

To: The Honorable Members of the PA House of Representatives

Date: Sept. 27, 2017

Re: Support legislation to address Supreme Court decision

From:

**Associated Pennsylvania Constructors
County Commissioners Association of Pennsylvania
Hospital & Healthsystem Association of Pennsylvania
Insurance Agents and Brokers
Insurance Federation of Pennsylvania
LeadingAge PA
National Federation of Independent Business --
Pennsylvania
Pennsylvania Association of School Business Officials
Pennsylvania Boroughs Association
Pennsylvania Builders Association
Pennsylvania Chamber of Business and Industry
Pennsylvania Council of General Contractors
Pennsylvania Defense Institute
Pennsylvania Food Merchants Association
Pennsylvania Health Care Association
Pennsylvania Homecare Association
Pennsylvania Manufacturers' Association
Pennsylvania Medical Society
Pennsylvania Municipal League
Pennsylvania Restaurant and Lodging Association
Pennsylvania Retailers' Association
Pennsylvania School Boards Association
Pennsylvania Self-Insured Association
Pennsylvania State Association of Township Supervisors
Rehabilitation & Community Providers Association
SMC Business Councils**

We write on behalf of our respective members in support of legislation that Labor and Industry Committee Chairman Rob Kauffman and Rep. Garth Everett plan to introduce to accommodate a recent Pennsylvania Supreme Court decision related to workers' compensation. This decision has prompted the Pennsylvania Compensation Rating Bureau to file for a mid-year loss cost increase: an unprecedented action that could lead to significant cost increases on Pennsylvania employers.

The Court's decision in *Protz v. Workers' Compensation Appeals Board* relates to so-called Impairment Rating Evaluations, a feature of our workers' compensation system since being included as part of Act 57 of 1996. An IRE may be conducted two years into a claim: a physician, designated by the

Department of Labor and Industry, evaluates the patient and uses guidelines from the American Medical Association to determine level of impairment. If impairment is less than 50 percent the patient moves to partial disability status and wage-loss benefits may be limited to 500 weeks, or just under 10 years, though medical benefits may continue indefinitely. It is estimated that roughly 1,000 IREs are performed annually and they are subject to appeal.

The IRE is a nationally accepted means of adjusting to changes that inevitably occur during the course of an employee's recovery from injury. IREs are used across the country in workers compensation, as are AMA guidelines. The process ensures that doctors are making the decisions – both those at the national level who develop the AMA impairment guides and those locally who apply the guides to specific patients. IREs have remained a component of Pennsylvania's workers' compensation system for over twenty years, through multiple General Assemblies and administrations of both political parties. They have generally served their purpose of bringing structure and fairness to the process of determining circumstances in which claimants can reasonably be expected to transition off wage-loss benefits and when benefits should be paid for the rest of an individual's life. IREs also helped stabilize the overall workers' compensation system which had experienced massive cost increases in the late 1980s and early 1990s.

In the *Protz* decision, the Supreme Court did *not* object to evaluating workers' compensation claimants to determine level of impairment. Further, the Court did *not* object to limiting the duration of benefits. The Court did not even object to using AMA guidelines for these purposes. The Court held that the current IRE process was unconstitutional because AMA guidelines are updated periodically (twice since the law was passed in 1996) and therefore, since the current version differs from the version used in 1996, their use is an unconstitutional delegation of authority.

Chairman Kauffman's bill will help ensure the constitutionality of the IRE process by updating the law with the most recent edition of the AMA guidelines and applying it to current and future claims.

We urge you to cosponsor this legislation.