

# Report to the Senate Commerce & Labor Committee from the Advisory Council on Workers' Compensation

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## Report of the Advisory Council on Workers' Compensation To the Senate Commerce & Labor Committee

**Jack Johnson, Chair**  
**Mark Green, 1<sup>st</sup> Vice-Chair**  
**Charlotte Burks, 2<sup>nd</sup> Vice-Chair**

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

The Advisory Council on Workers' Compensation met on March 7, 2013 to review pending workers' compensation bills and, pursuant to T.C.A. §50-6-121(j) *The advisory council on workers' compensation shall, within ten (10) days of each meeting it conducts, provide a summary of the meeting and a report of all actions taken and all actions recommended to be taken to each member of the consumer and employee affairs committee of the house of representatives and commerce, labor and agriculture committee of the senate.* This is the report of that Council meeting for your review and information.

### **SB0509/HB1149 (Hensley/Pody)**

The Advisory Council, upon call for reconsideration by Council Members Pitts, Selvy, Dove and Farmer of the Council's February 28, 2013 recommendation of SB0509/HB1149, met to discuss the proposed language regarding the apportionment of fault and reduction of subrogation of benefits and its effect on employers and their insurance companies.

The Council heard from Ms. Mandy Haynes Young on behalf of the Property Casualty Insurers Association of America, who stated that her client believed the bill to be potentially dangerous in that the bill would insert fault of the employer and the apportionment of fault back into a no-fault system. She stated that the bill allows the settlement of a matter, and, without a carrier or employer knowing about the settlement, may apportion fault to them and then reduce their lien for benefits without their even having notice.

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Mr. Ramos (Council Member Attorney Representative) agreed that this language could create unforeseen problems, especially since settlements would be included, as employers would not have an opportunity to contest their fault.

Mr. Broemel, representing the American Insurance Association, agreed that the bill could harm employers. He explained that employers' rates are based on modification factors which in turn are based on experience. This language could have an adverse impact on rates without employers having had an opportunity to be heard.

Mr. Farmer referred back to the February 28, 2013 Advisory Council meeting discussion with regard to Tennessee Supreme Court Justice Holder's comment in a recent case and stated that the language in this bill, as it is written, does not address the problem posed by Justice Holder, may not even properly be under Title 50, and may create more problems for both employees and employers than it creates solutions. He suggested the sponsor should **consider rewriting the bill**.

Mr. Farmer made a **motion that the Council recommend disapproval with that recommendation**. The motion was **seconded** by Mr. Selvy (Council Member Employer Representative). Mr. Pitts (Council Member Employer Representative) agreed with the previous comments and wanted to add that he had been informed that the bill would require a separate lawsuit in each instance for the employer to protect themselves, thereby creating an additional burden. The vote resulted in the **unanimous recommendation against adoption of the bill**.