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www.tnchamber.org

American Employees Lose Battle in U.S. House; Right to Secret Ballot Elections Threatened

The U.S. House of Representatives turned its back on employee rights and the basic American principle of secret ballots by passing H.R. 800, the misnamed "Employee Free Choice Act" (better known as the "card check" bill) by a 241-185 vote.

Tennessee's delegation vote was divided by party lines. Voting against the bill were Reps. David Davis, John J. Duncan, Zach P. Wamp and Marsha Blackburn, all Republicans. Voting for the bill were Reps. Lincoln Davis, Jim Cooper, Bart Gordon, John S. Tanner and Steve Cohen, all Democrats.

"This vote sends a disturbing message that the right to cast a ballot in private is not protected in the halls of Congress," said Deb Woolley, Tennessee Chamber president. "We urge our Senators to uphold the right of workers to vote in private – free of coercion or influence – on whether to join a union."

For decades, unions have been a declining force in the workplace. Fifty years ago, 35 percent of all workers belonged to unions. Now just 12 percent do, and nearly half of them are government employees.

Labor leaders blame their troubles on the secret-ballot process workers normally use to decide whether or not they want to be represented by unions, saying it's stacked against them.

Deciding whether to support a union seeking recognition is among the most important workplace decisions an employee may have to make. Our nation's labor laws provide a mechanism – federally supervised secret ballot elections – to ensure that workers can obtain necessary information from all sides during an organizing campaign while protecting employee privacy and reducing the opportunity for coercion. Unfortunately, while the law provides for secret ballot elections, it does not require them. Today, unions are more likely to seek representation through "card check" campaigns that do not include the important protections provided for in law. Under a card check campaign an employee is typically given a union authorization card by an organizer and asked right then and there to indicate whether he or she supports the union.

If this bill becomes law, unions would be certified as the bargaining agents for workers once they persuade a majority of eligible employees to sign authorization cards. Unions would have as long as they need to collect signatures. That is, this "card check" process would remain open until they win.

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OSHA Releases New "It's The Law" Poster

WASHINGTON — The Department of Labor's Occupational Safety and Health Administration (OSHA) has announced publication of its new "It's The Law" poster.

The OSHA poster, also known as the OSHA notice of employee rights, is required to be displayed in every workplace in America. The current edition of the OSHA poster is still valid; employers are not required to replace their existing poster with the new version. The poster informs employers and employees of their rights and responsibilities for a safe and healthful workplace.

Using plain language, the poster depicts a variety of employees in various settings—from the medical field to the construction industry—and succinctly explains how employees may confidentially file a complaint, report an emergency, or seek OSHA advice.

"The new OSHA poster provides employees with the information they need to protect themselves if there are unsafe or unhealthful conditions in the workplace," said Assistant Secretary of Labor for OSHA Edwin G. Foulke, Jr. "Presenting clear descriptions of employee rights is an important step, but the new poster also reminds employers of their two most basic responsibilities—furnishing a place of employment free from recognized hazards, and complying with OSHA's hazard-specific health and safety standards."

The OSHA poster, which is free and available in both English and Spanish, may be downloaded from OSHA's Web site at www.osha.gov. The poster may also be obtained from any OSHA regional or area office, or by writing to the OSHA Publications Office, room N3101, 200 Constitution Ave. NW, Washington, D.C. 20210, phone (202) 693-1888.



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Yet Another Education Report Card, But There are Lessons to be Learned

Deborah K. Woolley ★ President

The U.S. Chamber has just released its Education Report Card, grading the nation and each of the 50 states on their educational effectiveness. While there seems to be a plethora of education report cards – each drawing its own unique analysis and conclusions, I find myself looking at them and wondering just where we really are.

There is no doubt that educational achievement presents challenges in Tennessee. Our students score below the national average on a variety of tests, our graduation rates make us look down in shame. The Governor, the Republicans and the Democrats have all put education improvement at the top of their agenda.... and, you, the employers of the state, tell us every year that your greatest challenge is in hiring and retaining a qualified, educated workforce.

