

Tennessee Advisory Council On Workers' Compensation

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ANNUAL REPORT FOR  
JULY 1, 2014 – JUNE 30, 2015  
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TENNESSEE TREASURY DEPARTMENT
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

David H. Lillard, Jr., State Treasurer, Chair
Lynn Schroeder, Administrator

**STATE OF TENNESSEE
 ADVISORY COUNCIL ON WORKERS' COMPENSATION
 ANNUAL REPORT
 JULY 1, 2014 – JUNE 30, 2015**

Pursuant to Tennessee Code Annotated, Section 50-6-121(e), the Advisory Council on Workers' Compensation hereby submits its annual report for July 1, 2014 through June 30, 2015, including statistical reports and Tennessee workers' compensation data.

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STATUTORY DUTIES AND RESPONSIBILITIES OF THE TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION

The Advisory Council on Workers' Compensation (the "Advisory Council" or "Council") was initially created by the General Assembly in 1992. The Workers' Compensation Reform Act of 1996 terminated the then existing Council and created a new Advisory Council on Workers' Compensation. Subsequent amendments, including those in the Reform Acts of 2004 and 2013 (Chapter Numbers 282 and 289 of the Public Acts of 2013), are recorded at Tennessee Code Annotated ("T.C.A."), Section 50-6-121, which outlines the authority of the Council, its specific responsibilities and its general duties. The administration of the Council was transferred from the Tennessee Department of Labor and Workforce Development to the Tennessee Department of Treasury pursuant to Chapter Number 1087 of the Public Acts of 2010, and the Council's existence was extended to June 30, 2016 pursuant to Chapter Number 622 of the Public Acts of 2012. The Council is authorized to:

- Make recommendations to the Governor, the General Assembly, the Senate Commerce and Labor Committee, the House Consumer and Human Resources Committee, the Administrator of the Division of Workers' Compensation and the Commissioner of Commerce and Insurance relating to the promulgation or adoption of legislation or rules;
- Make recommendations to the Administrator of the Workers' Compensation Division and the Commissioner of Commerce and Insurance regarding the method and form of statistical data collection; and
- Monitor the performance of the workers' compensation system in the implementation of legislative directives and develop evaluations, statistical reports and other information from which the General Assembly may evaluate the impact of legislative changes to workers' compensation law.

Further responsibilities of the Advisory Council are provided in T.C.A. Titles 50 and 56. These provisions, among other things, direct the Council to provide the Commissioner of Commerce and Insurance with a recommendation regarding advisory prospective loss cost filings made by the National Council on Compensation Insurance, Inc. ("NCCI"), the authorized Tennessee rating bureau.

ADVISORY COUNCIL MEMBERS AND TERMS

The current Advisory Council is composed of seven voting members, ten non-voting members, and four ex-officio members. The State Treasurer is the Chair and a voting member. Three voting members represent employers, and three voting members represent employees. The non-voting members represent local government, insurance companies, medical organizations, hospital organizations, chiropractors, physical and occupational therapists and attorneys, all in Tennessee. The Chair may vote only on matters related to the administration of the Council or its research; the Chair is not permitted to vote on any matter that constitutes the making of a policy recommendation to the Governor or to the General Assembly.

Appointments to the Council are made by the Governor, Speaker of the Senate and Speaker of the House pursuant to T.C.A., Section 50-6-121(a)(1)(C). They respectively appoint one employer and one employee voting member each, and the Governor appoints the additional ten non-voting Council members. The Governor may choose to appoint from lists of suggested nominees provided by interested organizations as outlined in T.C.A., Section 50-6-121(a)(1)(E)(i-ii).

No new positions were added to the Advisory Council in 2014-2015, but several members' terms expired. The State of Tennessee thanked and acknowledged its appreciation for the dedication and years of service to one of the Council's founding voting employee labor representatives, Mr. Jack Gatlin, who generously served on the Council for decades and beyond his last term. His successor, Mr. Paul Shaffer, was appointed in August of 2014 and welcomed by the Council to complete that term. Tennessee physical therapist representative Mr. David Davenport generously served beyond his term as well and was succeeded by Mr. John Harris, whose appointment took place in October of 2013. Local government representative Mayor Kenny McBride was succeeded by Mr. John D. Burleson who was appointed in June of 2014.

