

HB1786 – SB2088
with amendment (drafting
code 012583) which makes
the bill

TCA §50-6-216
§50-6-217

Representative Pody

Senator Beavers

HB 1786 by *Pody. (SB 2088 by *Beavers.)

The Bill, as introduced, expands the scope of ombudsman services for unrepresented claimants and divides the power of appointing workers' compensation judges among the governor, the speaker of the senate, and the speaker of the house. - Amends TCA Title 50, Chapter 6.

Fiscal Summary: NOT SIGNIFICANT

Bill Summary:

Effective July 1, 2014, Chapter 289 of the Public Acts of 2013 establishes a workers' compensation ombudsman program to assist unrepresented persons in protecting their rights, resolving disputes, and obtaining information available under workers' compensation laws.

This bill requires that workers' compensation claims totaling less than \$5,000 from an unrepresented person be referred to the ombudsman by the division of workers' compensation. An ombudsman to whom a claim is assigned pursuant to this bill will not be permitted to assist or advise the opposing party, testify, nor give legal advice to the claimant, however, the ombudsman will be authorized to provide general advice and assistance to the claimant that is designed to facilitate a fair resolution of the claim by ensuring that the unrepresented claimant is aware of the procedural and evidentiary requirements that apply to the claim.

Present law requires the governor to appoint three qualified individuals to serve as judges on the workers' compensation appeals board who will each serve six-year terms. This bill specifies that once the terms of the governor's initial appointees expire, the appointing authority for the judges on the workers' compensation appeals' board will be divided so that the governor, the speaker of the senate and the speaker of the house of representatives will each appoint one judge.

The proposed change is to the law which is presently set to go into effect as of July 1, 2014. The proposed bill with the amendment would amend SECTION 1. Tennessee Code Annotated, Section 50-6-216, as amended by Chapter 289 of the Public Acts of 2013, by adding the following as a new, subsection:

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(1) Any party that is not represented by legal counsel may request the services of a workers' compensation ombudsman by contacting the office of mediation services.

(2) The ombudsman shall have the authority including, but not limited to:

- (A) Meet with and provide information to the unrepresented person about their rights and responsibilities under the law;
- (B) Explain the administrative process for resolving workers' compensation claims;
- (C) Investigate claims and attempt to resolve disputes without resort to alternative dispute resolution and court proceedings;
- (D) Communicate with all parties and providers in the claim;
- (E) Assist the parties with the completion of forms; and
- (F) Facilitate the exchange of medical records.

(3) An ombudsman shall not provide legal advice.

(4) An ombudsman shall not be called to testify in any workers' compensation proceeding and no statement or representation made to an ombudsman shall be considered by a workers' compensation judge.

(5) An unrepresented person has a right to consult with an ombudsman and receive services under this subsection. If the person receiving the services of an ombudsman obtains legal counsel pertaining to the case or dispute for which the services of an ombudsman were engaged, the person, or the person's counsel, must immediately notify the division and the office of mediation services. Upon receipt of notice that the person has retained counsel, the ombudsman must terminate all services.

SECTION 2. Tennessee Code Annotated, Section 50-6-217(a)(1), as amended by Chapter 289 of the Public Acts of 2013, is amended by deleting the first sentence in its entirety and replacing it with the following language: "The governor shall initially appoint three (3) qualified individuals to serve as judges on the workers' compensation appeals board. When the first vacancy occurs on the board, the speaker of the senate shall appoint a qualified individual to serve on the board to fill the vacancy. When the second vacancy occurs, the speaker of the house of representatives shall appoint a qualified individual to the board to fill the vacancy. When the third vacancy occurs, the governor shall appoint a qualified individual to serve on the board. The power to appoint qualified individuals will thereafter rotate among the speaker of the senate, the speaker of the house, and the governor in that order. A vacancy occurs only in the event that a judge retires, resigns, or is removed from office by law or natural causes."

SECTION 3. Tennessee Code Annotated, Section 50-6-217(a)(2), is amended by deleting the first sentence and replacing it with the following language: "Upon appointment, each judge of the workers' compensation appeals board shall serve a term of six (6) years and may be reappointed to an additional term upon expiration of the initial term by the constitutional officer who made the initial appointment."

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

Amendment No. _____
Mark A Pody

 Signature of Sponsor

AMEND Senate Bill No. 2088

House Bill No. 1786*

by deleting the language after the enacting clause and by substituting instead the following language:

SECTION 1. Tennessee Code Annotated, Section 50-6-216, as amended by Chapter 289 of the Public Acts of 2013, is amended by adding the following as a new, appropriately designated subsection:

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(1) Any party that is not represented by legal counsel may request the services of a workers' compensation ombudsman by contacting the office of mediation services.

