

Amendment No. _____

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Signature of Sponsor

AMEND Senate Bill No. 200*

House Bill No. 194

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

SECTION 1. Tennessee Code Annotated, Section 4-3-1408, is amended by deleting the section in its entirety and substituting instead the following:

(a) In addition to the creation of the division of the Tennessee state employment service within the department of labor and workforce development as provided in § 50-7-601, there are created within the department, the following divisions:

- (1) The division of employment security;
- (2) The division of workers' compensation; and
- (3) The division of occupational safety and health.

(b) The division of employment security and the division of occupational health and safety shall be under the supervision and charge of the commissioner of labor and workforce development, and shall be separate administrative entities for programs, personnel, and budgets. The division of workers' compensation shall also be a separate administrative entity for programs, personnel, and budgets; the supervision and charge of the division shall be in accordance with the provisions of § 4-3-1409.

(c)

(1) The office of administrator is hereby created for each division created pursuant to subdivisions (a)(1)-(3). The administrator shall have the general administrative authority of the division.

(A) Except as otherwise provided in this chapter, the administrator of the division of employment security is responsible, to the greatest extent possible, for administering, implementing, and enforcing those provisions of law compiled in title 50, chapter 7, and any rules or



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regulations promulgated in accordance with such chapter that are within the purview of employment security, but not including WOTC alien certification, veterans' programs and the Tennessee state employment service. The administrator shall have a minimum of five (5) years' credible experience in the field of employment security and shall have a comprehensive knowledge of and experience in the operation and programs of the division. The administrator shall be recognized by the representatives of the business and labor communities as a person of good standing and reputation in matters concerning employment security.

(B) The administrator of the division of workers' compensation is responsible for administering, implementing, and enforcing all of the provisions enacted into law and compiled in title 50, chapter 6, and any rules or regulations promulgated in accordance with such chapter.

(C) The administrator of the division of occupational safety and health shall be responsible for administering, implementing, and enforcing all of the provisions enacted into law and compiled in title 50, chapter 3, and any rules or regulations promulgated in accordance with such chapter. The administrator shall have a minimum of five (5) years' credible experience in the field of occupational safety and health and shall have a comprehensive knowledge of and experience in the operation and programs of the division. The administrator shall be recognized by the representatives of the business and labor communities as a person of good standing and reputation in matters concerning occupational safety and health.

(2) In addition to other duties, each administrator is responsible for preparing and submitting to the commissioner of labor and workforce development an annual budget for the division the administrator heads.

(3) The administrators of the division of employment security and the division of occupational safety and health shall be appointed by the commissioner of labor and workforce development for a term of four (4) years. The first appointment shall be made July 1, 1999, or as soon as practical thereafter. The four-year terms shall begin on July 1 and end on June 30 of appropriate years. The commissioner of labor and workforce development has the authority to remove an administrator only for non-performance of duties and responsibilities. If removed, a vacancy shall exist in the office of the administrator. A vacancy in the office shall be filled for the unexpired term with a person meeting the requirements applicable to the original appointee.

(4) The administrator of the division of workers' compensation shall be appointed in the manner provided in section 4-3-1409.

(d) The transfer of the functions and activities of the various departments and/or programs to the department of labor and workforce development shall not, because of the transfer, result in any preferred service employee suffering loss of employment, compensation, benefits, or state service status. Such rights, benefits, and compensation shall continue without any impairment, interruption, or diminution; provided, that the department may engage in disciplinary actions or reductions in force as provided for by law. The commissioner of human resources is authorized to enforce this section and shall determine whenever the rights, benefits, and compensation are impaired, interrupted, or diminished. Any employee aggrieved by any impairment in violation of this section shall have the right to seek redress through the grievance procedure established in § 8-30-328 [repealed; see § 8-30-318 for current appeal provisions].

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 3, Part 14, is amended by adding the following as a new section to be designated as the formerly obsolete Section 4-3-1409:

(a) In recognition of Tennessee's endeavor to reform the workers' compensation law in a manner designed to ensure the health and safety of Tennessee workers and to

promote Tennessee as an attractive destination for business, the legislature has determined that the independence of the workers' compensation division is paramount. The workers' compensation division shall be an autonomous unit that shall be attached to the department of labor and workforce development for administrative matters only.

(b)

(1) The division of workers' compensation shall be under the charge and general supervision of the administrator.

(2) The administrator or the administrator's designee has the following powers and duties, in addition to other powers and duties specifically provided by law:

(A) Development and maintenance of an organizational structure to ensure fair, equitable, expeditious, and efficient administration of the workers' compensation law; and

(B) Responsibility for the administration of a workers' compensation system that protects the life, health, and safety of Tennessee's workforce and ensures the continued viability of Tennessee's business environment.

(c)

(1) The administrator of the division of workers' compensation shall be appointed by the governor for a term a term of six (6) years. No administrator 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. The first appointment shall be made July 1, 2013, or as soon as practical thereafter. The first six-year term shall begin on July 1, 2013, and end on June 30, 2019. Thereafter, all terms shall begin on July 1 and end, six (6) years later, on June 30 of the following years. The governor has the authority to remove the administrator for nonperformance of duties and responsibilities or for cause. If the administrator is removed or resigns, a vacancy shall exist in the office, which shall be filled for the

unexpired term by a person meeting the requirements of subdivision (c)(2) of this section. Any administrator appointed to serve less than a full term to fill a vacancy created by the removal or resignation of the previous administrator shall be eligible to serve an additional two (2) full terms.

(2) The administrator shall have a minimum of seven (7) years' credible experience in the field of workers' compensation and shall have a comprehensive knowledge of and experience in the operation and programs of the workers' compensation industry. The administrator shall be recognized by the representatives of the business and labor communities as a person of good standing and reputation in matters concerning workers' compensation.

SECTION 3. Tennessee Code Annotated, Section 50-6-101, is amended by deleting the section in its entirety and substituting instead the following:

This Chapter shall be cited to as the Workers' Compensation Law and shall be controlling for any claim for workers' compensation benefits for an injury, as defined in this chapter, when the date of injury is on or after January 1, 2014. All claims having a date of injury prior to January 1, 2014, shall be governed by prior law.

SECTION 4. Tennessee Code Annotated, Section 50-6-102(2) is amended by deleting the reference to "§ 50-6-204(d)(3)(C)" and replacing it instead with a reference to "§ 50-6-204(e)(1)(A)" so that the amended subsection shall read:

"AMA guides" means the 6th edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, American Medical Association, designated by the general assembly in accordance with § 50-6-204(e)(1)(A). The edition that is in effect on the date the employee is injured is the edition that shall be applicable to the claim;

SECTION 5. Tennessee Code Annotated, Section 50-6-102, is amended by adding the following as a new subdivision and renumbering the remaining subdivisions accordingly:

(_) "Court of workers' compensation claims" means the adjudicative function within the division of workers' compensation;

SECTION 6. Tennessee Code Annotated, Section 50-6-102(12), is amended by deleting the subdivision in its entirety and substituting instead the following:

(12) "Injury" and "personal injury" mean an injury by accident, a mental injury, occupational disease including diseases of the heart, lung and hypertension, or cumulative trauma conditions including hearing loss, carpal tunnel syndrome or any other repetitive motion conditions, arising primarily out of and in the course and scope of employment, that causes death, disablement or the need for medical treatment of the employee; provided, that:

(A) An injury is "accidental" only if the injury is caused by a specific incident, or set of incidents, arising primarily out of and in the course and scope of employment, and is identifiable by time and place of occurrence, and shall not include the aggravation of a preexisting disease, condition or ailment unless it can be shown to a reasonable degree of medical certainty that the aggravation arose primarily out of and in the course and scope of employment;

(B) An injury "arises primarily out of and in course and scope of employment" only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes;

(C) An injury causes death, disablement or the need for medical treatment only if it has been shown to a reasonable degree of medical certainty that it contributed more than fifty percent (50%) in causing the death, disablement or need for medical treatment, considering all causes;

(D) "Shown to a reasonable degree of medical certainty" shall mean that, in the opinion of the physician, it is more likely than not considering all causes, as opposed to speculation or possibility;

(E) A "mental injury" means a loss of mental faculties or a mental or behavioral disorder, arising primarily out of a compensable physical injury or an identifiable work related event resulting in a sudden or unusual stimulus, and shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities; and

(F) The opinion of the treating physician, selected by the employee from the employer's designated panel of physicians pursuant to § 50-6-204(a)(4), shall be presumed correct on the issue of causation but this presumption shall be rebuttable by a preponderance of the evidence;

SECTION 7. Tennessee Code Annotated, Section 50-6-102(13), is amended by deleting the subdivision in its entirety and substituting instead the following:

(13) "Maximum total benefit" means the sum of all weekly benefits to which a worker may be entitled;

(A) For injuries occurring on or after July 1, 1992, but before July 1, 2009, the maximum total benefit shall be four hundred (400) weeks times the maximum weekly benefit, except in instances of permanent total disability; and

(B) For injuries occurring on or after July 1, 2009, but before January 1, 2014, the maximum total benefit shall be four hundred (400) weeks times one hundred percent (100%) of the state's average weekly wage, as determined pursuant to subdivision (14)(B), except in instances of permanent total disability. Temporary total disability benefits paid to the injured worker shall not be included in calculating the maximum total benefit;

(C) For injuries occurring on or after January 1, 2014, the maximum total benefit shall be four hundred fifty (450) weeks times one hundred percent (100%) of the state's average weekly wage, as

determined pursuant to subdivision (14)(B), except in instances of permanent total disability. Temporary total disability benefits paid to the injured worker before the employee attains maximum medical improvement shall not be included in calculating the maximum total benefit;

SECTION 8. Tennessee Code Annotated, Section 50-6-102(15), is amended by deleting the subdivision in its entirety and renumbering the remaining subdivisions accordingly.

SECTION 9. Tennessee Code Annotated, Section 50-6-102(16), is amended by deleting the subdivision in its entirety and substituting instead the following:

(16) "Minimum weekly benefit" means the minimum compensation per week payable to the worker, which shall be fifteen percent (15%) of the state's average weekly wage, as determined by the department.

SECTION 10. Tennessee Code Annotated, Section 50-6-102(18), is amended by deleting the subdivision in its entirety.

SECTION 11. Tennessee Code Annotated, Section 50-6-103(a), is amended by adding the word "primarily" between the words "arising" and "out," and by adding the phrase "and scope" between the words "course" and "of" of the subsection so that the amended subsection shall read:

Every employer and employee subject to this chapter, shall, respectively, pay and accept compensation for personal injury or death by accident arising primarily out of and in the course and scope of employment without regard to fault as a cause of the injury or death; provided, that any person who has an exemption pursuant to § 50-6-104 or part 9 of this chapter shall not be bound if the employee has given, prior to any accident resulting in injury or death, notice to be exempted from this chapter as provided in this part.

SECTION 12. Tennessee Code Annotated, Section 50-6-103(b), is amended by deleting the subdivision in its entirety.

SECTION 13. Tennessee Code Annotated, Section 50-6-104, is amended by adding the phrase "or member of a limited liability company" to subsection (a) between the words "corporation" and "may" and is further amended by adding the following language as new, appropriately designated subsections:

The election by any employee, who is a corporate officer of the employer or member of a limited liability company, to be exempted from this chapter, shall not reduce the number of employees of the employer for the purposes of determining the requirements of coverage of the employer under this chapter.

Every employee who is a corporate officer or member of a limited liability company and who elects not to operate under this chapter, in any action to recover damages for personal injury or death by accident brought against an employer who has elected to operate under this chapter, shall proceed as at common law, and the employer may make use of all common law defenses. This section shall not apply to any officer of a corporation, member of a limited liability company, partner, or sole proprietor who is engaged in the construction industry, as defined by § 50-6-901; instead, part 9 of this chapter shall apply to such officer, member, partner or sole proprietor.

SECTION 14. Tennessee Code Annotated, Section 50-6-108, is amended by adding the following language as a new, appropriately designated subsection:

No employer who fails to secure payment of compensation as required by this chapter, shall be permitted to defend the suit upon any of the following grounds, in any suit brought against the employer by an employee covered by this chapter or by the dependent or dependents of the employee, to recover damages for personal injury or death arising from an accident:

- (1) The employee was negligent;
- (2) The injury was caused by the negligence of a fellow servant or fellow employee; or
- (3) The employee had assumed the risk of the injury.

SECTION 15. Tennessee Code Annotated, Section 50-6-111, is amended by deleting the section in its entirety.

SECTION 16. Tennessee Code Annotated, Section 50-6-116, is amended by deleting the section in its entirety and substituting instead the following:

For any claim for workers' compensation benefits for an injury, as defined in this chapter, when the date of injury is on or after January 1, 2014, the provisions of this chapter shall not be remedially or liberally construed but shall be construed fairly, impartially, and in accordance with basic principles of statutory construction and this chapter shall not be construed in a manner favoring either the employee or the employer.

SECTION 17. Tennessee Code Annotated, Section 50-6-117, is amended by deleting the section in its entirety.

SECTION 18. Tennessee Code Annotated, Section 50-6-118, is amended by deleting subdivisions (a)(5), (a)(6) and (a)(7) in their entirety and by adding the following as new, appropriately numbered subdivisions, and is further amended by deleting subsection (c) in its entirety and substituting new language included below and by adding a new subsection (d):

() Failure of any party to appear or to mediate in good faith at any alternative dispute resolution proceeding;

() Failure of any party to comply, within the designated timeframe, with any order or judgment issued by a workers' compensation judge;

() Performance of any enumerated action provided in § 29-9-102 in relation to any proceedings in the court of workers' compensation claims;

() Failure of any employer to timely provide medical treatment made reasonably necessary by the accident and recommended by the authorized treating physician or operating physician;

() Failure of an employer to timely provide a panel of physicians that meets the statutory requirements of this act;

() Wrongful failure of an employer to pay an employee's claim for temporary total disability payments; and

() Wrongful failure to satisfy the terms of an approved settlement.

(c) The division of workers' compensation may assess the penalties authorized by this chapter, upon providing notice and an opportunity for a hearing to an employer, an employee, an insurer, or a self-insured pool or trust. If a hearing is requested, the commissioner, commissioner's designee, or an agency member appointed by the commissioner shall have the authority to hear the matter as a contested case, and the authority to hear the administrative appeal of an agency decision, relating to the assessment of the penalties authorized by this chapter. When a hearing or review of an agency decision is requested, the requesting party shall have the burden of proving, by a preponderance of the evidence, that the penalized party was either not subject to this chapter, or that the penalties assessed pursuant to this chapter should not have been assessed. Any party assessed a penalty pursuant to this section shall have the right to appeal the penalty assessed by the division and affirmed by the commissioner, the commissioner's designee or an agency member in the manner provided in this subsection, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) If an employee receives a settlement, judgment or decree under this chapter that includes the payment of medical expenses and the employer or workers' compensation carrier wrongfully fails to reimburse an employee for any medical expenses actually paid by the employee within sixty (60) days of the settlement, judgment or decree, or fails to provide reasonable and necessary medical expenses and treatment, including failure to reimburse for reasonable and necessary medical expenses, in bad faith after receiving reasonable notice of their obligation to provide the medical treatment, the employer or workers' compensation carrier shall be liable, in the discretion of the court, to pay the employee, in addition to the amount due for medical expenses paid, a sum not exceeding twenty-five percent (25%) of the expenses;

provided, that it is made to appear to the court that the refusal to pay the claim was not in good faith and that the failure to pay inflicted additional expense, loss or injury upon the employee.