A debt of gratitude, as well as congratulations, goes to several Council members whom the Governor reappointed, namely, employer representative founding voting member, Bob Pitts, insurance company representative, Mr. Jerry Mayo, health care provider representative, Dr. Samuel E. Murrell III, chiropractor representative, Dr. Keith B. Graves, occupational therapist representative, Mrs. Sandra Fletchall and attorney representative, Mr. A. Gregory Ramos. Their agreement to continue their service, their professionalism and dedication are greatly appreciated and acknowledged.

A chart outlining the members of the Advisory Council on Workers' Compensation as of June 30, 2015 is on the following page:

| NAME | MEMBER TYPE | REPRESENTING |
|---|--|--|
| David H. Lillard, Jr. State Treasurer | Chairman Administrative Voting Member | State Treasurer Ex-Officio Member |
| Kerry Dove | Voting Member | Employers |
| Bruce D. Fox | Voting Member | Employees |
| John M. Garrett | Voting Member | Employees |
| Bob Pitts | Voting Member | Employers |
| Gary Selvy | Voting Member | Employers |
| Paul Shaffer | Voting Member | Employees |
| John D. Burleson | Non-Voting Member | Local Governments |
| Jerry Mayo | Non-Voting Member | Insurance Companies |
| Samuel E. Murrell III, M.D. | Non-Voting Member | Health Care Providers: TN Medical Association |
| Paula Claytore | Non-Voting Member | Health Care Providers: TN Hospital Association |
| Keith B. Graves, D.C. | Non-Voting Member | Health Care Providers: Licensed TN Chiropractor |
| John Harris | Non-Voting Member | Health Care Providers: Licensed TN Physical Therapist |
| Sandra Fletchall | Non-Voting Member | Health Care Providers: Licensed TN Occupational Therapist |
| Vacant | Non-Voting Member | Attorney: TN Association for Justice |
| Lynn Vo Lawyer | Non-Voting Member | Attorney: TN Defense Lawyers |
| A. Gregory Ramos | Non-Voting Member | Attorney: TN Bar Association |
| Senator Jack Johnson Chairman | Ex-Officio Non-Voting Member | Senate Commerce and Labor Committee |
| Representative Jimmy Eldridge Chairman | Ex-Officio Non-Voting Member | House Consumer and Human Resources Committee |
| Abbie Hudgens, Administrator Troy Haley, Designee | Ex-Officio Non-Voting Member | TN Workers' Compensation Division |
| Commissioner Julie Mix-McPeak Designee, Mike R. Shinnick | Ex-Officio Non-Voting Member | TN Department of Commerce and Insurance |

TERMS OF THE NON-EX-OFFICIO MEMBERS

| Voting | Term of Position |
|-----------------------|-----------------------------------|
| Kerry Dove | July 1, 2012 - June 30, 2016 |
| Bruce D. Fox | March x, 2015 - June 30, 2016 |
| John M. Garrett | February 27, 2015 - June 30, 2018 |
| Bob Pitts | July 1, 2014 - June 30, 2018 |
| Gary Selvy | July 1, 2012 - June 30, 2016 |
| Paul Shaffer | August 5, 2014 - June 30, 2018 |
| Non-Voting | Term of Position |
| John D. Burleson | July 1, 2013 - June 30, 2017 |
| Paula Claytore | July 1, 2011 - June 30, 2015 |
| Sandra Fletchall | December 9, 2013 - June 30, 2017 |
| Keith B. Graves | July 1, 2013 - June 30, 2017 |
| John Harris | October 30, 2013 - June 30, 2017 |
| Lynn Vo Lawyer | July 1, 2011 - June 30, 2015 |
| Jerry Mayo | July 1, 2011 - June 30, 2015 |
| Samuel E. Murrell III | July 1, 2013 - June 30, 2017 |
| A. Gregory Ramos | July 1, 2013 - June 30, 2017 |
| Vacant | July 1, 2011 - June 30, 2015 |

ACTIVITIES OF THE ADVISORY COUNCIL

The Advisory Council is required, by statute, to meet at least two times per year. Throughout the July 1, 2014 through June 30, 2015 Council year, the Advisory Council met on four occasions. Approved meeting minutes may be viewed at the Advisory Council's website <http://treasury.tn.gov/claims/wcadvisory.html> under the "Meetings" tab. The agenda and video of each meeting are also available at the same location. Meetings were held August 28, 2014, October 14, 2014, March 16, 2015 and March 23, 2015.

