

**Report of the Advisory Council on Workers' Compensation
To the Senate Commerce and Labor Committee**

Jack Johnson, Chair
Mark Green, 1st Vice-Chair
Charlotte Burks, 2nd Vice-Chair

Members

Dolores Gresham	Steve Southerland
Reginald Tate	Jim Tracy
Bo Watson	Ken Yager

The Advisory Council on Workers' Compensation met on February 6, 2014 to review pending workers' compensation bills and, pursuant to T.C.A. §50-6-121(j) *"The advisory council on workers' compensation shall, within ten (10) business days of each meeting it conducts, provide a summary of the meeting and a report of all actions taken and all actions recommended to be taken to each member of the consumer and human resources committee of the house of representatives and commerce and labor committee of the senate."* This is the report of the February 6, 2014 Council meeting for your review and information.

Two workers' compensation bills were on the Council's February 6, 2014 agenda. They were:

SB1645/HB1440 (Leader Norris/Leader McCormick)

Mr. Bob Pitts (Council Member Employer Representative) **moved to postpone review of the bill** for a week since there were some issues remaining to be resolved. Mr. Kerry Dove (Council Member Employer Representative) **seconded** the motion. Mr. Pitts indicated that he had spoken to the appropriate officials with the Administration and a one week delay did not trouble them. He further indicated that he had inquired of the Division of Workers' Compensation if they wished to speak on the bill and they decided that if deferral took place, they would prefer to comment at the next meeting. Chairman Lillard indicated that the bill would be **rolled** to the next meeting which would be coordinated as soon as possible, preferably within the week, which was **done without objection**.

SB1646/HB1441 (Leader Norris/Leader McCormick)

Presentation of the bill, which would be called the Uninsured Employers' Fund Benefit Provision Act, was made by Mr. Josh Baker, Administrative Attorney and Legislative Liaison, Division of Workers' Compensation. A question regarding the bill was posed to Mr. Baker by Mr. Bob Pitts (Council Member Employer Representative) as to whether the recovery of the money spent by the Division would be a subrogation claim, to which Mr. Baker responded in the affirmative, adding that by payment of the judgment by the State, the State has satisfied a liability of the employer.

Further inquiry came from Mr. Gregg Ramos (Council Member Tennessee Bar Association Representative) as to what percentage of the current cases come under a situation where there is an on-the-job injury, but the employer has no workers' compensation coverage. Mr. Baker indicated that the Division had preliminary numbers based on those cases that actually come to the division since not all of them do. He indicated that many of these injured employees don't seek recovery at all. Approximately 47 came to the attention of the Division and not all were necessarily compensable nor were all of the employers necessarily required to carry workers' compensation insurance. The Division's rough estimate is \$33,000 per claim and that figure was derived from the average costs of temporary disability combined with medical payment of claims overall in the 2011 and 2012 numbers.

Mr. Tony Farmer (Council Member Employee Representative) inquired whether an irresponsible employer who was uninsured, but had assets, could use this proposed law as a shield. He pointed out that, in a serious claim, an uninsured employer could allow the Administrator to accept responsibility under this proposed provision, pay the capped benefit and then collect the \$40,000 from the employer. It appears that would cap the employer's liability under the proposed statute at \$40,000. Mr. Baker responded in the negative and indicated that the statute permits the employee to pursue any additional recovery against the employer. The employee would have to pursue the claim to completion and a normal judgment would be issued and they would have the opportunity to collect the additional amount.

Mr. Gregg Ramos (Council Member Tennessee Bar Association Representative) inquired if, in the event there is some fault on the part of the employer, but the employee goes ahead and takes advantage of these limited funds, there is a preclusion under the exclusive remedy provision? If the employee wants to maintain a negligence action against the employer for not having workers' compensation insurance in effect, will the employee be able to do that even after drawing these limited funds? Mr. Baker responded in the negative and indicated that the employee would have made an election of remedies at that time.

Mr. Bob Pitts (Council Member Employer Representative) **moved that the bill be recommended** by the Council for approval, which was **seconded** by Mr. Tony Farmer (Council Member Employee Representative). Chairman Lillard called for the roll, first stating that the Chair is a voting member for procedural and administrative matters only, so would not be voting on this substantive motion. Roll resulted in a **unanimous vote to recommend the bill and the motion was adopted**.