So, what can we take away from the U.S. Chamber's study? First and foremost is the realization that Tennessee does not score well overall. Second is the fact that, when compared to other states in our region, we are not a leader. Third is that there is a lot of opportunity for improvement.

The U.S. Chamber, in doing the study, recognized that in the 21st Century, we as a nation face unprecedented economic and social challenges, ranging from the forces of global competition to the impending retirement of 77 million baby boomers. Succeeding in this new era will require our children to be prepared for the intellectual demands of the modern workplace and a far more complex society.

It has been nearly a quarter century since the seminal report *A Nation at Risk* was issued in 1983. Throughout that period, education spending has steadily increased and rafts of well-intentioned school reforms have come and gone. But student achievement has remained stagnant, and the K-12 schools have stayed remarkably unchanged – preserving the routines, culture, and operations of an obsolete 1930s manufacturing plant.

Our educational shortcomings are stark indeed; on a national level, most 4th and 8th graders are not proficient in either reading or math. Only about two-thirds of all 9th graders graduate from high school within four years. And those students who do receive diplomas are too often unprepared for college or the modern workplace.

Despite such grim data, the business community has been willing to leave education to the politicians and the educators – standing aside and contenting itself with offers of money, support, and goodwill. But each passing year makes it clear that more, much more, is needed. America's dynamic, immensely productive private sector is the envy of the world. Are there ways in which business expertise, dynamism, accountability, and problem solving could improve our schools? What would a business plan for reform include?

With these questions in mind, last year the U.S. Chamber of Commerce launched an effort to dig deeper into the nation's educational effectiveness. It began with the premise that national statistics mask tremendous variations in educational outcomes and delivery from state to state. Because it is the states that are ultimately responsible for the quality of schooling, the Chamber decided to grade all 50 states and Washington, D.C., on their K-12 school systems in order to identify both leaders and laggards in the tough business of school performance.



The Tennessee Chamber Board of Directors has taken the following positions on pending legislation.

Bill No.	Sponsor	Synopsis	Position
SB 1139 HB 1241	Bunch Kelsey	Creates a formula which uses revenue projections and appropriation to trigger property tax refunds	OPPOSE
SB 1050 HB 1629	Finney, L. Pitts	Increases income levels and property value levels that trigger elderly tax relief	MONITOR
SB 70 HB 115	Jackson Shepard	Decreases sales tax rate on food from 6% to 3% and provides for increased cigarette taxes to offset the loss	MONITOR
SB 62 HB 10	Beavers Johnson	Reduces food sales tax by 0.5% each year until no state sales tax is levied on food in 2018 while maintaining, maintains local option sales tax on food.	MONITOR
SB 21 HB 1250	Jackson Odom	Creates a ban on use of chlorine as a disinfection agent by waterworks or public sewerage systems; all existing use must be phased out in three 3 years.	OPPOSE
SB 604 HB 1805	Woodson Buck	Authorizes TDEC commissioner to issue stop work orders for activities that violate the Water Quality Control Act.	OPPOSE
SB 2257 HB 2310	Kyle Odom	Effectively transfers legislative control of fees to the TDEC by allowing TDEC to increase maximum amounts that may be charged for certain fees. Makes numerous other changes to key environmental regulatory programs	OPPOSE
SB 2004 HB 766	Burchett Niceley	Mandates bottled water containers sold for human consumption is labeled to show whether there is added fluoride.	OPPOSE
SB 656 HB 765	Burchett Niceley	Mandates bottled water containers sold for human consumption is labeled to show whether there is added chlorine.	OPPOSE
SB 1381 HB 614	Haynes Turner	Would restrict and require special permitting for transport of certain poisonous, flammable or explosive.	OPPOSE
SB 878 BH 757	Finney, R. McDonald	Requires biomonitoring that would produce questionable or localized results, despite scientific-based biomonitoring studies by the feds.	OPPOSE
SB 1886 HB 625	Turner Jackson	Enacts state minimum wage law with triggers for annual COLA increases based on federal minimum wage inaction.	OPPOSE
SB 949 HB 65	Harper Turner, M.	Re-works the state wages laws to allow comparisons of wages, bans confidentiality of wages, requires guidelines to evaluate jobs, allows law suits, subjects employers to punitive/compensatory damages.	OPPOSE
HB 1484	Towns	Allows persons entering college to continue collecting unemployment.	OPPOSE
SB 1797 HB 2129	Southerland Fitzhugh	Clarifies the definition of repetitive injury	SUPPORT
SB 906 HB 1273	Ketron Lynn	Requires all employers to participate in the Federal Basic Employment Verification Pilot Program.	OPPOSE
SB 201 HB 424	Ketron Dubois	Requires all written driver's license examinations be given in English	OPPOSE
SB 153 HB 67	Jackson Turner, M.	Prohibits employers from banning firearms from company property if the person has a valid permit and the gun is in a locked vehicle.	OPPOSE
HB 1352 HB 596	Haynes Turner, M.	Requires that the General Assembly consent to all foreign trade agreements that impact Tennessee.	OPPOSE
SB 2255 HB 2236	Kyle Odom	Bans smoking in workplaces with certain exemptions. Creates protection for employee actions, enforces citizen complaints through injunctive relief, fines, penalties and business license revocation.	SUPPORTS with caveats