SECTION 19. Tennessee Code Annotated, Section 50-6-121(a)(1)(C), is amended by deleting the final two sentences of the subdivision.

SECTION 20. Tennessee Code Annotated, Section 50-6-122(a)(3), is amended by deleting the references to Section 50-6-204(a)(4) in the subdivision and replacing them with references to Section 50-6-204(a)(3).

SECTION 21. Tennessee Code Annotated, Section 50-6-122(c), is amended by deleting the subsection in its entirety.

SECTION 22. Tennessee Code Annotated, Section 50-6-124, is amended by adding the following language as appropriately numbered subsections:

() In consultation with the administrator's medical practice committee provided in § 50-6-125, the administrator shall, by rules to become effective on January 1, 2016, adopt guidelines for the diagnosis and treatment of commonly occurring workers' compensation injuries.

() Any treatment that explicitly follows the treatment guidelines adopted by the administrator or is reasonably derived therefrom, including allowances for specific adjustments to treatment, shall have a presumption of medical necessity for utilization review purposes. This presumption shall be rebuttable only by clear and convincing evidence that the treatment erroneously applies the guidelines or that the treatment presents an unwarranted risk to the injured worker.

() The administrator may assess a reasonable fee, not to exceed two hundred fifty dollars (\$250), for an appeal of any utilization review decision.

SECTION 23. Tennessee Code Annotated, Section 50-6-125, is amended by deleting the section in its entirety and substituting instead the following language:

(a)

(1) The administrator shall appoint a medical payment committee. The committee shall hear disputes on medical bill payments between providers and insurers and advise the administrator on issues relating to the medical fee schedule and medical care cost containment in the workers' compensation system. Upon hearing disputes on medical bill payments between providers and insurers, the medical payment committee shall have authority to render a decision on the merits of a dispute. If the medical payment committee determines that a provider or insurer has acted in bad faith in refusing to provide payment for a medical bill or refusing to provide reimbursement for overpayment, the medical payment committee, upon a majority vote, shall refer the malfeasant provider or insurer to the division for consideration of assessment of a civil penalty of no more than one thousand dollars (\$1,000) per occurrence. Any provider or insurer aggrieved by the assessment of a penalty under this subsection shall have the right to seek review of the penalty assessment in the manner provided by § 50-6-118(c).

(2) The committee shall be comprised of seven (7) voting members appointed by the administrator as follows:

(A) Three (3) members shall be representative of the medical provider industry;

(B) Three (3) members shall be representative of the workers' compensation insurance industry; and

(C) The medical director shall serve as the final member of the committee but shall not cast a vote unless a vote taken by members results in a tie. In that case, the medical director shall cast the deciding vote.

(b) In making appointments, the administrator shall strive to achieve a geographic balance and, in the case of the physician members of the committee, shall assure, to the extent possible, that the membership of the committee reflects the

diversity of specialties involved in the medical treatment and management of workers' compensation claimants.

(c) Members of the committee shall serve without compensation but, when engaged in the conduct of their official duties as members of the committee, shall be entitled to reimbursement for travel expenses in accordance with uniform regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) Each member appointed shall serve a term of four (4) years and may be reappointed by the administrator. If a member leaves the position prior to the expiration of the term, the administrator shall appoint an individual meeting the qualifications of this section to serve the unexpired portion of the term. The individual may be reappointed by the administrator upon expiration of the term.

SECTION 24. Tennessee Code Annotated, Title 50, Chapter 6, Part 1, is amended by adding the following as a new section:

(a)

(1) The administrator shall appoint a medical advisory committee comprised of practitioners in the medical community having experience in the treatment of workers' compensation injuries, representatives of the insurance industry, employer representatives, and employee representatives to assist the administrator in the development of treatment guidelines and advise the administrator on issues relating to medical care in the workers' compensation system.

(2) The medical director shall serve as a non-voting ex-officio member of the committee.

(b) In making appointments, the administrator shall strive to achieve a geographic balance and, in the case of the physician members of the committee, shall assure, to the extent possible, that the membership of the committee reflects the

diversity of specialties involved in the medical treatment and management of workers' compensation claimants.

(c) Members of the committee shall serve without compensation but, when engaged in the conduct of their official duties as members of the committee, shall be entitled to reimbursement for travel expenses in accordance with uniform regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) Each member appointed shall serve a term of four (4) years and may be reappointed by the administrator. If a member leaves the position prior to the expiration of the term, the administrator shall appoint an individual meeting the qualifications of this section to serve the unexpired portion of the term. The individual may be reappointed by the administrator upon expiration of the term.

SECTION 25. Tennessee Code Annotated, Section 50-6-133, is amended by deleting the section in its entirety.

SECTION 26. Tennessee Code Annotated, Section 50-6-134, is amended by deleting the section in its entirety and substituting instead the following:

The division shall, on or before July 1, 2017, and annually thereafter through 2020, review the impact of the Workers' Compensation Improvement Act of 2013 on the workers' compensation system in this state.

SECTION 27. Tennessee Code Annotated, Section 50-6-201, is amended by deleting subsection (c) in its entirety and by adding the following language as new subdivisions under subsection (a):

(1) The notice of the occurrence of an accident by the employee required to be given to the employer shall state in plain and simple language the name and address of the employee and the time, place, nature, and cause of the accident resulting in injury or death. The notice shall be signed by the claimant or by some person authorized to sign on the claimant's behalf, or by any one (1)

or more of the claimant's dependents if the accident resulted in death to the employee.

(2) No defect or inaccuracy in the notice shall be a bar to compensation, unless the employer can show, to the satisfaction of the workers' compensation judge before which the matter is pending, that the employer was prejudiced by the failure to give the proper notice, and then only to the extent of the prejudice.

(3) The notice shall be given personally to the employer or to the employer's agent or agents having charge of the business at which the injury was sustained by the employee.

SECTION 28. Tennessee Code Annotated, Section 50-6-202, is amended by deleting the section in its entirety and substituting instead the following language:

(a) On or after July 1, 2014, the administrator, in cooperation with the commissioner of commerce and insurance, shall adopt rules regarding the electronic submission and processing of medical bills by health care providers to insurance carriers.

(b) Insurance carriers shall accept medical bills submitted electronically by health care providers in accordance with the administrator's rules.

(c) The administrator shall establish by rule the criteria for granting exceptions to insurance carriers and health care providers who are unable to submit or accept medical bills electronically.

SECTION 29. Tennessee Code Annotated, Section 50-6-203, is amended by deleting subsections (a) and (b) in their entirety and substituting instead the following language:

(a) No request for a hearing by a workers' compensation judge under this chapter shall be filed with the court of workers' compensation claims, other than a request for settlement approval, until a workers' compensation mediator has issued a dispute certification notice certifying issues in dispute for hearing before a workers' compensation judge.

(b)

(1) In instances when the employer has not paid workers' compensation benefits to or on behalf of the employee, the right to compensation under this chapter shall be forever barred, unless the notice required by § 50-6-201 is given to the employer and a petition for benefit determination is filed with the division on a form prescribed by the administrator within one (1) year after the accident resulting in injury.

(2) In instances when the employer has voluntarily paid workers' compensation benefits, within one (1) year following the accident resulting in injury, the right to compensation is forever barred, unless a petition for benefit determination is filed with the division on a form prescribed by the administrator within one (1) year from the latter of the date of the last authorized treatment or the time the employer ceased to make payments of compensation to or on behalf of the employee.

SECTION 30. Tennessee Code Annotated, Section 50-6-203(e)(1), is amended by deleting the subdivision in its entirety and substituting instead the following language:

Unless a claim for death benefits is settled or voluntarily paid, the dependent or dependents of a deceased employee shall file a petition for benefit determination on a form prescribed by the administrator within one (1) year after the date of the employee's death.

SECTION 31. Tennessee Code Annotated, Section 50-6-203(f), is amended by deleting the subsection in its entirety and substituting instead the following language:

(f) If the employee fails to appear and participate in alternative dispute resolution as scheduled by the division, a workers' compensation judge shall have the authority to dismiss the employee's claim by sending a copy of the order of dismissal by certified mail with return receipt requested to the employee's last known address. The order of dismissal for failure to participate in alternative dispute resolution shall become final and the claim shall be forever barred, unless the employee contacts the division to schedule mediation and attends mediation within sixty (60) days after the date on which the

workers' compensation judge enters the order of dismissal. If the employee complies with the requirements of this subsection within the timeframe provided, the workers' compensation judge shall rescind the order dismissing the employee's claim for failure to participate in alternative dispute resolution.

SECTION 32. Tennessee Code Annotated, Section 50-6-203, is amended by deleting subsections (g) and (h) in their entirety and renumbering the remaining subsections accordingly.

SECTION 33. Tennessee Code Annotated, Section 50-6-204(a)(2), is amended by deleting the current language of subdivisions (A) and (B) in their entirety and substituting instead the following language:

(A) It is the intent of the general assembly that the administration of the workers' compensation system proceed in a timely manner and that the parties and the department have reasonable access to the employee's medical records and medical providers that are pertinent to and necessary for the efficient resolution of the employee's workers' compensation claim in a timely manner. To that end, employers or case managers may communicate with the employee's authorized treating physician, orally or in writing, and each medical provider shall be required to release the records of any employee treated for a work-related injury to both the employer and the employee within thirty (30) days after admission or treatment. There shall be no implied covenant of confidentiality with respect to those records, which will include all written memoranda or visual or recorded materials, e-mails and any written materials provided to the employee's authorized treating physician, by case managers, employers, insurance companies, or their attorneys or received from the employee's authorized treating physician.

(B) For purposes of subdivision (a)(2), "employer" means the employer, the employer's attorney, the employer's insurance carrier or third party manager, a case manager as authorized by § 50-6-123, or any utilization review agent as authorized by § 50-6-124 during the employee's treatment for the claimed workers' compensation injury.

SECTION 34. Tennessee Code Annotated, Section 50-6-204(a)(2)(C), is amended by deleting the subdivision in its entirety and substituting instead the following:

(C) If the division becomes involved in the appeal of a utilization review issue, then the division is authorized to communicate with the medical provider involved in the dispute, either orally or in writing, to permit the timely resolution of the issue and shall notify the employee, employer, and any attorney representing the employee or employer that they may review or copy the documents and responses. Each party requesting copies of records shall pay a fee authorized by subdivision (a)(1)(B) prior to the division providing the requested copies.

SECTION 35. Tennessee Code Annotated, Section 50-6-204(a)(3), is amended by deleting the subdivision in its entirety and substituting instead the following language.

(3)

(A) The injured employee shall accept the medical benefits afforded under this section; provided that in any case when the employee has suffered an injury and expressed a need for medical care, the employer shall designate a group of three (3) or more independent reputable physicians, surgeons or specialty practice groups if available in the injured employee's community or, if not so available, in accordance with subdivision (B), from which the injured employee shall select one (1) to be the treating physician.

(i) When necessary, the treating physician selected in accordance with subdivision (a)(3)(A) of this section shall make referrals to a specialist physician or surgeon and immediately notify the employer. The employer shall be deemed to have accepted the referral, unless the employer, within three (3) business days, provides the employee a panel of three (3) or more independent reputable physicians, surgeons or specialty practice groups. In this case, the employee may choose a specialist physician, surgeon or specialty practice group to provide treatment only from the panel provided by the employer.

(ii) The liability of the employer for the services provided to the employee shall be limited to the maximum allowable fees that are established in the applicable medical fee schedule adopted pursuant to this section.

(iii) The division shall have authority to waive the provisions of subdivision (ii) when necessary to provide treatment for an injured employee.

(B) If three (3) or more independent reputable physicians, surgeons or specialty practice groups are not available in the employee's community, the employer shall provide a list of three (3) independent reputable physicians, surgeons or specialty practice groups, within a one hundred (100) mile radius of the employee's community.

(C) When the treating physician refers the injured employee, the employee shall be entitled to have a second opinion on the issue of surgery and diagnosis from a physician specified in the initial panel of physicians provided by the employer pursuant to subdivision (a)(3)(A) of this section. The employee's decision to obtain a second opinion shall not alter the previous selection of the attending physician.

(D) The employer shall provide the applicable panel of physicians to the employee in writing on a form prescribed by the division, and the employee shall select a physician from the panel, sign and date the completed form, and return the form to the employer. The employer shall provide a copy of the completed form to the employee and shall maintain a copy of the completed form in the records of the employer and shall produce a copy of the completed form upon request by the division.

(i) In any case when the employee has been presented the physician selection form but has failed to sign the completed form and return it to the employer, the employee's receipt of treatment from any

physician provided in the panel after the date the panel was provided shall constitute acceptance of the panel and selection of the physician from whom the employee received treatment as the treating physician, specialist physician or surgeon.

(E) In all cases where the treating physician has referred the employee to a specialist physician, surgeon or specialty practice group, the specialist physician or surgeon to which the employee has been referred, or selected by the employee from a panel provided by the employer, shall become the treating physician until treatment by the specialist physician or surgeon concludes and the employee has been referred back to the treating physician selected by the employee from the initial panel provided by the employer under subdivision (a)(3)(A) of this section.

(F) In all cases when an employee changes his community of residence after selection of a physician under this subdivision, the employer shall provide the employee, upon written request, a new panel of reputable physicians surgeons, or specialty practice groups, as provided in (a)(3)(A), from which the injured employee shall select one (1) to be the treating physician.

(G) If any physician, surgeon or specialty practice group included on a panel provided to an employee under this subsection declines to accept the employee as a patient for the purpose of providing treatment to the employee for his workers' compensation injury, the employee may either select a physician from the remaining physicians or surgeons included on the initial panel provided to the employee pursuant to subdivision (a)(3)(A) of this section or request that the employer provide an additional choice of a physician, surgeon or specialty practice group to replace the physician or surgeon who refused to accept the injured employee as a patient for the purpose of treating his workers' compensation injury.

(H) Any treatment recommended by a physician selected pursuant to this subdivision (a)(3) or by referral, if applicable, shall be presumed to be medically necessary for treatment of the injured employee.

(I) Following the adoption of treatment guidelines pursuant to § 50-6-124, the presumption of medical necessity for treatment recommended by a physician selected pursuant to this subsection or by referral, if applicable, shall be rebuttable only by clear and convincing evidence demonstrating that the recommended treatment substantially deviates from, or presents an unreasonable interpretation of, the treatment guidelines.

SECTION 36. Tennessee Code Annotated, Section 50-6-204(a)(4), is amended by deleting the subdivision in its entirety and renumbering the remaining subdivisions accordingly.

SECTION 37. Tennessee Code Annotated, Section 50-6-204(a)(5), is amended by deleting the subdivision in its entirety and renumbering the remaining subdivisions accordingly.

SECTION 38. Tennessee Code Annotated, Section 50-6-204(b)(2), is amended by deleting the subdivision in its entirety and renumbering the remaining subdivisions accordingly.

SECTION 39. Tennessee Code Annotated, Section 50-6-204(d)(3), is amended by deleting the subdivision in its entirety and renumbering the remaining subdivisions accordingly.

SECTION 40. Tennessee Code Annotated, Section 50-6-204, is amended by adding the following language as an appropriately numbered subsection:

() All permanent impairment ratings shall be assigned by the treating physician.

(1) The treating physician shall utilize the applicable edition of the AMA guides as established by this chapter.

(A) The medical practice advisory committee shall, within six (6) months of the release of a new edition, conduct an evaluation of the new edition, report the committee's findings to the administrator and recommend to the administrator whether the new edition should be designated for application to the provisions of this chapter. The administrator shall report the committee's findings and recommendation

to the general assembly. The AMA guides, as defined in § 50-6-102, shall remain in effect until a new edition is designated by the general assembly.

