



# Capital Eye

Volume 2, Issue 2

January 17, 2003

## BATTLE OF THE BOBS: ROUND TWO GOES TO KISS

This week Speaker Bob Kiss trumped the governor, ramming his versions of 4 major bills through the House. In an unprecedented display of leadership might and disregard for public comment not seen since the 1900's robber baron-controlled legislature, Kiss bulldozed his agenda past a befuddled and uninformed House of Delegates. The bills were medical malpractice (tort reform), ATV safety, higher education reduction, and the workers compensation non-fix. Call or e-mail us for details.

The Kiss med mal bill is the "dream" bill for doctors, hospitals and insurance companies with double caps: on victims for what they can receive for malpractice, and on doctors for liability for their mistakes. **Consumers lose big time.** The governors' ATV bill was severely weakened by the House and has become the do-nothing bill the ATV dealers wanted. **See a trend?** The workers' comp "fix" ended up as a reduction of what injured workers can receive and no real increase in what the most dangerous industries like coal and timbering will have to pay. Higher Ed? Well \$20 million was cut from its budget and ...and...?? logically applied to the workers' comp deficit. Bold Bob Kiss is not yet bold enough to take on the tough issues like overweight trucks and a tobacco tax increase.

A former delegate and current business lobbyist called the day's events "a disgrace to the state of West Virginia." It's hard to convey to you how bad things are. The political climate and the power of the special interests are unlike anything we've seen since the Arch Moore years but at least then we had Democrats that acted like Democrats in office to counterbalance the greed. **It's hard to be proud of democracy right now.**

## **WHO WANTS TORT REFORM?**

Owners of coal slurry dams  
Makers of defective tires  
Tobacco companies  
Overweight coal truck operators  
Meat packers  
Chemical companies  
Drug companies  
Insurance companies  
All terrain vehicle manufacturers  
Hospitals

## **WHO OPPOSES TORT REFORM?**

Labor  
Victims  
Environmentalists  
Trial lawyers

What part of the tort reform issue do you not understand?

## **A Bit of Good News?**

by Norm Steenstra, [norm@wvcag.org](mailto:norm@wvcag.org)

Obviously, the session is not going well for people to the political left of Ghengis Kahn but there are a couple of things quietly happening that give me some cause for optimism. Two of our initiatives, the Clean Election Bill and the Bottle Bill are making some progress. Although we really do not expect either bill to pass this session we are likely to see an honest and deliberate treatment of these issues for the first time ever. The main opponents of the bottle bill are currently distracted as they oppose the tobacco tax increase. Also the potential of \$25 million in unredeemed container deposits is getting the attention of those worried about the budget deficit. The Clean Elections concept has gained credibility because of Maine and Arizona's recent successes. Don't look for spectacular progress this session on these issues but valuable momentum is occurring.

# Clean Elections Act Introduced

by Julie Archer, [julie@wvcag.org](mailto:julie@wvcag.org)

Clean Election reform passed a major milestone this week when **the West Virginia Clean Elections Act was introduced by 11 senators** who represent both parties and much of the political spectrum, and include some of the Senate's biggest fundraisers. The Clean Elections Act will provide public funding for campaigns for candidates who agree not to accept private contributions and to follow spending limits. The People's Election Reform Coalition (PERC) and WV-CAG have documented the influence of privately financed elections and how much they have cost the state in policies that hurt the people at the expense of big donors.

We are encouraged that reform to help reduce the influence of special interest contributions has been introduced. Kudos to Senators Jon Hunter, Larry Rowe, Brooks McCabe, Randy White, John Unger, Tracy Dempsey, Jeffrey Kessler, Mike Oliverio, Vic Sprouse, Anita Caldwell and Evan Jenkins for sponsoring the West Virginia Clean Elections Act (SB 158). Si Galperin gave a presentation on the bill before the Senate Judiciary Committee yesterday, and Senator Kessler has said he will assign the bill to a subcommittee for further consideration.

Clean Election reform is already visible in Maine and Arizona. Maine, for example, overcame corporate opposition and passed a successful universal health care bill in 2001. According to one of the bill's sponsors the insurance industry's influence in the legislature was diminished due to Clean Elections. Clean Election reform **is** the reform that makes all other reforms possible.

*"I am mindful not only of preserving executive powers for myself, but for predecessors as well."*

*George W. Bush*



# House Panders to Docs & Insurance Cos in Passing “Tort Reform”

by Gary Zuckett, garyz@wvcag.org

In a rush to please disgruntled doctors, the House passed HB 2021 by an overwhelming majority on Thursday. Giving in to threats by big insurance to leave the state and by docs to leave their patients, House leadership rushed the bill through committee and onto the House floor so fast it had to be patched up with a total rewrite (strike and insert) on third reading (passage stage) for over an hour. Then ensued another hour of debate on the measure.

Here are some of the bill’s provisions:

- A \$250,000 cap on awards for “non-economic” or punitive damages
- A \$500,000 cap on awards for damages from “trauma care”
- A special class of citizens is created with bankruptcy protection ten times greater than you and me. You guessed it: Doctors.
- A tax break for doctors of 20% of their malpractice premiums. The rest of us will make up the nearly \$20 million/year in lost revenue.
- “Collateral Source” would directly deduct any payments victims get from their own insurance, Social Security, Workers Comp etc., from the now-capped jury awards. This could result in a victim’s whole jury award being eliminated.

Realizing they were setting up a system that would do harm to victims of malpractice, the House bill set up a “Patient Compensation” fund to assist folks who will be denied adequate compensation for their injuries. This should be a red flag for anyone looking into this bill. No funding mechanism for the Patient Compensation concept was included in the bill, which turns it into yet another unfunded mandate. Oh well, just add it to the state’s Workers Comp, PEIA, and police retirement debt.

