

IDCA Legislative Update

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The 2017 Session of the 87th Iowa General Assembly proved to be one of the most substantial policy sessions in recent history. The Session came on the heels of significant Republican gains across the country that resulted in Republican control in both the Iowa House and the Senate, along with the Governor's office, for the first time in Iowa since 1998. The majorities in the House (59-41) and

the Senate (29-20-1) were substantial and the two Chambers addressed most of their priorities.

Before any policy was passed, the legislature was faced with a budget shortfall in the current 2017 budget. As such, the first three weeks of the session were consumed with discussions and negotiations between the two chambers and the Governor's office on de-appropriating some \$130 million from the current year budget. The impact on the Judicial Branch budget was a \$3 million reduction in funding. This reduction compounded the funding problems of the Judicial Branch that began the 2017 budget year already \$5 million short of the amount needed to maintain the current level of service.

After the de-appropriation bill was passed, the Senate took up Chapter 20 reforms, collective bargaining for public employees. The bill in large part guts Chapter 20, taking away most of the subjects that could be bargained over and terminated the union's ability to withhold dues and PAC contributions from members' paychecks. As the bill worked its way through the committee process, there was significant public attendance and objection, culminating in a public hearing that filled the Capitol. When the Senate finally took up the bill for debate, Senators debated through the night and into the afternoon on the next day. In the end, the final vote would be a sign of things to come in the Senate: 29-21, with every Republican voting for the bill.

On the other side of the rotunda, the House took up what was referred to as an omnibus gun rights bill. Most of the issues

contained in the bill had been worked on and in many instances, passed in one form or another over the last few years by the House. Among the many sections of the bill, perhaps the most controversial was the stand your ground provisions as it relates to civil causes of action.

The legislature went on to pass bills on voter identification, workers' compensation, medical malpractice, minimum wage preemption, statute of repose, restricting project labor agreements, asbestos litigation protections, alcoholic beverage laws, texting and driving, restrictions on abortions and expansion of medical marijuana. Despite bipartisan support from the legislature, Governor and Secretary of Agriculture, as well as environmental groups, cities and business and industry, the legislature failed to pass legislation addressing water quality. Both the House and the Senate passed different bills in the waning days of session, but ran out of time to reach a compromise.

After years of attempting to persuade the legislature, the legislature made changes to the Statute of Repose for improvements to real property. The final bill reduces the years from 15 to 8, but included certain exceptions in an effort to find compromise with the Bar Association and the Association for Justice. Despite these concessions, both remained against the bill to the end. The following are the exceptions: any action related to a nuclear power plant was kept at fifteen years; residential construction was reduced only to ten years; intentional misconduct or fraudulent concealment of an unsafe or defective condition was left at fifteen years.

Medical malpractice reform has been a periodic topic of legislative efforts over the years primarily spearheaded by the Iowa Medical Society. This session legislation was finally passed over the strenuous opposition by the Association for Justice and the Bar Association. The original bill was significantly amended, striking limitations on contingent attorney's fees and evidence-based medical practice guidelines. The bill adds a number of providers to the definition of "health care provider" in the confidential open discussions chapter (Chapter 135P) passed in 2015, to now include osteopathic physicians, chiropractors, nurses, dentists, optometrists and pharmacists. The bill also provides standards for expert witnesses, requiring the expert be a licensed health care provider, in good standing and in the five years preceding has not had a license revoked or suspended. The expert must have practiced or instructed in the same field in



the preceding five years. The bill establishes a certificate of merit affidavit for the expert witnesses.

The most controversial provision contained in the bill was the section providing for a cap on noneconomic damages of \$250,000. The Senate passed its version of the bill with a straight \$250,000 cap. Meanwhile, the House Judiciary Chair Chip Baltimore stripped out the section on caps when it was voted out of committee. Both bills sat in the House with no movement and appeared to be in jeopardy until leadership in the House got involved the next to last week of the session. Despite Representative Baltimore's opposition to caps, he was asked to attempt to find compromise language that would keep caps in the legislation. The following is the amendment to the Senate bill regarding caps:

unless the jury determines that there is a substantial or permanent loss or impairment of a bodily function, substantial disfigurement or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained.

The IDCA registered opposed to the caps. The bill passed the House 65-32, with ten Democrats voting with the majority. The Senate accepted the House amendment and passed the bill by an even greater percentage margin, 37-12.

Amongst all the tort related reforms of medical malpractice, worker's compensation and asbestos litigation, the IDCA again worked to pass changes to the mitigation of damages limitations

contained in code for the failure to wear a seat belt. Filing the bill initially as a straight comparative fault analysis, the bill met heavy resistance from both the Association for Justice and the Bar Association. After a contentious subcommittee, the IDCA worked with the Association for Justice in order to forge a compromise that would simply move the percentage limitation from 5% up to 25%. Despite this agreement, the Bar Association remained against the bill and it was not until the Board of Governors met on March 22nd, that the decision was made for the Bar to change their registration to neutral. This occurred the week prior to the second funnel.

We worked the House that week, vote counting (50 confirmed Republicans) and meeting with the Majority Leader to put our bill back on the debate Calendar. However, in the end we were held up in the House Republican caucus by an influential member who prevented us from getting back on the debate calendar and the bill died in the second funnel. Thereafter, efforts were made to be included in the Standings Bill at the end of session and we received favorable responses from leadership, but in the end it was extremely difficult to get policy language in the Standings Bill. Given the compromise reached with the Association for Justice this session, the Bar Association's newfound neutrality and all of the other tort reform issues seemingly out of the way, I would expect significant support from leadership on this bill next year.

The final tally was 174 bills passed by the legislature this session and sent to the Governor. Next year I can sum up what to expect in two words: Tax Reform.