Tennessee Self-Insurers Supports Self-Insured Companies

The Tennessee Self-Insurers' Association (TNSIA) is a non-profit organization dedicated to educating employers, insurers, and service providers on workers' compensation issues.

Today's business climate is challenging, demanding and ever changing. The the association, companies pledge to work together keeping members informed of current workers' compensation issues, including information regarding legislative actions and judicial decisions.

Members are not only self-insured employers, but also insured employers with high deductibles and with many service providers who help these employers. We encourage information sharing that will help employers reduce their workers' compensation costs and prevent injuries and accidents. Dues are only \$650 per year for self-insureds and those with high deductibles. All self-insureds and employers with high deductibles are invited to become members of this organization. Please send inquiries to Terry L. Hill at Manier & Herod, thill@manierherod.com, or visit our website at www.tnselfinsurers.org.

Education Report Card; Lessons To Be Learned

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So how did Tennessee fare:

Category	Score	Grade	Description	Ranking
Academic Achievement		D	4th and 8th graders are 7 points below national average in math.	40
Academic Achievement Low-Income/Minority		F	14% of 4th graders score above the proficient level, the national average is 19%.	40
Return on Investment		C	Achievement when compared to state education spending is middling.	21
Truth In Advertising about Student Proficiency		F	While the state said large numbers of students were proficient in math and science in 2005, smaller percentages were on NAEP tests.	48
Rigor of Standards		C	Science standards are good, but, graduation requirements not aligned with workplace and college requirements	17
Postsecondary and Workforce Readiness		F	62% of 9th graders get a high school diploma in four years; national average is 70%. Only 30% of 9th graders who graduate go to college.	46
21 Century Teaching Force		B	Incoming teachers tested on basic skills; requires high school teachers pass subject knowledge tests. Allows alternative routes for teachers.	36
Flexibility in Management & Policy		C	74% of principals report major degree of influence over how money is spent but there is no virtual school	41
Data Quality		B	Identifier system matches teachers and students to gauge effectiveness	21

The study also provides maps that allow one to easily compare Tennessee against the other Southeastern states.

While I am sure that researchers and educators can and will debate the merits of this study, I find it, like many others, pointing to challenges we face and deficiencies we need to address. What fascinates me about this study is that, right or wrong, it places a real emphasis on coupling a focus on academic outcomes with attention to key business metrics: innovation, flexibility, management, and fiscal prudence. The Chamber and its partners who conducted the study firmly believe that the traits that have long made the American private sector an engine of global prosperity – its dynamism, creativity, and relentless focus on efficiency and results – are essential to tapping the potential of our educators and schools. It was that understanding that informed and shaped this education study.