(B) No impairment rating, whether contained in a medical record, medical report, including a medical report pursuant to § 50-6-235(c), deposition, or oral expert opinion testimony shall be accepted during alternative dispute resolution proceedings or be admissible into evidence at the trial of a workers' compensation claim unless the impairment rating is based on the applicable edition of the AMA guides or, in cases not covered by the AMA guides, an impairment rating by any appropriate method used and accepted by the medical community.

(2) The treating physician shall assign impairment ratings as a percentage of the body as a whole and shall not consider complaints of pain in calculating the degree of impairment, notwithstanding allowances for pain provided by the applicable edition of the AMA guides as established by this chapter.

(3) The treating physician shall evaluate the employee for purposes of assigning an impairment rating and the employee shall attend the evaluation. An employee who fails to attend a scheduled evaluation without justifiable cause shall be subject to sanctions up to and including dismissal of the employee's claim for workers' compensation benefits.

(4) Scheduling of the evaluation shall occur within time limits and according to procedures promulgated by the administrator by rule.

(5) The treating physician shall complete the evaluation and submit an impairment rating report, on a form prescribed by the administrator, within time limits imposed by the administrator through the promulgation of rules.

(6) The treating physician's written opinion of the injured employee's permanent impairment rating shall be presumed to be the accurate impairment

rating. If the treating physician is a member of the administrator's medical impairment registry, this presumption shall be rebuttable only by the presentation of clear and convincing evidence to the contrary. If the treating physician is not a member of the administrator's medical impairment registry, this presumption shall be overcome by the presentation of contrary evidence that satisfies a preponderance of the evidence standard.

SECTION 41. Tennessee Code Annotated, Section 50-6-204(g)(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(2)

(A) If an employer does not provide medical care and treatment, medical services or medical benefits, or both, that an employee contends should be provided as a result of a judgment or decree entered by a workers' compensation judge following a workers' compensation trial or as a result of a workers' compensation settlement agreement, either the employee or the employer, or the attorney for the employee or employer, shall request the assistance of a workers' compensation mediator to determine whether such medical care and treatment, medical services or medical benefits, or both, are appropriate by filing a petition for benefit determination and participating in alternative dispute resolution as provided in § 50-6-236. If the parties do not resolve the dispute by agreement, either party may file a request for a hearing and submit the dispute to a workers' compensation judge for resolution after the workers' compensation mediator has issued a dispute certification notice in accordance with § 50-6-236.

(B) A workers' compensation judge shall have the authority to determine whether it is appropriate to order the employer or the employer's insurer to provide specific medical care and treatment, medical services or medical benefits, or both, to the employee pursuant to a judgment or decree entered by a court following a workers' compensation trial or pursuant to a workers' compensation settlement agreement approved by a workers' compensation

judge pursuant to § 50-6-240. The workers' compensation judge's authority shall include, but is not limited to, the authority to order specific medical care and treatment, medical services or medical benefits, or both. The authority of a workers' compensation judge to order the provision of benefits under this section shall include authority to order specific medical care and treatment, medical services or medical benefits, or both for all settlements approved by the department, the division, the commissioner, the commissioner's designee or a workers' compensation specialist even if the settlement was approved under prior law.

SECTION 42. Tennessee Code Annotated, Section 50-6-205(b)(3)(A), is amended by deleting the term "specialist" in the subsection and substituting instead the term "judge."

SECTION 43. Tennessee Code Annotated, Section 50-6-205(c)(2), is amended by deleting the subdivision in its entirety and renumbering the remaining subdivision accordingly.

SECTION 44. Tennessee Code Annotated, Section 50-6-206, is amended by deleting the section in its entirety.

SECTION 45. Tennessee Code Annotated, Section 50-6-207(1)(D)(ii), is amended by deleting the subdivision in its entirety.

SECTION 46. Tennessee Code Annotated, Section 50-6-207(1)(D)(iii), is amended by deleting the subdivision in its entirety.

SECTION 47. Tennessee Code Annotated, Section 50-6-207(1)(E), is amended by deleting the subdivision in its entirety and substituting instead the following:

(E) An employee claiming an injury as defined in § 50-6-102, other than a mental injury, when the date of injury is on or after January 1, 2014, shall be conclusively presumed to be at maximum medical improvement when the treating physician ends all active medical treatment and the only care provided is for the treatment of pain. The employer shall be given credit against an award of permanent disability for any amount of temporary total disability benefits paid to the employee after the date that the

employee attains maximum medical improvement as determined by a workers' compensation judge.

SECTION 48. Tennessee Code Annotated, Section 50-6-207(2) is amended by designating the existing language as subdivision (A), and by deleting the phrase "four hundred (400)" and replacing it instead with the phrase "four hundred fifty (450)" and is further amended by adding the following as new subdivisions (B) and (C):

(B) In all cases of temporary partial disability for claims with a date of injury on or after January 1, 2014, the compensation shall be sixty-six and two-thirds percent (66 2/3%) of the difference between the average weekly wage of the worker at the time of the injury and the wage the worker is able to earn in the worker's partially disabled condition. This compensation shall be paid during the period of the disability, but payment shall not extend beyond four hundred fifty (450) weeks. Payment shall be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum, as stated in subdivision (1). In no event shall the compensation be less than the minimum weekly benefit;

(C) In any case when a dispute exists over the date of the employee's attainment of maximum medical improvement, the employer shall be given credit against an award of permanent disability for any amount of temporary partial disability paid to the employee after the date on which the workers' compensation judge determines maximum medical improvement;

SECTION 49. Tennessee Code Annotated, Section 50-6-207(3), is amended by deleting the subsection in its entirety and substituting instead the following:

(3) Permanent Partial Disability.

(A) In case of disability partial in character but adjudged to be permanent, at the time the injured employee reaches maximum medical improvement the injured employee shall be paid sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages for the period of compensation, which shall be determined by multiplying the employee's

impairment rating by four hundred fifty (450) weeks. The injured employee shall receive these benefits, in addition to the benefits provided in sections (1) and (2) and those provided by § 50-6-204, whether the employee has returned to work or not; and

(B) If at the time the period of compensation provided by subdivision (3)(A) of this section ends, the employee has not returned to work with any employer or has returned to work and is receiving wages or a salary that is less than one hundred percent (100%) of the wages or salary the employee received from his pre-injury employer on the date of injury, the injured employee may file a claim for increased benefits. If appropriate, the injured employee's award as determined under subdivision (3)(A) shall be increased by multiplying the award by a factor of one and thirty-five one hundredths (1.35); in addition, the injured employee's award shall be further increased by multiplying the award by the following factors, if applicable:

(1) Education: One and forty-five one hundredths (1.45), if the employee lacks a high school diploma or general equivalency diploma;

(2) Age: One and two tenths (1.2), if the employee was more than forty (40) years of age at the time the period of compensation ends; and

(3) Unemployment rate: One and three tenths (1.3), if the unemployment rate, in the Tennessee county where the employee was employed by the employer on the date of the workers' compensation injury, was at least two percentage (2%) points greater than the yearly average unemployment rate in Tennessee according to the yearly average unemployment rate compiled by the department for the year immediately prior to the expiration of the period of compensation.

(C) In determining the employee's increased award pursuant to subdivision (3)(B), the employer shall be given credit for payment of the original

award of benefits as determined under subdivision (3)(A) against the increased award.

(D) Any employee may file a claim for increased benefits under subsection (3)(B) by filing a new petition for benefit determination, on a form prescribed by the administrator, with the division no more than one (1) year after the period of compensation provided in section (3)(A) ends. Any claim for increased benefits under subsection shall be forever barred, unless the employee files a new petition for benefit determination with the division within one (1) year after the period of compensation for the subject injury ends. Under no circumstances shall an employee be entitled to additional benefits when:

(1) The employee's loss of employment is due to the employee's voluntary resignation or retirement; provided, however, that the resignation or retirement does not result from the work-related disability; or

(2) The employee's loss of employment is due to the employee's misconduct connected with the employee's employment; or

(3) The employee remains employed but received a reduction in salary, wages, or hours that is concurrent with a reduction in salary, wages or reduction in hours that affected at least fifty percent (50%) of all hourly employees operating at or out of the same location.

(E) Nothing in this subsection shall prohibit the employer and employee from settling the issue of additional benefits at any time after the employee reaches maximum medical improvement. Any settlement or award of additional permanent partial disability benefits pursuant to this subdivision shall give the employer credit for prior permanent partial disability benefits paid to the employee.

(F) Subsection (3)(B) shall not apply to injuries sustained by an employee who is not eligible or authorized to work in the United States under federal immigration laws.

(G) The total amount of compensation payable in this subdivision 50-6-207(3) shall not exceed the maximum total benefit. The payment of temporary total disability benefits or temporary partial disability benefits shall not be included in calculating the maximum total benefit.

(H) All cases of permanent partial disability shall be apportioned to the body as a whole, which shall have a value of four hundred fifty (450) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury. If an employee has previously sustained an injury compensable under this section and has been awarded benefits for that injury, the injured employee shall be paid compensation for the period of temporary total disability or temporary partial disability and only for the degree of permanent disability that results from the subsequent injury.

SECTION 50. Tennessee Code Annotated, Section 50-6-207(4)(A)(i), is amended by deleting the phrase "after sixty (60) years of age, regardless of the age of the employee" and substituting instead the phrase "less than five (5) years before the date when the employee is eligible for full benefits in the Old Age Insurance Benefit Program as referenced previously in this subdivision or after the employee is eligible for such benefits" so that as amended the subdivision shall read:

For permanent total disability as defined in subdivision (4)(B), sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the injury, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, the employee shall receive not less than the minimum weekly benefit; provided, further, that if the employee's average weekly wages are less than the minimum weekly benefit, the employee shall receive the full amount of the employee's average weekly wages, but in

no event shall the compensation paid be less than the minimum weekly benefit. This compensation shall be paid during the period of the permanent total disability until the employee is, by age, eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act, compiled in 42 U.S.C. § 401 et seq.; provided, that with respect to disabilities resulting from injuries that occur less than five (5) years before the date when the employee is eligible for full benefits in the Old Age Insurance Benefit Program as referenced previously in this subdivision or after the employee is eligible for such benefits, permanent total disability benefits are payable for a period of two hundred sixty (260) weeks. The compensation payments shall be reduced by the amount of any old age insurance benefit payments attributable to employer contributions that the employee may receive under title 42, chapter 7, title II of the Social Security Act, 42 U.S.C. § 401 et seq. Notwithstanding any statute or court decision to the contrary, the statutory social security offset provided by this section shall have no applicability to death benefits awarded to a deceased worker's dependents pursuant to this chapter;

SECTION 51. Tennessee Code Annotated, Section 50-6-207(4)(A)(iii), is amended by deleting the subdivision in its entirety and substituting instead the following:

(iii) For injuries occurring before January 1, 2014, attorneys' fees in contested cases of permanent total disability shall be calculated upon the first four hundred (400) weeks of disability only; for injuries occurring on or after January 1, 2014, attorneys' fees in contested cases of permanent disability shall be calculated upon the first four hundred fifty (450) weeks of disability only;

SECTION 52. Tennessee Code Annotated, Section 50-6-207(6), is amended by deleting the phrase "from this code" and substituting instead the phrase "maintained by the United States Center for Disease Control and Prevention" so that as amended the subsection shall read:

For social security purposes only, as permitted by federal law or regulation, in an award of compensation as a lump sum or a partial lump sum under this chapter for permanent partial or permanent total disability, the court may make a finding of fact that

the payment represents a payment to the individual to be distributed over the individual's lifetime based upon life expectancy as determined from mortality tables maintained by the United States Center for Disease Control and Prevention.

SECTION 53. Tennessee Code Annotated, Section 50-6-208(a), is amended by adding the following as subdivisions (5) and (6):

(5) Claims against the fund shall be made by either the injured employee or the employer in the manner prescribed in § 50-6-239. In all cases when a party is making a claim against the fund, the party advancing the claim shall give notice to the fund of any alternative dispute resolution proceedings scheduled pursuant to § 50-6-236.

(6) Nothing in this section shall relieve the employer or its insurance company of liability for other benefits that may be due the injured employee, including temporary benefits, medical expenses and permanent benefits for injuries.

SECTION 54. Tennessee Code Annotated, Section 50-6-208(b), is amended by deleting the subsection in its entirety and renumbering the remaining subsections accordingly.

SECTION 55. Tennessee Code Annotated, Section 50-6-210, is amended by adding the following as a new subsection (f):

(f)

(1)

(A) If compensation is payable due to the death of an employee under this chapter, and the decedent leaves an alien dependent or dependents residing outside of the United States, a workers' compensation mediator is authorized to conduct alternative dispute resolution proceedings to attempt to resolve the issues; provided, that a representative or representatives of the employer and a duly authorized representative or representatives of the consul or other representative of the foreign country in which the dependent or dependents reside are present. If the parties reach a settlement agreement, the administrator or administrator's designee is authorized to approve the settlement, and the

order of the administrator or the administrator's designee shall be entitled to the same standing as a judgment of a court of record for all purposes. If the parties are unable to reach an agreement, the employer or employee's representative may seek relief pursuant to § 50-6-239 following the issuance of a dispute certification notice.

(B) The administrator, or administrator's designee, or the court shall order payment of any compensation due from the employer to be made to the duly accredited consular officer of the country where the beneficiaries are citizens. The consular officer or the consular officer's representative shall be fully authorized and empowered by this law to settle all claims for compensation and to receive the compensation for distribution to the persons entitled to the compensation.

(2) The distribution of funds in cases described in subdivision (1)(A) shall be made only upon the order of the administrator, the administrator's designee, or the court that heard the matter. If required to do so by the administrator, the administrator's designee, or the court, the consular officer or the consular officer's representative shall execute a good and sufficient bond to be approved by the administrator, the administrator's designee, or the court, conditioned upon the faithful accounting of the moneys so received by the consular officer or the consular officer's representative. Before the bond is discharged, a verified statement of receipts and disbursements of the moneys shall be made and filed with the administrator or the court, as appropriate.

(3) The consular officer or the consular officer's representative shall, before receiving the first payment of the compensation, and at reasonable times thereafter, upon the request of the employer, furnish to the employer a sworn statement containing a list of the dependents with the name, age, residence, extent of dependency and relation to the deceased of each dependent.

SECTION 56. Tennessee Code Annotated, Section 50-6-212(a), is amended by adding the term "primarily" between the terms "arising" and "out," and by adding the phrase "and scope" between the terms "course" and "of" of the subsection so that the amended subsection shall read:

In all claims for compensation for hernia or rupture, resulting from injury by accident arising primarily out of and in the course and scope of the employee's employment, it must be definitely proven to the satisfaction of the court that:

SECTION 57. Tennessee Code Annotated, Section 50-6-212(b), is amended by adding the term "primarily" between the terms "arising" and "out," and by adding the phrase "and scope" between the terms "course" and "of" in the first sentence of the subsection so that the amended subsection shall read:

All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising primarily out of and in the course and scope of the employment, shall be treated in a surgical manner by a radical operation.

SECTION 58. Tennessee Code Annotated, Section 50-6-224, is amended by deleting the section in its entirety.

SECTION 59. Tennessee Code Annotated, Section 50-6-225, is amended by deleting the section in its entirety and substituting, instead, the following:

(a)

(1) Any party to the proceedings in the court of workers' compensation claims may, if dissatisfied or aggrieved by the judgment of that court, appeal to the supreme court, where the cause shall be heard and determined as provided in the Tennessee Rules of Appellate Procedure.