At the August 28, 2014 Council meeting, it was announced that one of the founding voting employee representative members, Mr. Jack Gatlin, was retiring. The Chair and Council members thanked Mr. Gatlin for his decades of valued service to the Council and the State.

Another founding voting member and employer representative, Mr. Bob Pitts, was congratulated for his reappointed by the Governor for another term on the Council.

Mr. Gatlin introduced his successor, Business Manager of IBEW Local 474 from Memphis, Tennessee, Mr. Paul Schaffer, who was appointed by Speaker Harwell as a voting member and employee representative of the Council.

Attorney and partner of the defense firm of Rainey, Kizer, Reviere & Bell, Mr. John Burlison, of Jackson, Tennessee, was appointed by the Governor as the local government representative to the Council.

Tennessee Department of Commerce and Insurance Commissioner Julie Mix-McPeak's, Designee and Advisory Council member, Mr. Mike Shinnick, reported on the **Workers' Compensation Market Conditions and Environment for 2013**. Mr. Shinnick advised that there was an experience filing submitted August 22, 2014 to be effective March 1, 2015 from the National Council of Compensation Insurance, ("NCCI") for the Council's review and recommendation which indicated a -9.6% adjustment overall for the loss cost here in Tennessee, and indicated that it was the largest number he had seen.

Mr. Shinnick provided a detailed report and informed that there has been a very strong indemnity improvement, medical losses have had a significant drop in Tennessee, and a trend is being established so Tennessee is back in the profitable arena. The last three years of data represents 21% of a 36% desirable change since the Reform of 2004. Tennessee insurance companies made a 3% underwriting profit in 2013, which, when combined with the investment income, resulted in a very nice return.

He further advised that the self-insurance workers' compensation premium tax revenue is going down and the insurance revenue is going up. The final word to describe the environment in Tennessee is **balanced**.

Mr. Shinnick's presentation may be viewed in its entirety at <http://treasury.tn.gov/claims/wcac/2014WorkCompMarket.pdf>.

Mr. Thomas G. Redel, CPCU, Senior Vice President, AON Risk Services Central, Inc., which serves as the administrator of the Tennessee Assigned Risk Plan, provided the **Annual Report regarding the Tennessee Assigned Risk Plan Data**.

The size of accounts, the number of accounts, and how much premium they represent in various categories was discussed, presented in detail, and broken down by policy count, premium, and types of employers in the TWCIP. Financial results for the plan and policy years were provided, each year standing on its own financially.

Council member Mr. Shinnick added that the department has a "tail plan", which is the large risk plan designed for risk of \$250,000 in standard premium. It is not attractive at all and was designed that way. It is a depopulation plan that has been put into play that is working quite well. It gives the company motivation to get back into the voluntary market and to find a large deductible policy.

Mr. Redel's presentation may be viewed in its entirety at <http://treasury.tn.gov/claims/wcac/2014AssignedRiskPlan.pdf>.

At its October 14, 2014 meeting, the Council discussed the October 9, 2014 letter from Commissioner McPeak of the Department of Commerce and Insurance communicating her intention to increase the assigned risk plan loss cost multiplier (LCM) from 1.56 to 1.58 effective March 1, 2015, and requesting any comments from the Council.

Council member Mr. Mike Shinnick explained that, since the early 2000's, the assigned risk plan started having a surplus, and the Department has been very cautious to balance the cost of running the plan with the multipliers in the voluntary market. The Council agreed to send their letter approving same and thanking the Commissioner for providing such detailed information in support thereof.

Mr. David Wilstermann, contractor of the Council, presented his **Statistical Report on the 2012 Workers' Compensation Data** from the Tennessee Department of Labor and Workforce Development ("TDLWFD" or "Department").

