropriated [\$50,000] for the purposes of carrying out this section./The Department of Emergency Management shall provide staff support to the Commission.]

**Section 4. {Tax Exemption.}** Beginning in [2011], for a seven-day period that begins each year on May 25 and ends at 11:59 p.m. on May 31, the [state sales tax law] shall not apply to (i) portable generators used to provide light or communications or preserve food in the event of a power outage and (ii) certain other hurricane preparedness equipment, including, but not limited to, blue ice, carbon monoxide detectors, mobile phone batteries, mobile phone chargers, gas or diesel fuel tanks, nonelectric food storage coolers, portable self-powered light sources, portable self-powered radios, two-way radios, weather band radios, storm shutter devices, tarpaulins or other flexible waterproof sheeting, ground anchor systems or tie down kits, hurricane straps, clips or holdown devices, and packages of AAA cell, AA cell, C cell, D cell, 6 volt, or 9 volt batteries, excluding automobile and boat batteries. As used in this section, "storm shutter" means materials and products manufactured, rated, and marketed specifically for the purpose of preventing window damage from storms. (A) The tax exemption shall apply to each portable generator with a selling price of \$1,000 or less, and each article of other hurricane preparedness equipment with a selling price of \$60 or less. Any discount, coupon, or other credit offered either by the retailer or by a vendor of the retailer to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption.

(B) [The state tax collection authority] in consultation with the Commission on Hurricane Mitigation shall develop guidelines that describe the items of merchandise that qualify for the exemption and make such guidelines available, both electronically and in hard copy, no later than May 15 of each year.

**Section 5. {Severability Clause.}**

**Section 6. {Repealer Clause.}**

**Section 7. {Effective Date.}**

*Approved by ALEC Board of Directors on January 7, 2011.*