(2) Review of the workers' compensation court's findings of fact shall be de novo upon the record of the workers' compensation court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.

(3) The supreme court may, by order, refer workers' compensation cases to a panel known as the special workers' compensation appeals panel. This panel shall consist of three (3) judges designated by the chief justice, at least one (1) of whom shall be a member of the supreme court.

(4) Any case that the supreme court by order or rule refers to the special workers' compensation appeals panel shall be briefed, and oral argument shall be heard pursuant to the Tennessee Rules of Appellate Procedure as if the appeal were being heard by the entire supreme court.

(5)

(A) The special workers' compensation appeals panel shall reduce to writing its findings and conclusions in all cases. The decision of the panel shall become the judgment of the supreme court thirty (30) days after it is issued unless:

(i) Any member of the supreme court files with the clerk a written request within the thirty-day period that the case be heard by the entire supreme court, in which event a final judgment will not be entered until the supreme court, after due consideration of the case, enters final judgment; or

(ii) Any party to the appeal files a motion requesting review by the entire supreme court within fifteen (15) days after issuance of the decision by the panel, in which event a final judgment will not be entered:

(a) Until the motion is denied; or

(b) If the motion is granted, until the supreme court enters final judgment after its consideration of the case.

(B) For purposes of this subsection (a), a decision of the panel shall be deemed to be issued on the day it is mailed to the parties, which

date shall be noted on the decision by the clerk. Section 27-1-122 applies to all motions made pursuant to this subsection (e).

(b) Appeal of all cases under this chapter shall be expedited by:

(1) Giving the cases priority over all cases on the appellate dockets; and

(2) Allowing any case on appeal in the supreme court to be on motion of either party transferred to the division where the supreme court is then or will next be in session.

(c)

(1) If the judgment or decree is appealed pursuant to subsection (a), interest on the judgment or decree shall be computed from the date that the judgment is entered by the court of workers' compensation claims at an annual rate as defined in Tennessee Code Annotated Section 47-14-121. For purposes of calculating the accrual of interest pursuant to this subdivision (c)(1), the average prime loan rate on the day the judgment or decree is entered by the trial court shall be used.

(2) Total judgment awarded is computed by the total number of weeks multiplied by the benefit rate without any reduction.

(d) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employer or insurer is frivolous, or taken for purposes of delay, a penalty may be assessed by the court, without remand, against the appellant for a liquidated amount.

(e) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employee is frivolous, a penalty may be assessed by the court, without remand, against the appellant for a liquidated amount.

SECTION 60. Tennessee Code Annotated, Section 50-6-226(a)(1), is amended by deleting the subdivision in its entirety, and substituting instead the following language:

(a)

(1) The fees of attorneys for services to employees under this chapter, shall be subject to the approval of the workers' compensation judge before which the matter is pending, as appropriate; provided, that no attorney's fees to be charged employees shall be in excess of twenty percent (20%) of the amount of the recovery or award to be paid by the party employing the attorney. The department shall deem the attorney's fee to be reasonable if the fee does not exceed twenty percent (20%) of the award to the injured worker, or, in cases governed by § 50-6-207(4), twenty percent (20%) of the first four hundred fifty (450) weeks of the award. All attorney's fees for attorneys representing employers shall be subject to review for reasonableness of the fee and shall be subject to approval by a workers' compensation judge when the fee exceeds ten thousand dollars (\$10,000).

SECTION 61. Tennessee Code Annotated, Section 50-6-226(a)(2)(B) is amended by deleting the subdivision in its entirety and renumbering the remaining subsections accordingly.

SECTION 62. Tennessee Code Annotated, Section 50-6-226(c)(2), is amended by deleting the phrase "trial judge" in the subdivision and replacing it, instead, with the phrase "workers' compensation judge."

SECTION 63. Tennessee Code Annotated, Section 50-6-226, is amended by adding following as appropriately numbered subsections:

() In addition to any attorneys' fees provided for in this section, the court of workers' compensation claims may award attorneys' fees and reasonable costs, including reasonable and necessary court reporter expenses and expert witness fees for depositions and trials incurred when the employer fails to furnish appropriate medical, surgical and dental treatment or care, medicine, medical and surgical supplies, crutches, artificial members and other apparatus to an employee provided for in a settlement or judgment under this chapter.

() A health care provider shall not employ a collection agency or make a report to a credit bureau concerning a private claim against an employer for all or part of the

costs of medical care provided to an employee that are not paid by the employer's workers' compensation insurer without having first exhausted all administrative remedies as provided in this section. The medical director may include the insurer in the administrative process.

SECTION 64. Tennessee Code Annotated, Section 50-6-227, is amended by deleting the section in its entirety.

SECTION 65. Tennessee Code Annotated, Section 50-6-228, is amended by deleting the section in its entirety.

SECTION 66. Tennessee Code Annotated, Section 50-6-229(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) All settlements of compensation by agreement of the parties and all awards of compensation made by the court of workers' compensation claims, when the amount paid or to be paid in settlement or by award does not exceed the compensation for twenty-six (26) weeks of disability, shall be final and not subject to readjustment.

SECTION 67. Tennessee Code Annotated, Section 50-6-229, is amended by adding the following as a new subsection (c):

(c) All amounts paid by the employer and received by the employee or the employee's dependents, by lump sum payments, shall be final, but the amount of any award payable periodically for more than twenty-six (26) weeks may be modified as follows:

- (1) At any time by agreement of the parties and approval by the court; or
- (2) If the parties do not agree, then at any time after twenty-six (26) weeks from the date of the award, either party may file an application to the court of workers' compensation claims, on the ground of increase or decrease of incapacity due solely to the injury.

SECTION 68. Tennessee Code Annotated, Section 50-6-230, is amended by deleting the section in its entirety.

SECTION 69. Tennessee Code Annotated, Section 50-6-231, is amended by deleting the section in its entirety.

SECTION 70. Tennessee Code Annotated, Section 50-6-232(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) The payment of the sum by the employer evidenced by the receipts of the trustee, which shall be filed with the division, shall constitute satisfaction of the award by the employer.

SECTION 71. Tennessee Code Annotated, Section 50-6-232(d), is amended by deleting the term "court" from the subsection and substituting instead the phrase "court of workers' compensation claims."

SECTION 72. Tennessee Code Annotated, Section 50-6-233, is amended by deleting the language of the section in its entirety and substituting, instead, the following language:

(a)

(1) There is conferred upon the administrator the power to enforce the provisions of this chapter that relate to the assurance of payments of the awards under this chapter.

(2) In no event shall the division of workers' compensation charge a fee or impose a cost for any necessary or required forms needed to process a workers' compensation claim.

(b) The administrator shall cause the division of workers' compensation to refer all feasible cases for vocational rehabilitation to the department of education.

(c) In addition to the rulemaking authority granted in § 50-6-118, and subsection (a) of this section, the administrator or the commissioner of commerce and insurance, as appropriate, may promulgate rules and regulations implementing this chapter. The rules and regulations shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 73. Tennessee Code Annotated, Section 50-6-234, is amended by deleting the section in its entirety and substituting instead the following language:

(a) In any case when the employer has commenced paying temporary disability benefits to the employee and has then stopped or changed the benefits for any cause other than failure of an employee to submit to employer requests for reasonable medical examinations by the treating physician or final settlement, the employee may request the assistance of a workers' compensation mediator who shall mediate the dispute, in accordance with § 50-6-236. If the dispute is not be resolved by agreement, the parties may submit the dispute to a workers' compensation judge for resolution after the workers' compensation mediator has issued a dispute certification notice in accordance with § 50-6-236.

(b) After temporary disability payments have commenced, when the injured employee reaches maximum medical improvement and the compensability of the injury has not been contested by the employer, then payments shall continue until the injured employee accepts or rejects a job offered by any employer at a wage equal to or greater than the employee's pre-injury wage, if the employee is able to perform the duties of the position within any restrictions placed on the employee by the physician selected pursuant to § 50-6-204. In no case may temporary payments pursuant to this subsection (b) exceed the lesser of sixty (60) days or the value of the employee's permanent partial disability award calculated solely upon the medical impairment; provided, that these limits may be exceeded if agreed to by all parties. The amount of the payment shall be credited against any permanent award. For purposes of this subsection (b), the determination of attainment of maximum medical improvement and the employee's medical impairment shall be made by the physician selected in accordance with § 50-6-204. Nothing in this subsection (b) shall require an employer to return any employee to work.

SECTION 74. Tennessee Code Annotated, Section 50-6-235, is amended by deleting every mention of the term "commissioner" or any derivation thereof in the section and replacing it, instead, with the term "administrator" or an appropriate derivation, and is further amended by

deleting the phrase "medical care and cost containment committee" in subsection (d) and replacing it, instead, with the phrase "medical fee committee."

SECTION 75. Tennessee Code Annotated, Section 50-6-236, is amended by deleting the section in its entirety and substituting instead the following:

(a) The administrator shall establish a workers' compensation mediators program to assist injured or disabled employees, persons claiming death benefits, employers and other persons in protecting their rights, resolving disputes, and obtaining information pertinent to workers' compensation laws and practices.

(b) In accordance with rules adopted by the administrator, the mediator shall conduct alternative dispute resolution and the mediator shall:

(1) Mediate all disputes between the parties related to the resolution of a claim for workers' compensation benefits and assist in the adjustment of claims consistent with this chapter and the policies of the administrator;

(2) Thoroughly inform all parties of their rights and responsibilities under this chapter, including the right of any party to be represented by an attorney of the party's choice;

(3) Accept all documents and information presented to the division relating to the employee's wages, medical condition, and any other information pertinent to the resolution of disputed issues and include them in the claim file;

(4) If the parties reach a full and final settlement, the mediator shall reduce the settlement to writing and each party, or their representative, shall sign. Any settlement reached during alternative dispute resolution proceedings shall not become effective, until it has been approved by a workers' compensation judge in accordance with the procedure provided in this chapter.

(c)

(1) When mediation is held, a person representing the employee and the employer, or the employer's insurer, with the authority to settle, must attend. It shall not be required that the state or its representative who attends mediation

have final settlement authority. Parties entering into mediation shall be prepared to mediate all disputed issues at the beginning of mediation and shall mediate all issues in good faith.

(2) When a mediator determines that a party is not prepared to mediate as required or believes a party is not mediating in good faith, the mediator shall include comments to that effect in the dispute certification notice.

(3) The administrator is authorized to promulgate rules to effectuate the purposes of this subsection in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The violation of those rules or the provisions of this subsection may subject the party or their representative to a civil penalty of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000).

(d) If the parties are unable to reach settlement of any disputed issues, the mediator shall issue a written dispute certification notice setting forth all unresolved issues for hearing before a workers' compensation judge.

(1) The dispute certification shall be issued on a form prescribed by the administrator and signed by the assigned workers' compensation mediator who shall distribute a copy of the signed dispute certification notice to all parties in accordance with rules adopted by the administrator.

(2) No party is entitled to a hearing before a workers' compensation judge to determine temporary or permanent benefits or to resolve a dispute over the terms of an agreed settlement of a workers' compensation claim, unless a workers' compensation mediator has issued a dispute certification notice setting forth the issues for adjudication by a workers' compensation judge.

(A) Within five (5) business days after a copy of the dispute certification notice signed by the mediator has been distributed to the parties, any party may, one no more than one (1) occasion for each notice, present a written request that the contents of the dispute

certification notice be amended to the mediator who presided over the alternative dispute resolution proceeding.

(B) If a written request to amend the dispute certification notice is presented to the mediator before the expiration of the five (5) business period provided in subdivision (d)(2)(A) of this section, the mediator shall, within three (3) business days after the initial five (5) business day period ends, issue an amended dispute certification notice. If no amended dispute certification notice is signed by the mediator and distributed to the parties within three (3) business days, the initial dispute certification notice distributed to the parties pursuant to subdivision (d)(2) of this section shall remain in effect.

(e) A workers' compensation mediator shall not be an advocate for either party and shall mediate all issues without favor or presumption for or against either party. A mediator shall have no authority to order the provision of workers' compensation benefits.

(f) Any person employed as a workers' compensation mediator shall not engage in mediation, litigation, or determination of workers' compensation claims outside of the workers' compensation mediator's duties as a workers' compensation mediator.

(g) If, following a request by the mediator, a party fails to produce documents, to cooperate in scheduling mediation, or to provide a representative authorized to settle a matter in attendance at mediation, then the mediator may issue a dispute certification notice and include a statement detailing the party's failure to cooperate, produce documents or to ensure attendance of a representative authorized to settle the claim. On the motion of either party or on the workers' compensation judge's motion, a workers' compensation judge is authorized, but not required, to hold a hearing on the failure to produce documents requested by the mediator, to cooperate in scheduling and to provide a representative who possessed settlement authority. If the workers' compensation judge determines that the failure lacked good cause or resulted from bad

faith, then the workers' compensation judge may assess the offending party who failed to take the requested action with attorney's fees and costs related only to the mediation and the hearing. The administrator is authorized to promulgate rules to effectuate the purposes of this subsection (f) in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 76. Tennessee Code Annotated, Title 50, Chapter 6, Part 2, is amended by adding the following as a new section:

(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 matter.

(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.

SECTION 77. Tennessee Code Annotated, Section 50-6-237, is amended by deleting the section in its entirety and substituting instead the following:

There is created the court of workers' compensation claims in the division of workers' compensation, which shall have original and exclusive jurisdiction over all contested claims for workers' compensation benefits when the date of the alleged injury is on or after January 1, 2014. The administrator shall have sole administrative authority over the court including authority to appoint, and to remove, workers' compensation

judges. The administrator shall promulgate rules and regulations consistent with this chapter in order to fulfill the purposes of this chapter in an orderly and efficient matter.

SECTION 78. Tennessee Code Annotated, Section 50-6-238, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) The administrator shall appoint qualified individuals to serve as workers' compensation judges. Workers' compensation judges shall be Tennessee licensed attorneys in good standing with at least five (5) years experience in workers' compensation matters and shall be at least thirty (30) years of age. Workers' compensation judges shall be executive service employees of the state as defined in Tenn. Code Ann. Section 8-30-103(7).

(2)

(A) In making the initial appointments, the administrator shall have authority to shorten and stagger the terms of workers' compensation judges to ensure that the terms of no more than seven (7) workers' compensation judges shall terminate at the same time.

(B) Except for the initial appointment of candidates to fill the position of workers' compensation judge, upon appointment, each workers' compensation judge shall serve a term of six (6) years. Terms shall begin on July 1 and expire six (6) years later, on June 30. No workers' compensation judge shall serve more than three (3) full terms, and service of more than half of a six (6) year term shall constitute service of one (1) full term. If a sitting workers' compensation judge is removed or resigns, a vacancy shall exist in the office, which shall be filled for the unexpired term by a person meeting the requirements of subdivision (a)(1) of this section.

(C) Any workers' compensation judge may be reappointed by the administrator upon expiration of the term.

(D) If a workers' compensation judge leaves the position prior to the expiration of the term, the administrator shall appoint an individual meeting the qualifications of this section to serve the unexpired portion of the term. The individual may be reappointed by the administrator upon expiration of the term. Any workers' compensation judge appointed to serve less than a full term to fill a vacancy created by the removal or resignation of a sitting workers' compensation shall be eligible to serve an additional three (3) full terms.

(3) It shall be the duty of a workers' compensation judge to hear and determine claims for compensation, to approve settlements of claims for compensation, to conduct hearings, and to make orders, decisions, and determinations. Workers' compensation judges shall conduct hearings in accordance with the rules of civil procedure, the rules of evidence and the rules adopted by the division and shall have authority to issue subpoenas and to compel obedience to their judgments, orders, and process through the assessment of a penalty as provided in § 50-6-118.

(b)

(1) The administrator shall appoint a qualified individual to serve as chief judge of the court of workers' compensation claims. The individual shall be a Tennessee licensed attorney in good standing with at least seven (7) years experience in workers' compensation matters. The chief judge shall be an executive service employee of the state as defined in Tenn. Code Ann. Section 8-30-103(7).

(2) In addition to performing the duties required of a workers' compensation judge by subdivision (c)(2) of this section, it shall be the duty of the chief judge, under the rules adopted by the division, to administer the day to day operations of the court of workers' compensation claims and supervise the activities of workers' compensation judges.

(3) Upon appointment, the chief judge shall serve a term of six (6) years and may be reappointed by the administrator upon expiration of the term. No chief judge of the court of workers' compensation claims 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 chief judge of the court of workers' compensation claims appointed to serve less than a full term to fill a vacancy created by the removal or resignation of the previous chief judge shall be eligible to serve an additional two (2) full terms.

(c) Unless otherwise provided by law or clearly inapplicable in context, the Tennessee Code of Judicial Conduct, Rule 10, Canons 1 through 4, of the Rules of the Tennessee Supreme Court, and any subsequent amendments thereto, shall apply to all workers' compensation judges. However, any complaints regarding the conduct of a workers' compensation judge under the code shall be made to the chief workers' compensation judge. Any complaints about the chief judge shall be made to the administrator.

(d) The administrator shall have authority to remove a workers' compensation judge or the chief judge during an unexpired term for the commission of any of the judicial offenses provided in § 17-5-302.

(e) Any person appointed to serve as a workers' compensation judge or as the chief judge 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.

(f) No workers' compensation judge or chief judge 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 workers' compensation judge or chief judge. A newly appointed workers' compensation judge or chief judge can practice law only in an effort to wind up the judge's practice and must end the practice of law as soon as reasonably possible and in no event longer than one hundred eighty (180) days after assuming the position of workers' compensation judge or chief judge.

(g) When considering the appointment of an individual to serve as a workers' compensation judge or as the chief judge, the administrator shall consider comment from the members of the business, labor and legal communities concerning the suitability of the individual for appointment as a workers' compensation judge or the chief judge.

(h) The administrator shall appoint a qualified individual to serve as the clerk of the court of workers' compensation claims whose duty it shall be to perform all the clerical functions of the court. The clerk of the court of workers' compensation claims shall be an executive service employee of the state as defined in Tenn. Code Ann. Section 8-30-103(7).

SECTION 79. Tennessee Code Annotated, Title 50, Chapter 6, Part 2, is amended by adding the following as a new section:

(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 judge appointed shall serve a term of two (2) years, one judge appointed shall serve a term of four (4) years, and one 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 Tennessee Code Annotated Section 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 the judge's practice and must end the practice of law as soon as

reasonably possible and in no event longer than one hundred eighty (180) days after assuming the position judge on the board of administrative review.

SECTION 80. Tennessee Code Annotated, Title 50, Chapter 6, Part 2, is amended by adding the following as a new section:

The administrator shall institute and maintain an education and training program for workers' compensation mediators, workers' compensation judges, the chief judge, ombudsmen, and the judges of the workers' compensation appeals board in order to assure that these persons maintain current and appropriate skills and knowledge in performing their duties. Before assuming their duties, all persons selected to serve or appointed as workers' compensation mediators, workers' compensation judges, the chief judge, ombudsmen, or as judge of the workers' compensation appeals board shall be provided formal training and education, which shall include training on the department's workers' compensation system, the Tennessee workers' compensation statutes and case law, and the rules and regulations of the division of workers' compensation. In addition, such persons shall attend at least seven (7) hours of training each year that is focused on workers' compensation statutes and case law, and the rules and regulations of the division of workers' compensation.

SECTION 81. Tennessee Code Annotated, Section 50-6-239, is amended by deleting the section in its entirety and substituting instead the following:

(a) Within sixty (60) days after issuance of a dispute certification notice by a workers' compensation mediator, a party seeking further resolution of disputed issues shall file a request for a hearing with the division, and the clerk of the court of workers' compensation claims shall issue notice to all parties identifying the judge to whom the claim has been assigned and the procedure for scheduling and preparing for a hearing.

(b) Unless permission has been granted by the assigned workers' compensation judge, only issues that have been certified by a workers' compensation mediator within a dispute certification notice may be presented to the workers' compensation judge for adjudication.

(1) Following the issuance of a dispute certification notice and assignment of the claim to a workers' compensation judge, the workers' compensation judge may grant permission for parties to present issues that have not been certified by a workers' compensation mediator only upon finding that:

(A) The parties did not have knowledge of the issue prior to issuance of the dispute certification and could not have known of the issue despite reasonable investigation; and

(B) Prohibiting presentation of the issue would result in substantial injustice to the petitioning party.

(c) Hearings of disputes shall be conducted in the following manner:

(1) All hearings shall be conducted within the timeframes adopted by the administrator through the promulgation of rules. The rules of evidence and civil procedure shall govern proceedings at all hearings before a workers' compensation judge unless an alternate procedural or evidentiary rule has been adopted by the administrator. Whenever the administrator has adopted an alternate procedural or evidentiary rule that conflicts with the rules of procedure or the rules of evidence, the rule adopted by the administrator shall apply.

(2) Following the hearing, the workers' compensation judge shall issue a compensation order that sets forth findings of fact and conclusions of law, and, if appropriate, an order for the payment of benefits under the workers' compensation law. The workers' compensation judge shall note the date of entry on the order and a copy of the order shall be distributed to the parties in accordance with procedures adopted by the administrator.

(3) If a party who has filed a request for hearing files a notice of nonsuit of the action, either party shall have ninety (90) days from the date of the order of dismissal to institute an action for recovery of benefits under this chapter.

(4) All hearings before the workers' compensation judge shall be open to the public. The parties may provide a court reporter for the preparation of a record.

(5) The testimony of any witness may be taken by deposition according to the Tennessee Rules of Civil Procedure or may be taken before the workers' compensation judge. No costs shall be charged, taxed or collected by the workers' compensation judge for the appearance of witnesses except fees for witnesses who testify under subpoena. The witnesses shall be allowed the same fee for attendance and mileage as is fixed by law in civil actions.

(6) Unless the statute provides for a different standard of proof, at a hearing the employee shall bear the burden of proving each and every element of the claim by a preponderance of the evidence.

(7) There shall be a presumption that the findings and conclusions of the workers' compensation judge are correct, unless the preponderance of the evidence is otherwise. The decision of the workers' compensation judge shall become final thirty (30) days after the workers' compensation judge enters a compensation order, unless a party in interest seeks an appeal of the decision from the workers' compensation appeals board pursuant to this chapter. If a party in interest does not file a timely request for appeal to the workers' compensation appeals board, the order of the workers' compensation judge shall become final and may be appealed to the state supreme court in the manner provided by § 50-6-225.

(8) The workers' compensation judge may, in his discretion, assess discretionary costs including reasonable fees for depositions of medical experts against the employer upon adjudication of the employee's claim as compensable.

(9) After an order entered by a workers' compensation judge has become final, the parties subject to the order shall have five (5) business days after all

appeals are exhausted to comply with the order or the noncompliant parties shall be subject to penalization as provided by § 50-6-118.

(10) In any claim where the employee has suffered a catastrophic injury, the workers' compensation judge assigned to the claim shall have discretion to order that the claim be heard on an expedited basis. If the assigned workers' compensation judge orders an expedited hearing of the claim, the claim shall be given priority over all cases on the workers' compensation judge's trial docket with the exception of any other claims that the workers' compensation judge has previously ordered to be heard on an expedited basis under this subdivision.

(d) Hearings of disputes on an expedited basis shall be conducted in the following manner:

(1) Upon motion of either party made at any time after a dispute certification notice has been issued by a workers' compensation mediator, a workers' compensation judge may, at the judge's discretion, hear disputes over issues provided in the dispute certification notice concerning the provision of temporary disability or medical benefits on an expedited basis and enter an interlocutory order upon determining that the injured employee would likely prevail at a hearing on the merits. A copy of the motion shall be served by the moving party on all other parties to the claim in accordance with procedures adopted by the administrator.

(2) A workers' compensation judge is not required to hold a full evidentiary hearing before issuing an interlocutory order for temporary disability or medical benefits.

(3) If temporary disability or medical benefits are ordered, the employer shall have seven (7) business days to comply with the order or to request an appeal from the workers' compensation appeals board. Unless modified by the workers' compensation appeals board following an appeal or unless a subsequent order to modify an interlocutory order for temporary disability or

medical benefits is issued by the workers' compensation judge presiding over the claim, the interlocutory order shall remain in effect pending conclusion of the matter by hearing according to the procedure provided in subsection (c).

(4) If a motion for temporary disability or medical benefits is denied on the basis that the claim is not compensable, the proceeding shall continue according to the procedure provided in subsection (c) unless the employee files a request for an appeal to the workers' compensation appeals board. At any time after the employee has exhausted the procedures for seeking an appeal from the workers' compensation appeals board, as provide in this chapter, the workers' compensation judge may entertain an appropriate motion from the employer for dismissal of the claim.

(e) All discovery disputes, including motions to compel and for protective order, shall be adjudicated upon the review of written motions and affidavits. A workers' compensation judge may, in his discretion, convene a hearing on a discovery dispute only upon a finding that good cause to convene a hearing exists.

(f) The failure of any party to comply in a timely manner with an interlocutory or final order issued by a workers' compensation judge may result in the assessment of a penalty as provided in § 50-6-118.

(g) The administrator shall have authority to assess a filing fee sufficient to offset the cost of administering the provisions of this chapter.

(h) An order assessing a civil penalty under this chapter notwithstanding, no order issued by a workers' compensation judge shall be subject to judicial review pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 82. Tennessee Code Annotated, Title 50, Chapter 6, Part 2 is amended by adding a new section:

(a) The administrator shall establish a workers' compensation appeals board, which shall be wholly separate from the court of workers' compensation claims, to review

interlocutory and final orders entered by workers' compensation judges upon application of any party to a workers' compensation claim.

(1) Any party aggrieved by an order for temporary disability or medical benefits or an order either awarding permanent disability or medical benefits or denying a claim for permanent disability or medical benefits issued by a workers' compensation judge may request review of the order by the workers' compensation appeals board by filing a request for appeal, on a form prescribed by the administrator. Review shall be accomplished in the following manner:

(A) Within seven (7) business days after issuance of an interlocutory order for temporary disability or medical benefits by a workers' compensation judge, either party may request an appeal of the decision. Within seven (7) days of receiving an appeal of an interlocutory order, the workers' compensation appeals board shall enter an order affirming, reversing, remanding, or modifying the decision of the workers' compensation judge. The workers' compensation appeals board's decision on an appeal of an interlocutory order shall not be subject to further review.

(B) Within thirty (30) calendar days after issuance of a compensation order pursuant to § 50-6-239(c)(2), either party may request an appeal of the decision by filing a notice of appeal with the workers' compensation appeals board. Parties shall have fifteen (15) calendar days after an appeal is filed to file briefs with the workers' compensation appeals board. Within forty-five (45) calendar days after receiving an appeal of a compensation order, the workers' compensation appeals board shall issue a decision either affirming the judgment and certifying the workers' compensation judge's order as final or remanding the case. If judgment is affirmed, the final order of the workers' compensation judge shall be immediately appealable to the state

supreme court. If a request for administrative review is timely filed, the order issued by the workers' compensation judge shall not become final, as provided in § 50-6-239(c)(7), until the workers' compensation appeals board issues a written decision certifying the order as a final order.

(2) The workers' compensation appeals board may remand the decision of the workers' compensation judge, if the rights of the party seeking review have been prejudiced because findings, inferences, conclusions, or decisions of a workers' compensation judge:

(A) Violate constitutional or statutory provisions;

(B) Exceed the statutory authority of the workers' compensation judge;

(C) Do not comply with lawful procedure;

(D) Are arbitrary, capricious, characterized by abuse of discretion, or clearly unwarranted exercise of discretion; or

(E) Are not supported by evidence that is both substantial and material in the light of the entire record.

(b) The provisions of this section shall have no effect on the procedures established for filing a claim for workers' compensation benefits in the division of claims administration, pursuant to section 9-8-402, or in the claims commission, pursuant to section 9-8-307. The workers' compensation appeals board shall have no jurisdiction over an appeal of a decision of a commissioner of the claims commission.

(c) The decisions of the workers' compensation appeals board shall not be subject to judicial review pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 83. Tennessee Code Annotated, Section 50-6-240, is amended by deleting the section in its entirety and substituting instead the following:

(a) A workers' compensation judge may approve a proposed settlement among the parties if:

(1) The settlement agreement has been signed by the parties; and

(2) The workers' compensation judge has determined that the employee is receiving, substantially, the benefits provided by this chapter, or, in cases subject to subsection (d), if the workers' compensation judge has determined that the settlement is in the best interest of the employee.

(b) A workers' compensation judge shall approve or reject settlements submitted to the division within three (3) business days after the settlement has been received by the division and assigned to a workers' compensation judge for consideration.

(c) In approving settlements, a workers' compensation judge shall consider all pertinent factors and if the injured employee is not represented by counsel, then the workers' compensation judge shall thoroughly inform the employee of the scope of benefits available under this chapter and the employee's rights and the procedures necessary to protect those rights.

(d) Notwithstanding any other provision of this chapter, an employee who is determined to be permanently and totally disabled shall not be allowed to compromise and settle the employee's rights to future medical benefits.

(e) Notwithstanding any other provision of this section, if there is a dispute between the parties as to whether a claim is compensable, or as to the amount of compensation due, the parties may settle the matter without regard to whether the employee is receiving substantially the benefits provided by this chapter; provided that the settlement is determined by a workers' compensation judge to be in the best interest of the employee.

SECTION 84. Tennessee Code Annotated, Section 50-6-241(d)(1)(A), is amended by adding the phrase "but before January 1, 2014," between the date "July 1, 2004" and the term "in" to the first line of the subdivision.

SECTION 85. Tennessee Code Annotated, Section 50-6-241(d)(1)(C)(i), is amended by adding the phrase "but before January 1, 2014," between the date "July 1, 2009" and the word "if" to the first line of the subdivision.

SECTION 86. Tennessee Code Annotated, Section 50-6-241(d)(2)(A), is amended by deleting the subdivision in its entirety and substituting instead the following as an appropriately numbered subdivision:

For injuries arising on or after July 1, 2004, but before January 1, 2014, in cases in which the pre-injury employer did not return the injured employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits that the employee may receive for body as a whole and schedule member injuries may not exceed six (6) times the medical impairment rating determined pursuant to the provisions of § 50-6-204(d)(3). The maximum permanent partial disability benefits to which the employee is entitled shall be computed utilizing the appropriate maximum number of weeks as set forth in § 50-6-207 for the type of injury sustained by the employee. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities, and capacity to work at the types of employment available in claimant's disabled condition.

SECTION 87. Tennessee Code Annotated, Section 50-6-241(e)(2)(A), is amended by adding the phrase "but before January 1, 2014," between the date "July 1, 2009" and the word "in" to the first line of the subdivision.

