

Report to the Members of the Consumer and Human Resources
Committee of the House and the Commerce and Labor
Committee of the Senate

From

The Advisory Council on Workers' Compensation
David H. Lillard, Jr., Chair

March 1, 2018 MEETING

SB 1798 (Ketron)/HB1491 (Reedy)
SB 1615 (Johnson)/HB 1714 (Lynn)
SB 2141 (Gresham)/HB 2105 (Halford)
SB 2475 (Roberts)/HB 2304 (Beck)
SB 2544 (Tate)/HB 2333 (Cooper)
SB 2543 (Tate)/HB 2411 (Thompson)
SB 1967 (Watson)/HB 1978 (Marsh)
SB 2088 (Kyle)/HB 2392 (Miller)

SB 1798 (Ketron)/HB 1491 (Reedy)

The proposed legislation was presented by **Kathleen Murphy**, representing *Tennessee Professional Firefighters Association*. The bill would create a rebuttable presumption that any of 10 specific types of cancer diagnosed in a firefighter that causes a disabling health condition is a result of the firefighter's exposure to harmful agents while performing his duties. (A similar proposal was considered by the Advisory Council during the 2017 Session. The Council did not make a recommendation on the 2017 measure.) During the presentation Council member **Bob Pitts** expressed concerns about creating a presumption that could potentially open the door to similar requests by other public servants who perform under difficult and potentially hazardous conditions. Council member **Joy Baker** noted the presumption would be a departure from the causation standard established by the *Workers' Compensation Reform Act of 2013*, and she also questioned the fiscal impact of the proposal on local governments and the state workers' compensation system.

Both she and Council member **Brian Hunt** inquired whether statistical data compiled by other states definitively indicated a higher risk of cancer due to firefighters' exposure compared to genetic factors. After further discussion Council member **Bruce Fox**, seconded by Council member **Paul Shaffer**, moved that the legislative proposal be given a favorable recommendation for passage. The motion failed 2-3. Council member **Pitts** then moved, seconded by Council member **Kerry Dove**, that the proposal be given an unfavorable recommendation. That motion was **approved** on a 3-2 vote by the five voting members present.

SB 1615 (Johnson)/HB 1714 (Lynn)

This bill removes the requirement that every insurer providing workers' compensation insurance in Tennessee be required to maintain a claims office or contract with a claims adjuster located in the state. Although the bill sponsors were not in attendance, **Troy Haley**, legislative liaison for the Bureau of Workers' Compensation (BWC) and designee for *Ex Officio* Council member and BWC Administrator **Abbie Hudgens**, noted there was general consensus the bill would be helpful and was agreeable to all interested parties. On motion by Council member **Pitts**, seconded by Council member **Hunt**, the bill was given a favorable recommendation for passage on a **5-0** vote of the voting members present.

SB 2141 (Gresham)/HB 2105 (Halford)

This bill was presented by **Rep. Curtis Halford**, House sponsor. The proposed legislation would allow farm and agricultural employers to accept the workers' compensation chapter by purchasing a workers' compensation insurance policy and would also allow the employers to withdraw acceptance of the chapter at any time by canceling or not renewing the policy and providing notice to their employees. Following discussion, Council member **Pitts**, seconded by Council member **Fox**, moved that the bill be given a favorable recommendation for passage. The motion was **approved 5-0**.

SB 2475 (Roberts)/HB 2304 (Beck)

With the permission the **Chair**, Council member **Fox** presented the proposed legislation, which amends T. C. A. § 50-6-226 (d)(1)(B). He explained he had been working with the sponsors and other interested parties on the bill. The proposal would remove the termination date on the recovery of attorneys' fees and other costs against an employer in a workers' compensation action who wrongfully denies a claim by timely filing a notice of denial, in a situation where a workers' compensation judge subsequently finds, at an expedited or a compensation hearing, that such benefits were owed. Council member **Fox's** presentation was based on an amendment with drafting code No. 013698. As discussion ensued, it became apparent there was some disagreement on the amendment, specifically whether it addressed all pending issues. The **Chair** deemed it advisable for Council member **Fox**, **Bradley Jackson** of the *Tennessee Chamber of Commerce &*

Industry, and other interested parties to attempt to resolve any differences during a recess. Upon reconvening, Council member **Fox** stated that agreement had been reached on an oral amendment (later reduced to writing with drafting code No. 014188) which reads as follows:

“Wrongfully denies a claim, or wrongfully fails to timely initiate any of the benefits to which the employee or dependent is entitled under this chapter, including medical benefits under § 50-6-204, temporary or permanent disability benefits under § 50-6-207, or death benefits under § 50-6-210 if the workers’ compensation judge makes a finding that the benefits were owed at an expedited hearing or compensation hearing. For purposes of this subdivision (d)(1)(B), “wrongfully” means erroneous, incorrect or otherwise inconsistent with the law or facts.”