The study can be accessed at
<http://www.uschamber.com/icw/reportcard/default>



Dependent Family Members Living Outside U.S. Entitled to Certain Workers' Compensation Death Benefits

Terry L. Hill, Esquire ★ Manier & Herod

The Tennessee Supreme Court recently decided a workers' compensation case that is both favorable to illegal workers, and increases employer liability for workers' compensation death benefits to employees who support family members outside the U.S.

In October of 2002, an employee of a Nashville construction company fell to his death while on the job. He was a Mexican national who sent money home to his parents in Veracruz, Mexico, from his earnings. His parents sought workers' compensation death benefits through an attorney appointed by the Mexican Consulate.

The employee's parents, Albino Diaz and Juana Pedraza, received funds monthly, wire-transferred by their son in Nashville, and the money covered the majority of the family's expenses. Mr. Diaz was 74 years old, and worked sporadically as a farm hand and gas company employee, while Ms. Pedraza did not work and maintained the home. After their son died, they amassed considerable debt without the benefit of their son's contributions.

The trial court determined that Mr. Diaz and Mrs. Pedraza were wholly supported by their son's income to maintain their household, and therefore qualified as "actual dependents" under the Workers' Compensation Act. This entitled them to 35% of their son's average weekly wage under Tenn. Code Ann. § 50-6-210(c) and (e)(6). The employer appealed the decision, and the

Tennessee Supreme Court granted review to clarify the dependent status of non-resident foreign nationals.

The Supreme Court determined that non-resident foreign nationals can be "dependents" under the statute. The Court reasoned that the Workers' Compensation Act specifically provides a process for "alien dependents" to access the judicial system, and the language of the statute itself is clear in how dependents are classified and compensated.

However, upon consideration of Mr. Diaz's and Mrs. Pedraza's testimony, the Supreme Court disagreed with the trial judge, and determined that they were "partial dependents" because Mr. Diaz worked and earned income, however modest, to support his family at the time of his son's death and immediately prior thereto. "Partial dependents" are eligible for proportional benefits conditioned on the amount of family income they derive from the deceased employee. The Court concluded that foreign national dependents can be either actual or partial dependents. The Court also remanded the case back to the trial judge to formulate a pro ration calculation to determine the amount of benefits Mr. Diaz and Mrs. Pedraza should receive.

Terry Hill is a partner with Manier & Herod and can be reached at (615)742-9310 or at THill@ManierHerod.com

Don't miss your chance to **SAVE!**

The 2007 Compensation Data survey questionnaire is now available. Don't miss your opportunity to receive Compensation Data – Kentucky/Tennessee, your complete source for compensation information, for the low participant rate of \$349. That's a \$500 savings off the non-participant price!

Compensation Data – Kentucky/Tennessee provides complete data on benefits, pay practices, and salaries broken down by geography, industry and company size, so you can see how your pay and benefit packages compare to other organizations. You'll receive:

- Base pay and total compensation on more than 530 job titles
- Positions ranging from entry level to top executives
- Breakouts by industry, company size and local region within the state
- Multiple-state data for all management & key professional positions
- Benefits information covering health, life, dental, vision, & pension plans
- And much more!

The deadline to participate is quickly approaching, so sign up today to guarantee your savings! Remember to use promo code TCCI for even more discounts. For more information, visit www.compdatasurveys.com, call Compdata Surveys at 1-800-300-9570 or email customerservice@compdatasurveys.com.



OSHA Unveils New Guidance on Preparing Workplaces for Influenza Pandemic

The Department of Labor's Occupational Safety and Health Administration (OSHA) has unveiled new workplace safety and health guidance that will help employers prepare for an influenza pandemic.

Developed in coordination with the Department of Health and Human Services (HHS), Guidance on Preparing Workplaces for an Influenza Pandemic provides general guidance for all types of workplaces, describes the differences between seasonal, avian and pandemic influenza, and presents information on the nature of a potential pandemic, how the virus is likely to spread and how exposure is likely to occur.

"In anticipation of a flu pandemic, our top priority is protecting the safety and health of America's working men and women," said Assistant Secretary of Labor for Occupational Safety and Health Edwin G. Foulke Jr. "Employers and employees should use this guidance to help identify risk levels and implement appropriate control measures to prevent illness in the workplace."