SECTION 88. Tennessee Code Annotated, Section 50-6-241, is amended by deleting subsections (a), (b), and (c) in their entirety, renumbering the remaining subsections accordingly, and renumbering all references to subsections and subdivisions contained with this section.

SECTION 89. Tennessee Code Annotated, Section 50-6-242, is amended by deleting subsection (a) in its entirety and renumbering the remaining subsections accordingly, and by removing the reference to subsection (b) in newly redesignated subsection (b).

SECTION 90. Tennessee Code Annotated, Section 50-6-243, is amended by deleting the section in its entirety.

SECTION 91. Tennessee Code Annotated, Section 50-6-246, is amended by deleting the section in its entirety.

SECTION 92. Tennessee Code Annotated, Section 50-6-301, is amended by deleting the section in its entirety.

SECTION 93. Tennessee Code Annotated, Section 9-8-307(a)(1)(K)(ii), is amended by deleting the references to sections 50-6-117, 50-6-203(a)-(e) and (g)-(h), 50-6-206(a)(1), 50-6-224(a)(2), 50-6-225(a)-(d), (g) and (k), 50-6-227, 50-6-228, 50-6-236(a), (b), (e) and (h), and 50-6-237(c), and replacing them, instead, with references to sections 50-6-203(a)-(e) and (g), 50-6-210(f), 50-6-225(d), 50-6-236(c)(2-3) and (g), 50-6-239, and 50-6-237, so that as amended the subdivision shall read:

The commission's payment of these claims shall be in such amount and subject to such limitations as set forth in title 50, chapter 6, except the following provisions shall have no application to workers' compensation claims filed against the state: §§ 50-6-103, 50-6-104, 50-6-106(5), 50-6-118, 50-6-128, 50-6-203(a)-(e) and (g), 50-6-205(b)(2), (b)(3), (c) and (d), 50-6-208, 50-6-210(f), 50-6-211, 50-6-213, 50-6-222, 50-6-225(d), 50-6-229(b), 50-6-233, 50-6-236(c)(2-3) and (g), 50-6-237, 50-6-238, 50-6-239, 50-6-244, 50-6-306, 50-6-307, and title 50, chapter 6, part 4. Section 50-6-114 shall apply to workers' compensation claims against the state, except that the state is authorized to give an employee the option to use accrued sick and annual leave in lieu of receiving temporary total disability benefits. In no event shall an employee receive both accrued sick and annual leave and temporary total disability benefits for the period of temporary total disability. When appropriate, the claims commission shall be considered the court or tribunal to determine claims within title 50, chapter 6. Payments shall be made and accepted without regard to fault as a cause of the injury or death;

SECTION 94. Tennessee Code Annotated, Section 9-8-307(a)(1)(K)(iv), is amended by deleting the phrase "or to the commissioner of labor and workforce development or the commissioner's designee pursuant to § 50-6-206(c)" and replacing it, instead, with the following "or to a workers' compensation judge pursuant to § 50-6-240."

SECTION 95. Tennessee Code Annotated, Section 9-8-402(d)(2), is amended by deleting the phrase "request for a benefits review conference" and replacing it, instead, with the phrase "petition for benefit determination."

SECTION 96. Tennessee Code Annotated, Section 9-8-402(d)(4), is amended by deleting the subdivision in its entirety and substituting instead the following language:

In the event an agreement cannot be reached through alternative dispute resolution as to all issues related to the claim, the claimant shall have ninety (90) days, after the issuance of a dispute certification notice as provided in § 50-6-236, to file a claim with the claims commission. A claim for workers' compensation benefits must be instituted in the claims commission within that ninety (90) days

SECTION 97. Tennessee Code Annotated, Section 9-8-402(d)(5), is amended by deleting the phrase "or to the commissioner of labor and workforce development or the commissioner's designee pursuant to § 50-6-206(c)" and replacing it, instead, with the following "or to a workers' compensation judge pursuant to § 50-6-240."

SECTION 98. Tennessee Code Annotated, Section 9-8-402, is amended by deleting all references to section 50-6-239 and replacing them, instead, with references to section 50-6-236, and is further amended by is amended by deleting every mention of the phrase "benefit review conference" in the section and replacing it, instead, with the phrase "alternative dispute resolution."

SECTION 99. Tennessee Code Annotated, Section 29-20-401(f)(1), is amended by deleting the reference to section "50-6-208(c) and (d)" and replacing it, instead, with a reference section "50-6-208(b) and (c)."

SECTION 100. The Tennessee Code Commission is requested to change appropriate references in Title 50, Chapter 6, Parts 1, 2 and 3, from "commissioner" to "administrator" whenever the reference is to the commissioner of labor and workforce development in the code as supplements are issued and volumes are replaced, except in sections 50-6-102 and 50-6-118.

SECTION 101. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 102. For purposes of promulgating rules and regulations and making necessary provisions for the implementation of this act, this act shall take effect upon becoming a law, the public welfare requiring it. Additionally, Sections 1 and 2 of this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 2014, the public welfare requiring it.

ANALYSIS AND DISCUSSION OF ADMINISTRATION'S
PROPOSED 2013 WORKERS' COMPENSATION REFORM BILL

I. THE ADMINISTRATION'S BILL WILL REVERSE THE STEADY DECLINE OF LITIGATION EXPERIENCED SINCE 2004 AND INCREASE LITIGATION COSTS AND DELAYS.

- The Consultants' report stated among the most frequently cited problems in the Tennessee workers' compensation system is the role of the court system in workers' compensation because the system is seen by critics as "too litigious" and unpredictable and the system is seen as inefficient and taking too long and requiring too many processes. Since the enactment of the Reform Act of 2004, this is simply not true:
 - The number of trials of workers' compensation cases has decreased 74.4% since Calendar Year 2005. In CY2005 (the first full calendar year after the enactment of the 2004 Reform Act) there were 285 workers' compensation trials reported via the required Statistical Data Form. In CY2011, that number had dropped to 73.
 - The number of lawsuits filed and then settled prior to a trial has decreased 71% since CY2005. In CY2005 there were 2509 lawsuits filed and then settled after a complaint was filed. In CY2011 that number was 724.
 - Therefore, after the 2004 Reform Act that required exhaustion of the administrative process of a benefit review conference (mediation) before suit could be filed, the **total** number of filed complaints in a circuit or chancery court dramatically decreased from 2794 to 797, which is a reduction of 71.5%.
 - Trials were utilized to conclude cases in 0.9% of cases in 2011 and have been between .09% and 1.3% of cases since 2008.
 - The percent of Department of Labor approved settlements where a complaint has not been filed increased from 71% in 2005 to 99% in 2011.
 - Source: "Tennessee Workers' Compensation Data – Calendar Years 2002-2011" – Advisory Council on Workers' Compensation, published August 2012.
- The proposed bill creates a "Court of Workers' Compensation Claims" - defined as the "adjudicative function within the division of workers' compensation"- which has original and exclusive jurisdiction over **all contested claims** for workers' compensation benefits. Thus, while the current statutory scheme

establishes an *informal* system of benefit review conferences (mediation) that does not require a “clerk of the court” to manage all the formal pleadings, etc., the proposed bill will lead to formal hearings on many more issues and claims than are now filed in the circuit and chancery courts. In fact, the Consultants’ report described these hearings as covering all workers’ compensation issues, such as compensability, disability, treatment, return-to-work, impairment payment, penalties, and enforcement actions, such as for failure to insure.

- The Consultants’ report noted that administrative changes within the Division of Workers’ Compensation made in 2012 show real improvements in resolving disputes. However, these changes have not been allowed sufficient time to determine if they will further reduce the number of actual claims that result in disputed issues.

II. THE ADMINISTRATION’S BILL FAILS TO ADDRESS KNOWN AND STATISTICALLY SUPPORTED COST DRIVERS AND STRENGTH OF CURRENT BUSINESS CLIMATE

- Medical benefits constitute 67% of the total benefit costs in Tennessee compared to 58% of regional states including Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina and Virginia and 59% nationwide. Source: NCCI, Tennessee State Advisory Form 2012, September 5, 2012.
- The average medical cost per closed case in 2011 was \$21,864.11. Source: 2012 Advisory Council on Workers’ Compensation Statistical Report, page 16.
- 77.3% of Tennessee workers’ compensation claims are medical claims only. Source: NCCI, Tennessee State Advisory Form 2012, September 5, 2012, page 46.
- Indemnity costs continue to decline in Tennessee. The average indemnity cost is lower than the region and county-wide. Source: NCCI, Tennessee State Advisory Form 2012, September 5, 2012, page 55.
- The Tennessee medical fee schedule is substantially higher than the average fees paid in 42 other states included in a study reported in the 2009 Workers’ Compensation Research Institute Report.
- Temporary indemnity benefits have continued to rise since 2002. In 2011, the average TTD paid was \$10,241.56. Source: WCAC August 2012 Statistical Report. Undoubtedly, one of the primary drivers of this increase in TTD is the increasing abuse of the utilization review process by insurers which delays the delivery of medical care to the injured worker and lengthens the number of weeks an injured worker stays out of work.

III. THE ADMINISTRATION'S BILL ADOPTS A STANDARD OF INJURY CAUSATION THAT IS MORE RESTRICTIVE THAN THE COMMON LAW IN TENNESSEE AND REQUIRES APPORTIONMENT WHICH THE COURTS OF TENNESSEE HAVE LONG RECOGNIZED AS AN IMPRACTICAL AND IMPOSSIBLE MEDICAL/LEGAL CONCLUSION.

- In a Tennessee personal injury claim, the injured person must prove an accident proximately caused (more probably than not) the injury/damages. The causation standard for workers' compensation injuries that is enacted by this bill is a higher standard of proof than is required in a personal injury claim.
- The injured employee is required to prove he/she suffered an injury that arose **primarily** out of and in the course *and scope* of employment.
- To prove this, a physician must testify that it is more likely than not, considering all causes, as opposed to speculation or possibility [i.e., definition of "shown to a reasonable degree of medical certainty"] that the employment contributed more than 50% in causing the death, disablement, or need for medical treatment.
- The average age of workers involved in workplace injuries in Tennessee has consistently increased since 2002 when the average injured worker was 41.8 years of age. In 2011, the average age of an injured worker was 46.4, or 10% higher.
- The average age of injured workers has increased nearly 5 years since 2002.
- As this trend continues and the average age of injured workers continues to rise, there will be more and more opportunities for insurance companies to deny coverage to aged workers who statistically have pre-existing medical conditions including degeneration of joints and spines. Increased denials of benefits for those aged workers will increase litigation.

IV. THE ADMINISTRATION'S BILL WILL SHIFT RESPONSIBILITY FOR WORK-RELATED ACCIDENTS/INJURIES FROM RESPONSIBLE INSURERS/EMPLOYERS TO TENNESSEE TAXPAYERS.

- In 1919, when the workers' compensation law was first enacted, the General Assembly determined the statute to be remedial - to be given an equitable construction by the courts. The Supreme Court has continually recognized the strong public policy set forth by this statute - that the intent of this provision is to burden industry (business) and their insurers with the responsibility of industrial accidents (work-related injuries/diseases) so as to relieve society of that obligation. [See, TCA §50-6-116]
- While the first stated goal of the Consultants' report (page 11) is "to recommend changes that would make Tennessee more competitive as a place to do business", the focus appears to be solely on lowering costs for employers in Tennessee at any cost, including abandoning decades of sound public policy - that responsible

Tennessee employers - NOT THE TAXPAYERS OF TENNESSEE - should bear the cost of work-related injuries.

V. THE ADMINISTRATION'S BILL ABANDONS ASSESSING AN INDIVIDUAL'S VOCATIONAL DISABILITY AS A PUBLIC POLICY AND ADOPTS A COMMUNITY OR UNIFORM LOSS OF USE STANDARD.

- This new provision for "permanent partial disability" eliminates any incentive for the pre-injury employer to bring the employee back to work - one of the best provisions of the Tennessee workers' compensation law since enacted in 1992.
- Based on current available data, the "PPD" adjustment factor for "unemployment rate" would apply to 1% of Tennessee's working population contained in 4 counties and would exclude 99% of Tennessee's working population.
- The "PPD" adjustment factor for "education" in Section 52, page 30 of the Bill will only apply currently to 12.5% of the workforce based on 2011 data.
- In the AMA Guides, Sixth Edition, it is clearly stated, "In disability evaluation, the impairment rating is one of several determinants of disablement" (page 6 – left column). That same page contains the following in the Christopher Reeve (Superman) example, "a given physical impairment can be highly disabling in one vocational context and virtually non-disabling in another."
- Under current Tennessee case law indemnity compensation is paid on the basis of loss of earning power after consideration of the employee's age, skills, education, job training, job opportunities, etc. The bill replaces this with a system based almost solely on a non-treating doctor's opinion as to permanent impairment.
- PPD benefits is really a misnomer. The employee is actually receiving IMPAIRMENT BENEFITS. *See* Section 52 (pages 33-34) of the bill which states "all cases of permanent partial disability shall be apportioned to the body as a whole, which shall have a value of four hundred fifty (450) weeks, and there shall be paid compensation to the injured employee for the proportionate **loss of use of the body as a whole** resulting from the injury". [Emphasis added.]
- Although contained in a section titled "Permanent Partial Disability", according to Section 52 (page 29) of the bill the employee is to receive payment for the **loss of use of the body as a whole** at the time the employee reaches MMI as determined by the employee's attending physician. However, an impairment rating by a rating physician must be made first before the amount of "PPD benefits" can be determined. The rating physician determines the degree of permanent impairment as a result of the injury based on the AMA Guides, 6th Edition BUT excluding consideration complaints of pain even if the Guides do consider pain in the rating. [See Section 24 of the bill, page 25.] This opinion is

presumed to be accurate and can be rebutted only by clear and convincing evidence.

- Apparently, according to the bill, the employee is to receive these "PPD - loss of use benefits" for a specific period of time calculated by multiplying the percentage of impairment by 450 weeks. [NOTE: It would appear a judge's order will pay out these benefits weekly, not in a lump sum, although there is no specific language to that effect.]
- The employee may petition for "increased benefits" at the end of the time period for which the employee received the "loss of use" original awarded PPD, IF the employee has not returned to work with ANY employer or has returned to work with ANY employer and is receiving wages/salary less than 100% of the pre-injury employer wages/salary as of the date of injury. Under those circumstances, the **proportionate loss of use of the body** [assumed to be the original PPI] as a whole is multiplied by specified factors taking into account physical exertion, education and unemployment rate. [NOTE: This appears to be an area may require expert testimony regarding physical exertion.] To receive these "increased benefits" the employee must file a new petition for benefit determination no more than 30 days before the period of time calculated for "LOSS OF USE/PPD BENEFITS" expires or within 1 year of the loss of employment, whichever is later. The "LOSS OF USE/PPD BENEFITS" received at MMI/PPI determination are subtracted from these "increased benefits".
- Since 2002, the percentage of Tennessee's workforce that has less than a high school education has decreased by 35% from 19% to 12.5%. Since 2006, there has been a steady trend of increase in the education of Tennessee's workforce which, by natural extrapolation, will mean that over time the "education" adjustment factor will apply to less and less of Tennessee's workforce.
- According to Tennessee Department of Labor 2011 Labor Force Estimates Summary-Tennessee, Annual Average 2011 (www.tn.gov/labor-wfd/lmi/laborforce2011.pdf), published March 15, 2012, the average Tennessee unemployment rate was 9.2%. The adjustment factor for "unemployment rate" contained in Section 52, page 31 of the Bill adjusts upward 1.4 if the county where the employee resided on the date of injury was 3 percentage points greater than the most recent yearly average unemployment rate in Tennessee and 1.3 for unemployment rate in the county where the employee resided on the date of the injury if the unemployment rate is 2 percentage points greater than the recent yearly average.
- The most recent county unemployment rates in Tennessee are for November 2012. If you assume the Administration's Bill were in effect now, only workers injured in Obion and Scott Counties would qualify for the 1.4 adjustment factor. The lower adjustment factor would be applicable in only Lauderdale and Pickett Counties.

- Information taken from Labor Force Estimates-United States and Tennessee, released 1:30 p.m. CST on December 27, 2012 (http://www.tn.gov/labor-wfd/labor_figures/labornov12.pdf).
- Of the 2,866,500 working Tennesseans in November 2012, only 28,420 work in Lauderdale, Obion, Pickett and Scott Counties.
- By contrast, 43% or 1,238,270 working Tennesseans are located in Davidson, Hamilton, Knox, Rutherford, and Shelby Counties. Those 5 counties November 2012 unemployment rate averaged 6.1%, far below the most recent published annual unemployment rate for Tennessee.

VI. THE ADMINISTRATION'S BILL'S ABANDONMENT OF THE TRADITIONAL TENNESSEE PPD SYSTEM OF ASSESSING AN INDIVIDUAL'S VOCATIONAL DISABILITY RESULTS IN THE OMISSION FROM FAIR COMPENSATION OF A TREMENDOUSLY HIGH NUMBER OF INJURIES WHICH HISTORICALLY RESULT IN SIGNIFICANT NON-EXERTIONAL RESTRICTIONS.

- Under the proposed reforms, the "physical exertion" adjustment factor contained in Section 52, page 30 of the Bill, allow for an adjustment factor for lifting restrictions which impact the classification of available jobs to the employee.
- The physical exertional factor is not applicable to many injuries which occur routinely in Tennessee based upon our industry and workforce. For instance, head trauma including concussion and post-concussion syndrome, seizure disorder, lung conditions such as occupational induced asthma, lung cancer, mesothelioma and others, ear disorders including vertigo and Meniere's disease, psychiatric disorders such as PTSD, anxiety and depression, chemical exposure, development of allergies, heart attacks are a few examples of the type of injuries which typically result in severe, serious non-exertional limitations and restrictions which often preclude an employee from returning to his pre-injury career or long term occupation.
- Some physical injuries, including back injuries and knee injuries, often result in positional change requirements such as alternating sitting and standing or no crouching, crawling, climbing, etc.
- Under the proposed reforms, serious restrictions in these areas would result in no adjustment whatsoever even when the employment is lost as a direct result of the injury if the worker is in the 87.5% of Tennessee workers who has a high school education and is in the 91 counties which would not qualify for the unemployment factor. Serious injuries would result in an impairment rating only loss of use payment or compensation even though the vocational disability far exceeds the impairment rating.

VII. THE ADMINISTRATION'S BILL ELIMINATES A PHYSICIAN'S INDEPENDENT MEDICAL JUDGMENT AS THE STANDARD OF TREATMENT FOR INJURED WORKERS AND ADOPTS A STATE GOVERNMENT IMPOSED STANDARD OF MEDICAL TREATMENT AND LIMITS WORKERS' ACCESS TO MEDICAL BENEFITS.

- Section 37 (page 20-23) of the bill changes current law regarding how an injured employee receives medical benefits.
- The employer is required to designate a group of 3 or more reputable physicians, surgeons or specialty practice groups - without a direct business relationship - when the employee has suffered an injury AND expressed a need for medical care. That panel is to be in employee's county of residence if available and if not then the employer is required to provide list of 3 within 100 miles of employee's county of residence. [NOTE: there is no definition provided for "specialty practice groups".]
- The injured employee selects one physician from the list of 3 and that doctor becomes the "attending physician". [NOTE: Under the section of the bill related to the selection of the PPI rating physician, the term "treating physician" is used.]
- The "attending physician", when necessary, shall make all referrals to a specialist physician or surgeon and immediately notify the employer. The employer is deemed to have accepted the referral unless the employer - within 3 business days - provides the employee a panel of 3 or more reputable physicians, surgeons or specialty practice groups, without a direct business relationship and employee MUST choose the from this list for further treatment. [NOTE: the bill does not state whether this referral physician becomes the "attending physician".]
- The employee is entitled to a second opinion on the issue of surgery and diagnosis - when the "attending physician" refers the employee - from the same panel submitted by the employer. [NOTE: The bill does not specify which panel, the original one, or the second one produced after a referral the employer did not accept.] The decision of the employee to obtain a second opinion DOES NOT change the selection of the "attending physician".
- The bill does not give the division of workers' compensation or the workers' compensation judge the authority/power to approve a change of "attending physician" if requested by the employee and does not give the authority/power to determine a panel does NOT meet the requirements of the statute.

VIII. THE ADMINISTRATION'S BILL ELIMINATES INDEPENDENT JUDICIAL REVIEW AND SUBSTITUTES IN ITS PLACE AN UNKNOWN, UNDEFINED, EXECUTIVE-DRIVEN AND CONTROLLED BUREAUCRATIC REVIEW FORMAT.

- Although established as wholly separate from the court of workers' compensation claims with 3 members appointed by the Governor, the Administrative Review Board does not fulfill any mandatory appellate function. Review by the Board is a permissive - not mandatory - review of interlocutory and final orders of the workers' compensation judge.
- Since the parties are free to appeal any decision of the workers' compensation judge to the Supreme Court, it is doubtful the Administrative Review Board will be effective in assisting the parties in a timely redress if the issues.'
- The bill (Section 88, page 58) creates a presumption that the findings and conclusions of the workers' compensation judge are correct, unless the preponderance of the evidence is otherwise. [Note: The bill does not state "findings of fact and conclusions of law".]
- The Administrative Review Board may reverse, modify, or remand the decision of the workers' compensation judge because the workers' compensation judge's decision under certain criteria, which are identical to the standard of review established in the UAPA for review of an agency decision by the Davidson County Chancery Court.
- The Administrative Review Board's decision on appeal of an order for temporary benefits shall not constitute a final order. If the appeal is related to permanent disability or medical benefits, the Review Board apparently must certify the workers' compensation judge's order or REMAND THE CASE.

IX. THE ADMINISTRATION'S BILL ELIMINATES THE ROLE OF THE GENERAL ASSEMBLY IN SETTING THE WORKERS' COMPENSATION PUBLIC POLICY OF THE STATE OF TENNESSEE.

- The proposed reforms basically shift all legislative and judicial functions to an agency of the executive branch. [It appears the intent of the proposed reforms is to strip the General Assembly of any role in the workers' compensation system and place total control of the Tennessee workers' compensation system from start to finish in an agency of the Executive Branch.]
- Workers' Compensation Division is given authority to enact the rules and regulations to establish the details of the day-to-day handling of workers' compensation claims and to adjudicate those claims without any checks and balances currently in the Tennessee workers' compensation system.
- While the General Assembly has enacted standards for the discovery and evidence in civil matters, those Rules of Civil Procedure, Rules of Evidence and

rules of Appellate Procedure will no longer be applicable to a workers' compensation claim.

- The proposed reforms eliminate any independent review or appeal of a decision of the agency employee - the workers' compensation judge. There is no intermediate appeal to an independent entity after the agency employee decides a case. Currently, the General Assembly has control over the qualifications of Circuit Court Judges and Chancellors; the General Assembly will lose that oversight when the Department is given complete authority to hire the workers' compensation judges to hear contested workers' compensation claims.
- The General Assembly will lose control of important aspects of public policy when the Department is given such broad rulemaking authority - rules adopted by this Executive Branch Agency will go into effect even if the General Assembly disagrees with how the agency has interpreted the legislative intent.

X. THE ADMINISTRATION'S BILL WILL NEEDLESSLY COMPLICATE THE DETERMINATION OF IMPAIRMENT RATINGS AND INCREASE MEDICAL COSTS AND EXTEND THE LENGTH OF THE CLAIM EXPERIENCE.

- Section 42, pages 23-26 of the proposed bill dramatically changes the way impairment ratings are given to injured workers in Tennessee. The system established in this draft of the legislation creates a quasi-MIRR program before there is a dispute regarding the impairment rating.
- The proposed bill requires the impairment rating to be given by a physician on the administrator's medical impairment rating registry. The authorized treating physician can only give an impairment rating if he/she is on the registry and obtains written consent from the employee to provide the impairment rating.
- The proposed new evaluation process creates a requirement that an impairment rating evaluation be conducted even though 77% of all cases in Tennessee are medical only claims according to the NCCI, Tennessee State Advisory Form 2012, September 5, 2012 Report, page 46. This requirement will add substantial medical costs to the Employer (as detailed below) and delay the resolution of every claim.
- The proposed new evaluation process will require all impairment relevant medical records to be gathered and forwarded to the evaluating physician to review prior to the evaluation. This process could take weeks, or even months, to complete, adding more costs and delay.
- If the treating physician is not on the MIR registry, or the employee refuses to consent to the treating physician performing the impairment rating evaluation, then the parties are allowed to agree upon a physician to perform the rating. If no agreement can be reached, a panel of three physicians randomly selected from the registry will be provided.

- The employer, like the current MIRR, is permitted to first strike one of the three physicians and the employee is required to choose from the remaining two physicians.
- The proposed legislation provides that the “scheduling of the evaluation shall occur within time limits and according to procedures promulgated by the administrator by rule.” There will be a definite delay in time between the release of the employee at maximum medical improvement and the scheduling of the employee with the impairment rating doctor. This will add time and delay to the current system.
- The proposed legislation provides that compensation for the selected registry physician “shall be determined according to rules promulgated by the administrator and the employer shall pay the compensation.” Currently, for a physician selected from the MIR registry, the fee for performing the impairment rating evaluation is set by rule at up to \$1,000.00 (if the report is provided in 30 days) pursuant to 0800-02-20-.07.
- The impairment rating of the selected registry physician is given a presumption of correctness that can only be overcome by clear and convincing evidence. Both Employees and Employers agree that currently MIRR doctors perform less than accurate and less than thorough evaluations. However, based on the development of the case law in the area, the heightened presumptive standard is virtually impossible to overcome by either employers or employees.
- In CY2011, 80.7% of cases were settled using only one (1) permanent partial impairment rating. Source: Advisory Council on Workers’ Compensation, Statistical Report, August 2012.
- For calendar years 2002 through 2010, on average, over 81% of cases were settled or resolved using only one (1) permanent partial impairment rating.
- Accordingly, from CY2002 through CY2011, 81% of all cases resolved using only one (1) permanent partial impairment rating.
- In CY2011, only 17% of cases resolved with 2 impairment ratings and less than 3% of cases resolved with 3 or more impairment ratings. Source: Advisory Council on Workers’ Compensation, Statistical Report, August 2012.
- In CY2011, 2,116 cases involving permanent partial impairment for body as a whole injuries resulted in an average impairment rating of 7.3% when the employee returned to work. Source: Advisory Council on Workers’ Compensation, Statistical Report, August 2012.
- In CY2011, 1,421 cases involving permanent partial impairment for body as a whole injuries resulted in an average impairment rating of 11% when the employee did not return to work. Source: Advisory Council on Workers’ Compensation, Statistical Report, August 2012.
- In CY2011, 687 cases involving permanent partial impairment for arm injuries resulted in an average impairment rating of 5.9% when the employee returned to

work. Source: Advisory Council on Workers' Compensation, Statistical Report, August 2012.

- In CY2011, 198 cases involving permanent partial impairment for arm injuries resulted in an average impairment rating of 10.3% when the employee did not return to work. Source: Advisory Council on Workers' Compensation, Statistical Report, August 2012.
- In CY2011, 995 cases involving permanent partial impairment for leg injuries resulted in an average impairment rating of 7.5% when the employee returned to work. Source: Advisory Council on Workers' Compensation, Statistical Report, August 2012.
- In CY2011, 326 cases involving permanent partial impairment for leg injuries resulted in an average impairment rating of 11.4% when the employee did not return to work. Source: Advisory Council on Workers' Compensation, Statistical Report, August 2012.
- Since CY2004, there has been a steady decline in the average permanent partial impairment rating assigned to injured Tennessee workers for body as a whole injuries. This data overlaps the 5th and 6th Editions as the 6th Edition is effective for any injury which occurred after January 1, 2008. In CY2004, the average whole person impairment rating assigned to employees who returned to work was 20%. It has declined every year since 2004 to a low in CY2011 of 11.8% which is a reduction of 41%. Source: Advisory Council on Workers' Compensation, Statistical Report, August 2012.
- Since CY2003, there has been a steady decline in the average permanent partial impairment rating assigned to injured Tennessee workers for arm injuries. This data overlaps the 5th and 6th Editions as the 6th Edition is effective for any injury which occurred after January 1, 2008 and also includes the 2004 reform which applied the 1.5 cap to arm injuries. In CY2003, the average arm injury impairment rating assigned to employees who returned to work was 19.1%. It has declined every year since 2003 to a low in CY2011 of 8.4% which is a reduction of 56%. Source: Advisory Council on Workers' Compensation, Statistical Report, August 2012.
- For CY2011, there were 7,892 concluded workers' compensation claims which represented the continuation of a steady decline since the 2004 reforms and was the lowest number of concluded cases reported since the 2004 reforms. If the MIR registry physician was utilized in those cases to determine the impairment rating under the proposed bill at the current compensation rate established by the Department, employers would pay \$7,892,000.00 to obtain impairment ratings, even though in 81% of cases there is only 1 impairment rating ever assigned. Source: Advisory Council on Workers' Compensation, Statistical Report, August 2012.

- According to Department of Labor data, for fiscal year 2010/11, there were 61,411 medical only claims and for fiscal year 2011/12 there were 60,541 medical only claims in Tennessee. Under the proposed legislation, the medical only claimants will be entitled to a formal impairment rating evaluation from a registry physician at the expense of the employer. These additional, perhaps unwarranted evaluations could unnecessarily cost employers millions of dollars.
- Even if the administrator lowers the compensation paid for evaluations by half to \$500, the additional costs to employers could be \$30 million dollars. If the administrator lowers the compensation paid for evaluations by three-quarters to \$250, the additional costs to employers could be \$15 million dollars.
- The first strike provision granted the Employer regarding the impairment rating panel gives the Employer a distinct procedural advantage over the Employee because the Employer is permitted the right to preclude certain reputable and qualified physicians from ever rating its employees. A more balanced approach is to simply allow employees to choose from the impairment list the same as they do from the treating doctor list.

XI. THE ADMINISTRATION'S PROPOSED LEGISLATION OVERLOOKS CRITICAL AREAS OF CHANGE THAT WOULD CREATE A MORE BALANCED BILL AND SAVINGS TO THE BUSINESS COMMUNITY.

A. Reducing Return to Work Multiplier and Keeping Current PPD System Otherwise

A decrease in the multiplier for return to work from 1.5 to 1.0 would result in millions of additional dollars of savings to business and insurance according to data from the work comp advisory council's August, 2012 report. 61% of workers who suffered permanent injuries to the body as a whole returned to work in 2011; 75% of workers who suffered permanent arm injuries returned to work in 2001 and 75% of workers with permanent leg injuries returned to work in 2001. A reduction of the multiplier on return to work cases only would result in real savings to employers and real savings to business.