There is not room here to explain the 75 pages of insurance corporate welfare and doctors benefits in HB 2021. However, here

are some quotes from the House floor debate:

Delegate Fleischauer, "This 'solution' doesn't fit the root cause...\$250,000 is that what a life is worth?...The \$500,000 trauma cap may have to cover a lifetime of care and support. It's not enough."

Delegate Webster, "I cannot support a bill that lacks balance...The people who are absent from the debate today are the victims...The people and the patients were left out of this bill...They are the real losers."

Delegate DeLong, "This bill means rich parents [of mal-practice victims] will get representation [in court] and poor parents won't."

Delegate Rick Thompson, " This bill says the plaintiff cannot win, but if they do it takes all the money away."

"No one expects this bill to reduce insurance premiums,"  
Delegate Amores, House Judiciary Chair.

*Q: Please state the location of your right foot immediately prior to impact.*

*A: Immediately before the impact, my right foot was located at the immediate end of my right leg.*

*actual courtroom testimony*

# Coal Trucks - Sleeping Giant of 2003 Session?

by Julie Archer, [julie@wvcag.org](mailto:julie@wvcag.org)

Comprehensive bills dealing with overweight coal trucks still have not been introduced this session. In the meantime, two bills to make important reforms to coal hauling have been introduced. HB 2067, which was introduced last week and sponsored by Delegate Caputo, would require law enforcement officers investigating accidents involving commercial motor vehicles to include the weight of those vehicles in accident reports. This would make it easier for the Division of Highways (DOH) to determine how many overweight vehicles are involved in accidents. On a number of occasions when DOH officials have been asked how many overweight vehicles were involved in accidents they were unable to provide an answer. They were also unable to accurately determine how many coal trucks were involved in accidents because investigating officers currently are not required to report what commercial vehicles are hauling.

**Any real solution to the problem with overweight coal trucks will require going to the source – the coal companies.** A bill introduced by Delegate Don Perdue does just that. HB 2193 would require coal companies to weigh trucks they load and report the weights to the Department of Transportation. The shippers could be fined for each truck they overload and could be subject to additional fines for failing to comply with the law. Similar provisions were part of the Caputo bill, which would have increased fines and penalties for violating existing weight limits. Under Delegate Caputo's bill both the shipper and receiver, in addition to the trucking company, would be held liable, and they would be subject to the same fines and penalties.

*"I would have to ask the questioner. I haven't had a chance to ask the questioners the question they've been questioning."  
George W. Bush*

# What's the Buzz?

by Phanny High There! Our Eye On Gossip

We all know things get tense at the Capitol this time of year. But, in spite of frazzled nerves and short tempers, usually we can at least count on lobbyists to remain professional and respectful of the elected leaders with whom they wish to gain an audience. Apparently, some are not remembering that unwritten rule this year.

After the governor's State of the State address some stooped to derogatory comments about the governor's hair line, or lack thereof, and altered a *Gazette* headline to read "Wise Calls For Baldness." Others commented upon the "smudge" on the governor's forehead and



wondered if maybe Mr. Wise is struggling with a Gorbachev complex. Still others thought that maybe the governor and DEP Secretary Callaghan have been spending more time together. Well, it is beneath this reporter to pass along any more comments that have been circulating but I simply use these examples as an illustration of the levels to which some will plunge.

Heads are spinning as we watch the House of Delegates pass monumental bills at break-neck speed. What is the rush? Is this an attempt at a more efficient government? Should we watch for more of the same? Maybe soon legislators will be talking like the famous FedEx executive. Maybe soon public hearings will become as taboo as electric deregulation. Maybe special sessions will soon earn their names. Anything for streamlining the process.

*West Virginia Citizen Action Group (WV-CAG) publishes Capital Eye during the Legislative Session. You can visit our website at [www.wvcag.org](http://www.wvcag.org), call us at 304-346-5891 or e-mail us at [linda@wvcag.org](mailto:linda@wvcag.org) to give us your comments and suggestions and to become a member. Since 1974, WV-CAG has been a nonprofit membership organization dedicated to increasing citizen participation in economic and political decision-making. By educating people about key public interest issues and involving them in the decisions that affect their lives, WV-CAG works for progressive changes in federal, state and local policies - ranging from environmental protection and consumer rights to good government and health care reform. Thank you for your support!*

## Apathy Antidote - Save This Sheet!

The 2003 legislative session sure has gotten off to a \_\_\_\_\_ start. You fill in the blank. And if you're like the rest of us, you're wondering what to do about it. You may be tempted to pull the blankets over your head, wait it out and hope that March 8 gets here before too much damage can be done. But now, more than ever, is the time when your legislators need to hear from you. And here are easy ways to do it:

To e-mail your legislators or the governor, simply go to [www.wvcag.org](http://www.wvcag.org), scroll down on the left side of the home page and follow the steps. It's simple!

To call your legislators and the governor, dial toll-free at 1-888-438-2731.

Throughout the *Eye*, we'll give you simple actions that you can do to let your legislators know that you are watching. They need to hear from you.

We're already ten days into the session and bills are flying through both houses. We need your help! Please renew your membership, join, or send in a contribution today. Thanks! Remember, it's easy to donate on-line at [www.wvcag.org](http://www.wvcag.org). Or clip and snail mail to 1500 Dixie St., Charleston, WV 25311:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Here's my donation of \$\_\_\_\_\_

Please add me to your e-mail alert list. My address is: