

Tennessee Advisory Council on Workers' Compensation
MINUTES
Monday, March 26, 2012, 3:30 p.m.
Legislative Plaza, Room 29
Nashville, Tennessee

Members present:

Voting Members

Chairman David H. Lillard, Jr.
J. Anthony Farmer via telephone
Jerry Lee
Bob Pitts
Dan Pohlgeers

Nonvoting Members

Sandy Fletchall via telephone
Bruce Fox via telephone
Abbie Hudgens
Lynn Lawyer
Mike Shinnick
Lynn Ivanick, Administrator

Also present from Treasury, introduced, presenting or available to speak:

Senator Stacey Campfield
Christy Allen, Assistant Treasurer, State Treasury Department, Chairman Designee
Anne Adams, Claims Administrator, State Treasury Department
Ben Simpson, Claims Service Counselor, State Treasury Department
Nathan Green, Robinson & Green, LLC
Nathan Burton, Secretary of State's Office
Landon Lackey, Dept. of Labor & Workforce Development

At 3:34 p.m., Chairman, Treasurer David H. Lillard, Jr., called the meeting to order. Roll was called by Ms. Ivanick, and Chairman Lillard declared a quorum was present. The Chairman introduced and welcomed the newest member of the Council, Ms. Sandy Fletchall, who was on the conference line.

Ms. Ivanick read a resolution to conduct the meeting via teleconference. A **motion** was made by Mr. Jerry Lee and **seconded** by Mr. Bob Pitts to adopt the resolution. A voice vote was taken and the Chair declared the resolution adopted.

The first item of business is the approval of the minutes of March 12, 2012. One proposed amendment was described in detail, specifically to move the two paragraphs on page six referring to HB2706 to page two where HB2706 was initially addressed so that all comments on that particular bill are in one location in the minutes, even though they were separated in time in the meeting itself. Mr. Dan Pohlgeers made a **motion** to accept the minutes as amended, which was **seconded** by Mr. Lee. Chairman Lillard called for a voice vote, and the minutes were unanimously approved as amended.

Chairman Lillard noted that there were three bills listed under new business on the agenda and further informed that he was required to attend a meeting with the Governor at 4:00 p.m. and would have Ms. Christy Allen, Assistant Treasurer for Legal Compliance and Audit, preside as his designee upon his departure if required before the completion of the meeting.

Because Senator Campfield was present in the room, Chairman Lillard recognized him and moved immediately to agenda item two which was the Senator's to address.

HB3250* - SB3019, Amendment 1 (drafting code #01505563), T.C.A. 50-9-101, et seq., Representative Butt, Senator Campfield.

The Amendment, which makes the bill, requires employers who participate in the workers' compensation assigned risk plan and who pay a tabular surcharge of 20% or more, to implement a drug-free workplace program. The enactment date was revised from the 2012 date in the original bill to July 1, 2013 in the amendment for new or renewed contracts. Present law does not contain this requirement. This would add a new section (Section 115) to Title 50, Chapter 9.

Senator Campfield indicated that he was not running the bill this year but would like input and comment from the Council with respect to the amendment for future action next year. He indicated that the original bill was much more broad and affected small companies using the state assigned risk plan who weren't able to achieve private insurance on their own. The amendment narrowed the language so as to only encompass those companies in the assigned risk plan that are larger and have had unfavorable experience ratings due to a high rate of accidents by comparison to others in their industry. The enactment date was extended in the amendment to allow sufficient time for employers to implement a drug free workplace program.

Chairman Lillard called for comments on the bill. Mr. Pitts was recognized and complimented the Senator for applying prior comments of the Council to make meaningful amendments to his bill. He further agreed that letting the bill go to next year would allow several things to be accomplished: the economy would hopefully be better, and those entities that use the assigned risk plan might be in better financial shape; the additional time would allow AON (the company that handles the assigned risk plan) to have the bill properly vetted among the companies that write coverage; and there would be additional time to research other states' actions in this area. Mr. Pitts again complimented the Senator on correcting the technical issues that had been raised.

Chairman Lillard requested Mr. Mike Shinnick speak to a point he raised at the last meeting regarding his concern for small policy holders. Mr. Shinnick indicated that there were a lot of minimum premium policies (approximately 25%) in the assigned risk plan, and the original bill would have made it very difficult financially for that group. He explained that Senator Campfield has addressed that issue with the amendment by

including the tabular surcharge language as a means to set a floor for companies to be required to have a drug free workplace. Entities that would be charged a tabular surcharge of 20% or higher would be subject to implementing a drug free workplace program as they are those that have had poor loss experience and are in the plan for that reason.

Chairman Lillard thanked Senator Campfield for his presentation. Senator Campfield thanked the Council for its past and present support.