(2) The ombudsman shall have the authority including, but not limited to:

(A) Meet with and provide information to unrepresented parties about their rights and responsibilities under the law;

(B) Explain the administrative process for resolving workers' compensation claims;

(C) Investigate claims and attempt to resolve disputes without resort to alternative dispute resolution and court proceedings;

(D) Communicate with all parties and providers in the claim;

(E) Assist the parties in the completion of forms; and

(F) Facilitate the exchange of medical records.

(3) An ombudsman shall not provide legal advice.



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(4) An ombudsman shall not be called to testify in any proceeding and no statement or representation made to an ombudsman shall be considered by a workers' compensation judge for any purpose.

(5) An unrepresented person has a right to consult with an ombudsman and receive services under this subsection. If the person receiving the services of an ombudsman obtains legal counsel pertaining to the case or dispute for which the services of an ombudsman were engaged, the person, or the person's counsel, shall immediately notify the division and the office of mediation services. Upon receipt of notice that the person has retained counsel, the ombudsman shall terminate all services.

SECTION 2. Tennessee Code Annotated, Section 50-6-217(a)(1), as amended by Chapter 289 of the Public Acts of 2013, is amended by deleting the first sentence in its entirety and replacing it with the following language: "The governor shall initially appoint three (3) qualified individuals to serve as judges on the workers' compensation appeals board. When the first vacancy occurs on the board, the speaker of the senate shall appoint a qualified individual to serve on the board to fill the vacancy. When the second vacancy occurs, the speaker of the house of representatives shall appoint a qualified individual to the board to fill the vacancy. When the third vacancy occurs, the governor shall appoint a qualified individual to serve on the board. The power to appoint qualified individuals will thereafter rotate among the speaker of the senate, the speaker of the house, and the governor in that order. A vacancy occurs only in the event that a judge retires, resigns, or is removed from office by law or natural causes."

SECTION 3. Tennessee Code Annotated, Section 50-6-217(a)(2), is amended by deleting the first sentence and replacing it with the following language: "Upon appointment, each judge of the workers' compensation appeals board shall serve a term of six (6) years and may be reappointed to an additional term upon expiration of the initial term by the constitutional officer who made the initial appointment."

SECTION 4. For purposes of promulgating rules, this act shall take effect, upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2014, the public welfare requiring it.

SENATE BILL 2088

By Beavers

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 6, relative to workers' compensation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-216, as amended by Chapter 289 of the Public Acts of 2013, is amended by adding the following as a new, appropriately designated subsection:

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(1) Upon receipt of a claim for workers' compensation totaling less than five thousand dollars (\$5000) from an unrepresented person, the division shall refer the person to the ombudsman.

(2) The ombudsman will assist and advise the unrepresented person and shall not assist or advise the opposing party. Notwithstanding this subdivision (), an opposing party may utilize the services of an ombudsman not assigned to the unrepresented party as provided in subsection (a).

(3) The ombudsman may not provide legal advice to the unrepresented person but has the authority to:

(A) Meet with and provide information to the unrepresented person about the person's rights and responsibilities under the law;

(B) Explain the administrative process for resolving workers' compensation claims;

(C) Investigate the claim;

(D) Assist the unrepresented person with completing forms; and

(E) Facilitate the production of medical records.

(4) An ombudsman cannot testify in any workers' compensation proceeding and no statement or representation made to an ombudsman shall be considered by a workers' compensation judge.

(5) An unrepresented person has a right to consult with an ombudsman and receive services under this subsection. If the person receiving the services of an ombudsman obtains legal counsel pertaining to the case or dispute for which the services of an ombudsman were engaged, the person, or the person's counsel, must immediately notify the division and the office of mediation services. Upon receipt of notice that the person has retained counsel, the ombudsman must terminate all services.

SECTION 2. Tennessee Code Annotated, Section 50-6-217(a)(1), as amended by Chapter 289 of the Public Acts of 2013, is amended by deleting the first sentence in its entirety and replacing it with the following language: "The governor shall initially appoint three (3) qualified individuals to serve as judges on the workers' compensation appeals board. When the first vacancy occurs on the board, the speaker of the senate shall appoint a qualified individual to serve on the board to fill the vacancy. When the second vacancy occurs, the speaker of the house of representatives shall appoint a qualified individual to the board to fill the vacancy. When the third vacancy occurs, the governor shall appoint a qualified individual to serve on the board. The power to appoint qualified individuals will thereafter rotate among the speaker of the senate, the speaker of the house, and the governor in that order. A vacancy occurs only in the event that a judge retires, resigns, or is removed from office by law or natural causes."

SECTION 3. Tennessee Code Annotated, Section 50-6-217(a)(2), is amended by deleting the first sentence and replacing it with the following language: "Upon appointment, each judge of the workers' compensation appeals board shall serve a term of six (6) years and may be reappointed to an additional term upon expiration of the initial term by the constitutional officer who made the initial appointment."

SECTION 4. For purposes of promulgating rules, this act shall take effect, upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2014, the public welfare requiring it.