Mr. Wilstermann examined the percentage of conclusion types over the last 11 years and explained that settlements accounted for more than 90% of all cases last year. He informed the Council that the total number of permanent disability cases was reducing, and that medical costs, over time, appeared to have leveled off. He discussed the lengths of time from injury to date of conclusion (average of 86.5 weeks), variables such as age (average of 46.8), education, and compensation rates (\$459.78), and the reducing amount of temporary and total benefits for differing body parts and psychological injuries.

Mr. Wilstermann's presentation, including moving graphs may be viewed at http://treasury.tn.gov/claims/wcac/2014_Statistical_Report_TDLWFD_2013_Data.pdf.

NCCI files advisory prospective loss cost and rating value experience recommendations with the Commissioner of the Department of Commerce and Insurance, who presents same to the Advisory Council for recommendation before approving or modifying. The Advisory Council submits a written comment to the Commissioner for Advisory Prospective Loss Costs Filings pursuant to T.C.A., Section 50-6-402(b), (c) and (d).

NCCI Directing Actuary, Karen Ayres presented her report on the **Voluntary Loss Costs and Rating Values Experience Filing proposed effective March 1, 2015.**

Ms. Ayres summarized the recommendation of the NCCI for the State of Tennessee and reviewed her analysis and methodology underlying that recommendation of -9.6%. NCCI believes using an experience period of the latest two policy years provides the appropriate reflection of trends in the state. She indicated that NCCI, with approval, changed its methodology for determining the loading factor for the expected excess loss. There was improved loss experience. If NCCI had not changed the methodology, Ms. Ayres indicated that the indication would have been less negative - perhaps a -8.5%.

Ms. Ayres' NCCI presentation may be viewed at http://treasury.tn.gov/claims/wcac/NCCI_Presentation_3_1_15_Filing.pdf.

Presentation by **Advisory Council on Workers' Compensation Actuary**, By The Numbers Actuarial Consulting, Inc. ("BYNAC"), President, Lisa Dennison, on the **Voluntary Loss Costs and Rating Values Experience Filing proposed effective March 1, 2015.**

Ms. Dennison reported BYNAC's opinion that, although NCCI's recommendation of -9.6% was reasonable based upon actuarial standards, their firm had a differing opinion and proposed -5.7%, which they believed to be more appropriate using a warranted longer three year experience period as suggested by Commissioner McPeak last year. Reviewing with a three-year period reduces variability and is reasonable.

Ms. Dennison's BYNAC actuarial presentation may be viewed in its entirety at http://treasury.tn.gov/claims/wcac/BYNACPresentationon3_1_15_NCCIfiling.pdf.

Presentation by **Commerce and Insurance Department Actuary**, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, Inc. ("BWR&B"), by Vice-President, Chris Burkhalter, on the **Voluntary Loss Costs and Rating Values Experience Filing proposed effective March 1, 2015.**

Mr. Burkhalter informed that his firm, BWR&B, looks at a longer trend for stability. For experience, he gave a 30% weight to 2012, 25% to 2011, 20% to 2010, 15% to 2009 and 10% to 2008, which ultimately gives a higher weight to the emergent experience while holding on to the older weight and the five-year weighted average brought what they believed to be the optimal indication of -4.4%.

Mr. Burkhalter's BWR&B actuarial presentation may be viewed at: http://treasury.tn.gov/claims/wcac/BWRB_Presentation_3_1_15_NCCI_Filing.pdf.

Council member and employer representative, Mr. Pitts, noted that he was concerned that there was such a large distance between the actuaries but attributed it to the number of years' experience reviewed. He applauded BYNAC and BWR&B, who used the Council's recommendation regarding the appropriate amount for LAE's. He further stated that it would take several years for the reform to show itself in the numbers. He suggested that, although the big rate decrease recommended would benefit business, in an effort to keep from having large swings in the numbers, a more conservative recommendation would be preferred.

Council member and Workers' Compensation Division Administrator, Ms. Hudgens, reiterated that she had concerns about using only a two-year experience period and indicated that Mr. Burkhalter's method of weighting the years and allowing the figures to slide off rather than drop off was a conservative approach that seemed appropriate. She continued to state that, whatever the recommendation, it should not be as low as NCCI has proposed because NCCI should have used at least a three-year period.

Based upon all of the above information, the Council made a unanimous recommendation to the Commissioner to stay with the 19.8% on LAE and that the reduction be -6.5%.