Council member **Fox** stated the current sunset provision under Subsection (d)(2) would also be extended for two years from June 30, 2018 until June 30, 2020. Council member **Pitts** moved, seconded by Council member **Fox**, that the proposed legislation be given a **favorable recommendation for passage**, *provided* the amendatory language as stated orally by Council member **Fox** (later reduced to writing under drafting code 014188) was incorporated into the bill. On that basis, the Council members **approved** the motion **5-0**.

SB 2544 (Tate)/HB 2333 (Cooper)

The proposed legislation prohibits retaliatory discharge by an employer or other person for conduct relating to filing a workers’ compensation claim and authorizes an action by the employee as a remedy. No sponsor or other presenter was present to explain the purpose or scope of the bill. Upon motion by Council member **Pitts**, seconded by Council member **Kerry Dove**, that the proposal be given an **unfavorable recommendation**, the motion was **approved 3-2**.

SB 2543 (Tate)/HB 2411 (Thompson)

This proposed legislation would similarly prohibit retaliatory discharge of employees under the workers’ compensation law under certain circumstances and prescribes certain damages available to prevailing plaintiffs under retaliatory discharge claims. It would amend T. C. A., Title 4, Title 8 and Title 50. In the absence of a sponsor or other presenter the **Chair** invited **David Broemel**, a well-respected insurance regulatory attorney, to comment on the proposed bill. **Mr. Broemel** cited Tennessee case law, specifically the decision in *Clanton v. Cain-Sloan Co.*, 677 S.W.2d 441 (Tenn. 1984), in which the Tennessee Supreme Court first recognized a cause of action for retaliatory discharge, and a right to seek punitive damages in lawsuits to follow. (Punitive damages were not allowed for the plaintiff in the *Cain-Sloan* case because it was a case of first impression.) Council members **Fox** and **Gregg Ramos** asked if enactment of the proposed bill could effectively serve to codify and enhance the holding in *Cain-Sloan*.

Mr. Broemel responded that in his opinion existing case law was sufficient and that the bill was not necessary. Council member **Pitts**, seconded by Council member **Hunt**, moved that the bill be given an **unfavorable recommendation**. The motion was **approved 3-2**.

SB 1967 (Watson)/HB 1978 (Marsh)

Rep. Pat Marsh, House sponsor, presented the bill. The legislative proposal provides that a marketplace contractor, who acts as a broker or representative of a customer seeking services from a marketplace platform such as Amazon or other marketplace platform, is an independent contractor and not an employee of the marketplace platform. **Rep. Marsh** based his presentation on an amendment with drafting code No. 013964, which rewrites the bill. He explained there was a need to clarify that a marketplace contractor was an independent contractor. Council member **Pitts**, seconded by Council member **Hunt**, moved that the proposed legislation as incorporated in the amendment with drafting code No. 013964 be given a **favorable recommendation for passage**. The motion was **approved 5-0**.

SB 2088 (Kyle)/HB 2392 (Miller)

The proposed legislation rewrites the *Healthy Workplace Act of 2014* (T. C. A. § 50-1-501 et seq.) to designate certain acts of harassment, intimidation, or bullying as unlawful employment practices and to require employers to adopt policies prohibiting those acts. It gives the Commissioner of Labor & Workforce Development the same authority as the Administrator of the Bureau of Workers' Compensation under T. C. A. § 50-6-128 to assess a \$500 penalty against employers who cause compensable workers' compensation claims to be paid by health insurance or who fail to provide necessary treatment. In the absence of a sponsor or other presenter, **Troy Haley**, designee for *Ex Officio* Council member **Abbie Hudgens**, commented briefly on the penalty provision. Council member **Pitts** stated that in view of the comprehensive nature of bill he believed it warranted further study. He moved that the legislative proposal be given **no recommendation** by the Council with the hope the respective legislative committees would devote time to study the measure after the current legislative Session. The motion was seconded by Council member **Dove** and approved **5-0**.

Respectfully Submitted,

/s/ _____

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