The proposed reforms departure from the vocational disability platform embedded in Tennessee Public Policy for over 90 years to an impairment loss of use system leaves injured workers who are unable to return to work without balanced compensation for the loss. The limited adjustment factors contained in the Administration's Bill is not consistent with our neighboring States. If an employee is not returned to work, allowing the current 6 times multiplier system to stay in place would give flexibility to the Workers' Compensation Judges to establish fair compensation based upon traditional factors understood by employees and employers. Even though the 6 times multiplier is available in the current system, it is important to note that the average multiplier used in

whole person injuries where there is no return to work was 3.2 in 2011, 2.9 for arm injuries in 2011 and 3.2 for leg injuries in 2011.

B. If proposed reforms adjustment factors remain, consider meaningful additions:

- It is undisputed that serious work place injuries impair the level of function of some workers and preclude a return to the physical capacity to perform the type of work the employee performed at the time of the injury. In situations where an employee is unable to return to the same type of work he did before the injury, consider the following addition to the proposed reforms:

If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of the injury, the benefit for permanent partial disability shall be multiplied by three point five (3.5) times the amount otherwise determined under paragraph 3(A)(i).

- Consider adding an adjustment factor for an OSHA violation that leads to an injury to a worker. Such as:

if, it is determined by the Tennessee Occupational Safety and Hazard Administration that the employer was guilty of a single safety violation which was a proximate cause of the worker's injury, the benefit for permanent partial disability shall be multiplied by two (2) times the amount otherwise determined under paragraph 3(A)(1) of this subsection; if it is determined by the Tennessee Occupational Safety and Hazard Administration that the employer was guilty of two or more safety violations which were the proximate cause of the worker's injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph 3(A)(1) of this subsection.

- Recognizing that advancing age negatively impacts an employee's post-injury earning capacity and job opportunities, consider adding an adjustment factor for age such as:

(d) Age: One and seventy-five one hundredths (1.75) if the employee was age 60 or older at the time of maximum medical improvement; One and six tenths (1.6) if the employee was age 50 or older, but less than 60 at the time of maximum medical improvement; or One and four tenths (1.4) if the employee was age 40 or older but less than 50 at the time of maximum medical improvement.

C. The proposed reforms create the Courts of Workers' Compensation and gives the Administrator the authority to adopt rules to govern contested matters.

- In order to create a fair and uniform process consistent with other Courts in the State, consider adopting the Rules of Civil Procedure, the Rules of Evidence, and the Rules of Appellate Procedure.
- The concern here is that the Administrator is give the authority to appoint and remove Workers' Compensation Judges.

D. In section 6 of the proposed reforms, page 7, "Mental Injury" is defined. The definition in the proposed reforms contains a subtle, yet dramatic change in the definition of mental injury which existed for many years in Tennessee. The phrase, "or an identifiable work-related event resulting in a sudden or unusual mental stimulus" is changed to state, "or an identifiable work-related event resulting in a sudden or unusual trauma." That change is dramatic and will result in additional litigation.

E. Section 37 of the Administration's Bill on pages 20-21, when a doctor chosen from a provided panel makes a referral to "a specialist physician or surgeon" the employer is allowed to provide a panel instead of accepting the doctor to whom the paneled doctor made the referral. Consider requiring the panel to include the specific doctor chosen by the referring physician.

January 22, 2013
Workers' Compensation Bill Summary

Governor Haslam released the proposed legislative overhaul of Tennessee's Workers' Compensation system this past week. In its current form the draft bill seeks to accomplish three primary objectives:

- Enact a major reconstruction of the Labor and Workforce Development's Division of Workers' Compensation.
- Enact the simplification of complex systems of compensation.
- Enact the decrease of broad and expansive interpretations of workers' compensation coverage.

The bill seeks to circumvent the judicial branch and create an executive judiciary which possesses final authority on workers' compensation disputes (except appeals to the Supreme Court of Tennessee). It also seeks to lessen the number of disputes and allow parties to reach a quick remedy by simplifying the workers' compensation laws. Finally, in an attempt to provide greater certainty and consistency for all parties involved, the proposed legislation seeks to redefine the applicable interpretations for workers' compensation disputes.

I. Overview

A. *Criticisms of the Current System*

Critics of the current system argue that it is "too litigious," because it uses the court system to remedy compensation disputes. Many practitioners criticize the system as too complicated because it requires employers to exhaust the administrative process through the Tennessee Department of Labor before receiving a final judgment from the courts. Others accuse the trial courts of disparate application of the law and wildly irregular judgments. This led the Supreme Court of Tennessee to describe the process as "a race" by attorneys to "secure perceived procedural advantages" among judges from across the state.

B. *The Proposed Legislation*

The proposed legislation completely rewrites TCA §50-6-237¹. It creates a sub-division within the Tennessee Department of Labor called the division of workers' compensation. The legislation also creates the court of workers' compensation claims in the division of workers' compensation, "which shall have original and exclusive jurisdiction over all contested claims for workers' compensation benefits." This change will allow control for any claim of workers' compensation benefits concerning an injury to the division of workers' compensation. This effectively removes the judicial branch

¹ The bill proposes a title of "Workers' Compensation Law" and states that the chapter would control all claims for workers' compensation benefits for an injury when the date of injury is on or after January 1, 2014.

from workers' compensation disputes altogether. Under the proposed legislation, all complaints, administrative procedures, mediation, filings for dispute, judgments, hearings, trials, final orders, and first level of appeal will be under the authority of the division of workers' compensation.

II. The Proposed Overhaul to the Current Workers' Compensation System

A. *Creating the New Division of Workers' Compensation*

The proposed legislation trifurcates the substantive departments within the Tennessee Department of Labor and Workforce Development into three divisions: (1) the division of workers' compensation; (2) the division of employment security; and (3) the division of occupational safety and health (which remains under the control of the Commissioner of the Department of Labor and Workforce Development). The Bill clarifies that the workers' compensation division operates as an autonomous unit and shall remain attached to the Department of Labor and Workforce Development for administrative purposes only.

1. *Administration of Division of Workers' Compensation*

Under the new system proposed by the legislation, the Governor will appoint an Administrator of the Division of Workers' Compensation. The Administrator must possess a minimum of seven (7) years "credible experience" in the field of workers' compensation and will sit for a term of six (6) years, beginning on July 1, 2013. The Governor retains the authority to remove the Administrator for nonperformance of duties and responsibilities.

a. *Inherent Powers of the Administrator*

The proposed legislation creates an incredibly powerful Administrator of the division of workers' compensation. The Administrator, responsible for administering, implementing, and enforcing all of the proposed provisions, will possess the authority to not only set the administrative rules of the new executive judiciary (i.e., where the courts will meet, when they will meet, and how often the courts will meet, etc), but the Administrator will also retain the authority to appoint the members of the court of workers' compensation claims, including the workers' compensation judges, the chief judge, the court clerk, the ombudsmen, and the workers' compensation mediators.

b. *Responsibility of the Administrator*

The stated responsibility of the administrator is to not only, "protect the life, health, and safety of Tennessee's workforce," but to also, "ensure the continued viability of Tennessee's business environment."

III. Simplification of the Compensation System

The proposed legislation largely simplifies the workers' compensation system by restructuring the system into and under the Tennessee Department of Labor and Workforce Development. However, the proposed legislation also adds provisions to make the law more clear.

A. Alternative Dispute Resolution - *New Executive Positions Under the Proposed Legislation*

1. *Ombudsmen*

The Ombudsmen program seeks to provide parties without legal representation an avenue to resolve disputes by facilitating communication, educating parties as to their rights and obligations, and establishing a system for processing disputes. The ombudsmen program will only be available to those individuals or organizations that are not represented by an attorney. Furthermore, if any person or organization refuses to cooperate with services provided by the ombudsmen, the division will have the authority to assess civil penalties against the party which refused.

a. *Administration of Ombudsmen*

The administrator of the division of workers' compensation shall adopt rules and regulations consistent to fulfill the purposes of the ombudsmen program. These rules will likely develop over the first six (6) months to one (1) year after the Governor appoints the first Administrator on July 1, 2013.

2. *Workers' Compensation Mediators*

The Workers' Compensation Mediators will be vested with the authority to mediate all disputes between parties related to resolving a claim for workers' compensation benefits. If the parties settle the matter at mediation, the mediator must reduce the settlement to writing and require both parties sign the document. The mediation will be finalized once the workers' compensation judge approves the settlement.

As a predicate to a hearing before a workers' compensation judge, the mediator must issue a "written dispute certification notice setting forth all unresolved issues for hearing before a workers' compensation judge." Any unresolved matter not included on the dispute certification notice will not be heard by the workers' compensation judge unless a party meets certain criteria.

After the mediator issues the certification notice, the clerk of the court of workers' compensation claims must issue notice to all parties identifying the judge to whom the division assigned the claim and the procedure for scheduling and preparing for a hearing.

Once a mediator issues a dispute certification notice, either party has sixty (60) days to file a request for hearing. At the hearing, the employee shall bear the burden of proving each and every element of the claim by a preponderance of the evidence. The decision of the workers' compensation judge will become final and conclusive to all adjudicated matters thirty (30) days after the workers' compensation judge enters the order.

a. Administration of Workers' Compensation Mediators

The Administrator of the division of workers' compensation shall adopt rules and regulations consistent to fulfill the purposes of the workers' compensation mediators.

B. Administrative Disputes

1. Workers' Compensation Judges

The proposed legislation allows for the creation of Workers' Compensation Judges under the sole administrative authority of the Administrator of the Division of Workers' Compensation. The Administrator retains the authority to appoint and remove workers' compensation judges and shall "promulgate rules and regulations... in order to fulfill the purposes" of the court of workers' compensation claims. Judges shall be Tennessee licensed attorneys with at least five (5) years experience in workers' compensation matters. Judges will sit for six (6) year staggered terms.

The Bill vests the workers' compensation judges with all authority to hear and decide workers' compensation disputes filed within the division of workers' compensation. The State will consider the Judges executive service employees. The workers' compensation judges will also retain the authority to order specific medical care and treatment, medical services, and/or medical benefits.

2. Chief Judge of the Court of Workers' Compensation

The Administrator shall also appoint a Tennessee licensed attorney with seven (7) years experience in workers' compensation matters. Along with performing the duties described above, the Chief Judge will administer the day to day operations of the court.

3. Workers' Compensation Hearing

At the workers' compensation dispute hearing before the judge, the employee shall bear the burden of proving each and every element of the claim by a preponderance of the evidence. The decision of the workers' compensation judge will become final and conclusive to all adjudicated matters thirty (30) days after the workers' compensation judge enters the order.

4. *Administrative Review Board*

The Governor will appoint three (3) qualified individuals to serve as judges on the Administrative Review Board. Review Judges shall be Tennessee licensed attorneys with at least seven (7) years experience in workers' compensation matters. Judges will serve staggered six (6) year terms. The legislation authorizes the Review Board to affirm, reverse, or remand the decision of the workers' compensation judges.

On appeal, the parties have fifteen (15) calendar days to file briefs with the Administrative Review Board. Within forty-five (45) days after receiving an appeal of a final order of a workers' compensation judge, the Administrative Review Board must issue an order affirming or denying the judgment. If the Administrative Review Board affirms the workers' compensation judge's order, the decision becomes immediately appealable to the Supreme Court of Tennessee.

IV. *Decreasing Broad Interpretations of Workers' Compensation Claims*

A. *Clarifying Scope of Compensation Factors*

The proposed legislation makes seemingly small, but incredibly important changes to Tennessee law regarding how the new administrative system will rule on workers' compensation cases. In numerous cases, clarifications and the narrowing of legal language make broad interpretations less likely. For example, in TCA §50-6-102, the code is amended to clarify definitions of "injury by accident" by adding: "primarily out of and in the course and scope of employment..." It later clarifies the phrase to mean, "that it has been shown to a reasonable degree of medical certainty that the employment contributed more than fifty percent (50%)... of the accident..."

B. *Modifying "Liberal Construction" Interpretation*

The proposed legislation removes the provision for "equitable construction" of the law—which the Tennessee courts determined requires a "liberal and equitably constructed in furtherance of its purposes and in favor of compensation."²

The proposed legislation states, "the provisions of this Chapter shall not be remedially or liberally construed but shall be construed fairly, impartially, and in accordance with basic principles of statutory construction. This Chapter shall not be construed in a manner favoring either the employee or the employer, and any court opinions, so far as they require a remedial or liberal constructions of the Workers' Compensation Law, shall have no precedential value in the adjudication of workers' compensation claims...."

² *Coleman v. St. Thomas Hosp.*, 334 S.W.3d 199 (Tenn. S. Ct. 2010)

C. *Modifying Permanent Partial Disability (PPD)*

The proposed legislation creates a major overhaul of PPD. The new legislation removes the “multiplier system”—a unique feature of Tennessee’s workers’ compensation laws. Instead, it multiplies 66 2/3% of employee’s weekly wages for the proportionate loss of the use of the body as a whole resulting from the injury multiplied by the following factors (minus the amount of permanent disability benefits):

- Measures of lost physical exertion - the proposed legislation’s formula is modeled after the Social Security Administration’s Physical Exertion Requirement. 1.25-1.5.
- Education - lack of high school diploma or general equivalency exam. 1.45.
- Unemployment rate in the county where the employee resided on the date of injury. 1.3-1.4.

D. *Simplifying Employer Panel Selection Process*

In order to provide a more concise system of medical panel selection, the proposed legislation allows more certainty for the choice of employers. The employer can set forth a list of three or more physicians, surgeons, or specially practice groups, from which the employee can chose one attending physician. The employee will now be held to the choice of physician more firmly. Any appeals on behalf of the employee will be reviewed by the workers’ compensation division. Unlike the current law, employers will not be required to provide additional panels.

V. *Other Substantive Changes Relating to the Workers’ Compensation System*

A. *Medical Payment Committee*

The proposed legislation will restructure the medical payment committee, which hears disputes on medical bill payments between providers and insurers and advise the administrator on issues relating to the medical fee schedule. The restructuring allows the administrator to appoint all members.

- Reduces the number of members from 15 to 7.
 - Three members representative of medical provider industry
 - Three members representative of workers’ compensation industry
 - The medical director (only voting to break tie)
- Removes appointments by:
 - TN Medical Association (previously represented by 3 members).

- TN Chamber of commerce & industry (2)
- Associated builders & contractors (1)
- TN AFL-CIO State labor council (3)
- TN hospital association (3)
- TN pharmacists association (1)
- TN chiropractic association (1)

B. *Maximum Total Benefits*

Maximum total benefits increase for injuries occurring on or after January 1, 2014 from 400 weeks times 100% of the state's average weekly wage to 450 weeks times 100% of the state's average weekly wage.

C. *Establishment of a Permanent Impairment Rating Registry*

The Bill proposes the Administrator establish a permanent impairment rating registry, which consists of a group of physicians that retain the exclusive authority to assign permanent impairment ratings.

The parties would attempt to independently agree on a physician from the registry; however, if the parties cannot agree on a physician, the Administrator's Designee will provide a list of three (3) physicians randomly selected from the registry. The employer can strike one of the physicians from the panel and the employee can choose from the remaining two physicians.

The written opinion of the impairment physician shall be presumed accurate; however, the proposed legislation provides that this presumption may be rebutted only by "clear and convincing evidence to the contrary."

D. *Approval of Attorneys' Fees*

The workers' compensation judge must approve the claimant's attorney's fees. Notably, the Bill provides that "no attorney's fees to be charged employees shall be in excess of twenty-percent (20%) of the amount of the recovery or award...."

E. *Right to Reconsideration*

The prior Right of Reconsideration changes to state that "[a]ll amounts paid by the employer and received by the employee...by lump sum payments, shall be final, but the amount of any award payable periodically for more than six (6) months may be modified."