TENNESSEE CASE LAW UPDATE

Throughout the year, the Advisory Council followed the Tennessee Supreme Court in reviewing its decisions and suggestions regarding the need for specific changes in the law.

An annual case law update of the 2014 calendar year from the Tennessee Supreme Court, including select cases from the Tennessee Supreme Court Workers' Compensation Panel, was submitted by the Advisory Council to the General Assembly in January of 2015.

Appeals of trial court decisions in cases involving workers' compensation are referred directly to the Supreme Court's Special Workers' Compensation Appeals Panel ("Panel") for hearings. The Panel gives considerable deference to a trial court's decision with respect to credibility of witnesses since the lower court has the opportunity to observe them testify. The Panel reports its findings of fact and conclusions of law, and such judgments automatically become the judgment of the full Tennessee Supreme Court 30 days thereafter, barring the grant of a motion for review. Tennessee Supreme Court Rule 51 and T.C.A., Section 50-6-225(a)(1).

In 2014, the full Tennessee Supreme Court ("Court") granted a workers' compensation employee's motion for review of a Panel decision and considered the case to determine if there had been "a meaningful return to work" so as to apply the one and one-half times statutory cap to his award. [T.C.A., Section 50-6-241(d)(1)(A)]. The Court examined the basis and reasonableness of the employee's decision to accept a group "buy-out" after his workplace injury caused him to be unable to work up to the quota and time standards of the company. The Court found his decision to be reasonable and injury-related. Therefore, the award was not capped since there was not a "meaningful return to work". In so deciding, the Court overturned the Panel decision and reinstated the trial court's award. A brief synopsis and link to the full case follows:

CHA YANG v. NISSAN NORTH AMERICA, INC. ET AL.

Appeal by Permission from the Special Workers' Compensation Appeals Panel

No. M2012-01196-SC-WCM-WC - Filed August 11, 2014

The employee suffered bilateral shoulder injuries, underwent separate surgeries and later accepted a voluntary buyout of his employment as part of an offer made to all of employer's manufacturing technicians. He filed suit for workers' compensation benefits, and the trial court awarded him temporary total and uncapped permanent partial benefits. Employer argued the permanent award should have been capped since he voluntarily left his employment via a buyout. The Panel affirmed the judgment of the trial court in all respects, except regarding the application of the cap, which it determined should have been applied.

The Court granted employee's motion for review. The Court deferred to the trial court finding that the injured employee and his fellow employees' testimony was credible, that the injured employee wanted to work, and that his workplace injuries prevented him from being able to work without fear of reprimand or threats of loss of employment due to his inability to perform strenuous physical work at a rapid pace.

The Supreme Court analyzed whether the employee had a meaningful return to work by looking at both the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to remain at work. The Panel acknowledged that if an employee resigns for reasons that are not related to his workplace injury, the employee has had a meaningful return to work and is subject to the cap under T.C.A., Section 50-6-241(d)(1)(A). Under the facts of this case, however, the Court deemed the employee's decision to accept the voluntary buyout to be reasonable in light of his substantiated belief that he would be unable to perform the job as required. Additionally, the Court found this decision to be directly related to his workplace injuries and, therefore, not capped, so the Court reinstated the trial court's original award. The Panel's judgment was otherwise confirmed, including the rejection of the employer's claims of non-compensability of the mental injury and the award of temporary total benefits, medical expense and discretionary costs. The full text of the opinion may be viewed here: http://www.tncourts.gov/sites/default/files/yangcha.opn_.pdf.

The detailed 2014 Supreme Court report of workers' compensation decisions, complete with citations, may be viewed in its entirety at <http://treasury.tn.gov/claims/wcac/SignedTNACWCSupCt2014AnnualWCReport.pdf>.

TENNESSEE WORKERS' COMPENSATION LEGISLATION

The Council considered proposed changes in Tennessee Workers' Compensation Laws as the 109th Tennessee General Assembly submitted bills for the members' review and recommendation.

In its March 16th, 2015 meeting, the Chair welcomed and congratulated attorney Bruce Fox for his appointment by the Governor as a voting member employees representative after having served eight years as an attorney representative on the Council, and attorney John Garrett for his appointment to the Council as a voting member employee representative by the Speaker of the Senate.