HB2706* - SB2691, T.C.A. 50-6-912, Representative Turner M., Senator Haynes. The bill creates an exception for *sole proprietors* such that they would not be required to pay fees to the Secretary of State for registration, renewal or amendments to the Workers' Compensation Exemption Registry. Present law requires all construction service providers to pay fees outlined in §50-6-912. The fiscal memo indicates the financial impact to the State. The practical effect would be to offer financial relief to individual business owners.

Mr. Bob Pitts stated "I have real concerns about this bill from several points. Number one, it's going to eliminate a large number of sole proprietors of being responsible for registration fees to the Secretary of State. The whole workers' comp bill involving the construction industry, as everyone here knows, went through incredible discussion, pain and suffering through two legislative sessions and finally a compromise was reached. To me, to go in and eliminate the sole proprietors from a requirement that is on all business forms under the current law would be unfair. Number two, because of the size of the fiscal note, I have grave concerns as to the availability of funds for enforcement activity, which has been a driving issue in the legislature because a great deal of fraud, misclassification, etc. has been identified in the construction industry, so those two issues seem to me to be at conflict with each other."

Mr. Pitts **moved** that the Council go on record in opposition to this piece of legislation for the reasons enumerated. Mr. Pohlgeers **seconded** the motion. Roll was called, and 3 "ayes", 1 "nay" resulted in the Council failing to achieve a majority and therefore **not being able to make a recommendation**. Chairman Lillard called for further discussion. Mr. Pitts requested comments be presented to the Sponsors, to which there was no objection.

Mr. Lee indicated that his objection to voting with the motion in opposition to the bill is based on the fact that there are many sole proprietors that don't do a volume of work that justifies these fees. He indicated that if language regarding a floor on gross sales was added to the bill, he would then reconsider.

HB3806 - SB2830*, T.C.A. 50-6-106 & 29-20-106, Representative White, Senator Ketron. The original bill eliminates the state, counties and municipal corporations' exemption from the workers' compensation law. The amendment eliminates the right to withdraw from coverage under the workers' compensation system with 30 days written

notice once coverage has been accepted by a state, county or municipal corporation. The fiscal memo indicates significant "permissive" impact.

Mr. Nathan Green was called upon to present the bill.

Chairman Lillard excused himself at this time and called upon his designee, Ms. Christy Allen to conduct the remainder of the meeting. He further indicated that he believed this to be the last meeting of the Council for this session, but that the Council would be subject to reconvene at the call of the Chair in the event there are further referrals.

Ms. Christy Allen was seated as Chair Designee, introduced herself and invited Mr. Green to continue with his presentation.

Mr. Green indicated that he was not asking for a recommendation at this time. He explained that the bill was brought on behalf of an individual who believes there is a disparity that they wish to bring to the Council and General Assembly's attention. The bill is up in both the House and Senate with plans to take the both bills off notice. There is a slightly large fiscal note attached, although it is permissive.

Mr. Green continued to explain that the crux of the matter is that his client believes that there are some local governmental entities out there that, with regard to "on the job" injuries, just allow employees to sue for services. This occurs without their having an adequate understanding of the tort liability requirements and they consequently do not manage their costs or the process. It appears that public employees, in certain circumstances, have fewer rights than private employees. Mr. Green stated his client believes there is a disparity that should be addressed in the future.

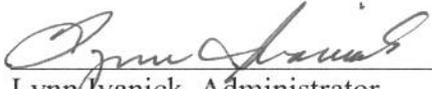
The proposed amendment would clearly indicate whether an entity is required to cover itself under of the workers' compensation statutes. The amendment would freeze those cities that have already opted to insure themselves under workers' compensation coverage. It would not permit them to opt out. It further would require those governmental entities that previously were exempt or had opted out to cover themselves in the manner of their choice under the guidelines of workers' compensation law, but mandatorily in some fashion.

Mr. Green thanked the Council for its time and indicated that, although the bill is going to be taken off notice in both the House and Senate, the sponsors would like to talk about this issue further, perhaps when there is a bill with more merit and less of a fiscal impact.

Chairman Allen solicited comments of the Council, and Mr. Pitts was recognized. Mr. Pitts inquired as to whether Mr. Green's client was suggesting that there was, in addition to those entities that are utilizing a local or state self-insured pool and those that are purchasing insurance in the private market, a third class that is not participating in either of those options and is, in effect, running bare, causing the injured employee to have to litigate against the governmental entity for any kind of service.

Mr. Green agreed with Mr. Pitts' summation that his client believes there to be just such a group of governmental entities that fall into that third uninsured category.

Chairman Allen called for further comments, seeing none, thanked Mr. Green for his presentation and indicated that the agenda for the day was concluded, inquired as to any other business to come before the Council and, seeing none, acknowledged a motion to adjourn from Mr. Pitts and adjourned the meeting at 4:05 p.m. without objection and subject to call of the Chair.



Lynn Ivanick, Administrator
Advisory Council on Workers'
Compensation



David H. Lillard, Jr., State Treasurer
Chairman, Advisory Council on Workers'
Compensation