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1786 - SB 2088

February 10, 2014

SUMMARY OF BILL: Requires the Department and Labor and Workforce Development (DLWD), the Division of Workers' Compensation (DWC), upon receiving a claim for workers' compensation totaling less than \$5,000 from an unrepresented person, to refer such unrepresented person to the ombudsman. Requires the ombudsman to assist and advise the unrepresented person, except for legal advice. Establishes several new authorities for the ombudsman related to assistance to any unrepresented person. Prohibits the ombudsman from testifying in any workers' compensation proceeding. Modifies procedure for appointing new individuals to the workers' compensation appeals board when replacements are required such that the Speaker of the Senate appoints the first vacancy, the Speaker of the House of Representatives appoints the second vacancy, and the Governor appoints the third vacancy, and thereafter, the authority for appointing members will rotate among the Speakers and Governor.

ESTIMATED FISCAL IMPACT:

NOT SIGNIFICANT

Assumptions:

- According to the Office of Legal Services (OLS), this bill will have no significant impact upon the office.
- Based on the information provided by the Division of Workers Compensation, any fiscal impact to the Division or the Department of Labor and Workforce Development is considered not significant.

IMPACT TO COMMERCE:

NOT SIGNIFICANT

HB 1786 - SB 2088

Assumption:

- Requiring DLWD to refer unrepresented persons to the ombudsman, authorizing the ombudsman to assist and advise any unrepresented persons, and modifying the procedure to appoint new members to the workers' compensation appeals board is not expected to impact commerce or the number of Tennessee jobs.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

/dwl

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*** Current through the 2013 Regular Session ***

Title 50 Employer And Employee
Chapter 6 Workers' Compensation Law
Part 2 Claims and Payment of Compensation

Tenn. Code Ann. § 50-6-216 (2013)

50-6-216. Ombudsman program. [Effective on July 1, 2014.]

(a) The administrator shall establish a workers' compensation ombudsman program to assist injured or disabled employees, persons claiming death benefits, employers, and other persons in protecting their rights, resolving disputes, and obtaining information available under workers' compensation laws. The ombudsman program shall be available only to those individuals or organizations that are not represented by an attorney in the claim for workers' compensation benefits.

(b) No statement, discussion, evidence, allegation or other matter of legal significance that occurs in the presence of an ombudsman shall be admissible as evidence in any other proceeding.

(c) The administrator may adopt rules and regulations consistent with this chapter in order to fulfill the purposes of this section in an orderly and efficient manner.

(d) The division shall have authority to assess a civil penalty against any person or organization, with the exception of the state or a representative of the state, that refuses to cooperate with the services provided by an ombudsman as provided in § 50-6-118.

HISTORY: Acts 2013, ch. 289, § 77.

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*** Current through the 2013 Regular Session ***

Title 50 Employer And Employee
Chapter 6 Workers' Compensation Law
Part 2 Claims and Payment of Compensation

Tenn. Code Ann. § 50-6-217 (2013)

50-6-217. Appointment of judges on the workers' compensation appeals board. [Effective on July 1, 2014.]

(a) (1) The governor shall appoint three (3) qualified individuals to serve as judges on the workers' compensation appeals board. Each individual selected shall be a Tennessee licensed attorney, with at least seven (7) years' experience in workers' compensation matters, shall be at least thirty (30) years of age, and shall be required to attend annual training on workers' compensation laws.

(2) Upon appointment, each judge of the workers' compensation appeals board shall serve a term of six (6) years and may be reappointed for an additional term by the governor upon expiration of the initial term. No judge appointed to the workers' compensation appeals board shall serve more than two (2) full terms, and service of more than half of a six (6) year term shall constitute service of one (1) full term. Any judge appointed to the workers' compensation appeals board to serve less than a full term to fill a vacancy created by the removal or resignation of a judge sitting on the workers' compensation appeals board shall be eligible to serve an additional two (2) full terms. In the initial appointment of judges to the workers' compensation appeals board, one (1) judge appointed shall serve a term of two (2) years, one (1) judge appointed shall serve a term of four (4) years, and one (1) judge appointed shall serve a term of six (6) years.

(3) The governor shall have authority to remove a judge sitting on the workers' compensation appeals board during an unexpired term for the commission of any of the judicial offenses provided in § 17-5-302.

(4) Any person appointed to serve as a judge on the workers' compensation appeals board shall be required to take an oath or affirmation to support the constitutions of the United States and of this state, and to administer justice without respect of persons, and impartially to discharge all the duties incumbent upon a judge to the best of the judge's skill and ability. The oath may be taken before another workers' compensation judge, any inferior court judge, a retired judge, a retired chancellor or an active or retired judge of the court of general sessions.

(5) No person appointed to serve as a judge on the workers' compensation appeals board shall practice law, or perform any of the functions of attorney or counsel, in any of the courts of this state, except in cases in which the judge may have been employed as counsel previous to the appointment as a judge on the workers' compensation appeals board. A newly appointed judge on the workers' compensation appeals board can practice law only in an effort to wind up