The Council heard from sponsors and stakeholders for the bills related to workers' compensation for the State of Tennessee which were presented for recommendation by the Senate Commerce and Labor Committee, chaired by Senator Jack Johnson, and the House Consumer and Human Resources Committee, chaired by Representative Jimmy Eldridge.

The Council discussed, reviewed and made recommendation on each proposed bill to the legislative committees for their benefit and use. The following is a synopsis of the recommendations made by the Council and the resulting legislation:

- The bill was filed as **HB0094/SB0105 (McCormick, Kevin Brooks, Eldridge/ Norris, Johnson, Ketrone) and became Chapter 341 of the Public Acts of 2015.** Under the bill, several revisions were made by the Administration to various provisions of the Workers' Compensation Law: (1) utilization review firms will be required to have Utilization Review Accreditation Commission (URAQ) or the National Committee for Quality Assurance (NCQA) certification to improve overall medical treatment and provide a level playing field; (2) the definition of qualified physician for pain management purposes will now be the same as the Department of Health's pain management treatment guidelines; (3) Second Injury Fund attorneys will be paid from the fund rather than the general fund; (4) the Division of Workers' Compensation name would be changed to the Bureau of Workers' Compensation; (5) the Court of Workers' Compensation claims statute of limitations would be extended to two years if permanent partial disability payments were made to an employee in an attempt to settle a claim without the Court of Workers' Compensation approving that settlement; (6) judges will be able to swear in witnesses, appoint guardians ad litem and enforce judgments on uninsured employers; and (7) the Appeals Board duties and procedures are set forth in detail. The Council **voted unanimously to recommend the bill for approval.** The bill passed through the legislature and became Public Chapter 341, which may be viewed in its entirety at <http://state.tn.us/sos/acts/109/pub/pc0341.pdf>.

- The bill was filed as **HB0178/SB0174 (Lynn/Ketron) and became Chapter 345 of the Public Acts of 2015** and proposes workers' compensation policy cancellation and reinstatement dates be open to the public. The Council **voted unanimously to recommend the bill for approval**, the bill passed through the legislature and became Public Chapter 345, which may be viewed in its entirety at <http://state.tn.us/sos/acts/109/pub/pc0345.pdf>.
- The bill was filed as **HB0558/SB0171 (Eldridge/ Ketron) and became Chapter 188 of the Public Acts of 2015**, which proposed language to specifically name the exempt construction service provider and independent contractor as exempt from premiums to clear up uncertainty. Additionally, it redefines supplementary rate and loss adjustment expense and requires defense and loss adjustment expenses be included in the reporting. It does not change the seven factors for determining who is an independent contractor. The Council **voted unanimously to recommend the bill for approval**; the bill passed through the legislature and became Public Chapter 188, which may be viewed in its entirety at <http://state.tn.us/sos/acts/109/pub/pc0188.pdf>.
- The bill was filed as **HB1246/ SB1247 (Holt/Green)** to enact the “Tennessee Volunteer Firefighter Protection Act”, which proposes language that a volunteer firefighter’s wages, for the purpose of workers’ compensation, would be determined by multiplying their call rate times 40 hours, regardless of the actual number of hours worked. Council discussed the fact that, if passed, the rate that would be used for 40 hours would be the same rate as that of a regular employee of the fire department, would establish the injured worker’s compensation rate for temporary total disability (TTD) and permanent partial disability (PPD), and is basically the methodology presently utilized. The Council vote resulted in the three employee representatives voting **for** and the three employer representatives voting **against** recommending the bill for approval, thereby resulting in **no recommendation** from the Council to the Committees. The bill did not pass this legislative session.

In its March 23rd, 2015 meeting, the Council was updated on three remaining bills, which had been deferred for further information or amendment.

- The bill was filed as **HB0589/SB1061** (Parkinson/Harris) **with Amendment** to amend the definition of “drug”, to authorize employers to consider whether the employee was under the influence of the drug or alcohol while the employee performed duties within the employee’s scope of employment regardless of the drug presenting in a screen, provided the drugs were legally ingested. The Council voted **unanimously against recommendation** of the bill. The bill did not pass this legislative session.

- The bill was filed as **HB0997/SB0721 (Durham/Green) with Amendment** and proposed enactment of the "Tennessee Employee Injury Benefit Alternative which would provide a Tennessee Option for financially stable employers with at least 100 employees that would enable them to opt out of the Workers' Compensation Laws of Tennessee, from under which the Division of Workers' Compensation oversight for workers' compensation benefits, and allow them to design their own employee injury benefit plan with certain minimum requirements and caps per individual and occurrence. Presentations were made to the Council by Mr. Gary Moore, Mr. Trey Gillespie and Mr. Brian Bivens, and Mr. John Peeler, all representatives of entities with interest in the bill, most of whom pointed out that the Governor had just brought about a comprehensive Workers' Compensation Reform in 2013 and that there is no data yet to reflect how the system is working post-reform, so they encouraged waiting to see how the Governor's Workers' Compensation Reform functions before addressing this type of change and ability to opt out of government oversight.

Council discussion surrounded the need for further information, the study of statistics of other states' options already in place, some public policy decisions, consideration of the small number of well-respected companies looking for cost savings, consideration of interests of state regulators and employee and business group on an action deemed by the Council to be complex and significant. One very specific need addressed was for an analysis of how the Opt Out reduced benefits may transfer injured workers' financial needs to Social Security, Medicare and TennCare before the Council can make a properly informed decision about the viability of the Tennessee Option presented in the amendment. Another discussion item was that the proposed law appeared to divide the current pool of employees into those who are eligible for benefits and protections under state law and those who are not, and fails to address the fairness of what happens to employees of employers who have opted out, as there would be no protections or processes available from the state of Tennessee to help these employees if their employer is not fair in their dealings. The Council **voted unanimously against recommendation** of the bill. The bill did not pass this legislative session.

- The bill was filed as **HB1073/SB1328 (Kane/McNally)** which exempts from Fair Disclosure of State Funded Payments for Pharmacists' Act plans that only provide workers' compensation coverage for the State of Tennessee. It would allow entities that administer pharmacy benefits' programs for Tennessee Workers' Compensation to fall outside the definition of a pharmacy benefit plan or program and therefore be exempt from the requirements of itemized reporting on each individual claim. The Council **voted unanimously to recommend approval** of the bill. The bill did not pass this legislative session.

OSHA NEWS

The Tennessee Occupational Safety and Health Administration (TOSHA) and its industry partners hosted another Fall Protection Safety Stand Down May 4-15th to raise awareness of fall hazards and the importance of fall prevention. Falls account for one-third of the deaths in the construction industry.

The Bureau of Labor Statistics reported 93 work-related fatalities in Tennessee in 2014. TOSHA investigated 28 of these and, in most cases, believed the death could have been prevented with proper safety training. The Bureau also issued 2013 injury and illness rates for the State of Tennessee which dropped just below the national average. Tennessee is also slightly below the national average in its total case incident rate.

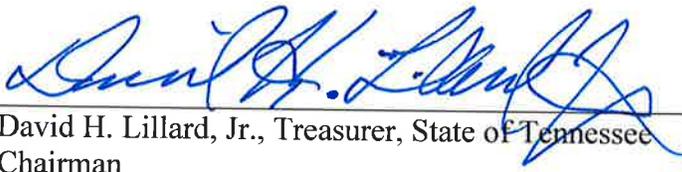
The Tennessee Safety and Health Congress is a joint venture between the TOSHA and the American Society of Safety Engineers offering a program of expertise to increase awareness and implementation of safety and health practices in the workplace. Its 38th annual meeting will be held July 26th-29th, 2015 at the Opryland Hotel in Nashville.

TOSHA continues to focus on the goal of reducing deaths in high-hazard industries with all such programs. Workers' Memorial Day was April 28, 2015:
<https://www.osha.gov/as/opa/workersmemorialday.html>

CONCLUSION

The Advisory Council on Workers' Compensation met on four (4) occasions from July 1, 2014 through June 30, 2015. This annual report provides a synopsis of the topics considered and appointments made during that time period. The Advisory Council appreciates the opportunity to be of service to the Governor, the General Assembly and Executive Departments, as well as the employers and employees of the great State of Tennessee.

Respectfully submitted on behalf of the
Advisory Council on Workers' Compensation,



David H. Lillard, Jr., Treasurer, State of Tennessee
Chairman