To help employers determine appropriate workplace practices and precautions, the guidance divides workplaces and work operations into four risk zones, according to the likelihood of employees' occupational exposure to pandemic influenza. Recommendations for employee protection are presented for each of the four levels of anticipated risk and include engineering controls, work practices and use of personal protective equipment such as respirators and surgical masks and their relative value in protecting employees.

The Labor Department/HHS guidance also encourages employers to prepare a plan to deal with a depleted workforce during a pandemic. In addition, the guidance includes links to helpful Web sites with additional information and a list of technical articles and resources, including a history on flu pandemics, symptoms and outcomes of various strains of the influenza, and details on the transmission of the virus.

It is important to note that workplace safety and health guidance may evolve and change over time as new information becomes available. For instance, the characteristics of the specific strain of influenza virus ultimately responsible for the pandemic may affect the way in which the disease is spread and therefore additional guidance would be tailored to that information. Up-to-date information and guidance is available to employers, employees and the general public through <http://www.pandemicflu.gov/>, the federal government's Web site for information regarding pandemic flu.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing a safe and healthful workplace for their employees. OSHA's role is to assure the safety and health of America's working men and women by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual process improvement in workplace safety and health.

Secret Ballot Elections Threatened by Congress

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What's wrong with that?

- The "Employee Free Choice Act" would eliminate more than 70 years of precedent established under the National Labor Relations Act of 1935.
- The bill would take away an employee's access to a federally supervised private ballot when deciding whether to join a union. It would replace the private ballot with a "card check" system that allows a union to organize if a majority of employees simply sign a card. Under this system, employees' signatures are made public to their employer, union organizers and co-workers.
- When a union is attempting to organize a workplace, workers sometimes face intimidation and pressure about how they should vote. The only way to guarantee worker protection is through the continued use of a federally supervised secret ballot so that personal decisions about joining a union remain private.
- The NLRB already has strict procedures to ensure fair private ballot elections, free of employer or union coercion. An NLRB agent is present and oversees the entire voting process and ensures that neither the employer nor the union can determine how an individual employee votes.
- Current NLRB procedures lead to swift and fair elections. Most elections are held within 56 days, and labor unions prevail approximately 55 percent of the time.
- H.R. 800 also imposes binding arbitration on first contracts for private, unionized employers. Under the bill, if you and your unionized workforce cannot come to terms on a collective bargaining agreement within 90 days, the dispute will be referred to a federal mediator, who has 30 days to settle the dispute. If the mediator cannot secure an agreement from the union and management, the federal government would set terms and conditions on your company and workforce for the next two years – with no opportunity for you or the union to appeal.
- It would expose more small businesses to union campaigns. Of the 2649 union representation elections conducted by the NLRB in 2005, more than 20 percent involved bargaining units of fewer than 10 employees and a full 70 percent involved bargaining units of fewer than 50 employees. The card check bill would make union organizing cheaper and easier than ever before, allowing unions to target even smaller companies.

The U.S. Senate will consider the bill next. Please contact Sens. Lamar Alexander and Bob Corker and ask them to vote to protect an employee's right to a secret ballot.



Air Pollution Enforcement Process

Barry Stephens ★ Tennessee Air Pollution Control Division

The Tennessee Division of Air Pollution Control strives to have a fair and consistent enforcement process. As the regulations and regulatory climate change, new opportunities for improvements present themselves for consideration.

One such change pertains to “excursions.” To ensure equitable standards across all source categories (Title 5, Conditional Major and True Minor), the Division has extended the use of “excursions” from applying only to Title 5 sources to applying to Conditional Major and True Minor sources as well. As defined in Division regulation 1200-3-9-.02(11)(b)31., an “excursion” is a departure from an indicator range established for monitoring, consistent with any averaging period specified for averaging the results of the monitoring. A common example of an “excursion” is reporting pressure drop readings that fall below the minimum value required by permit condition.

To ensure that all pertinent information is available in evaluating the need for enforcement, the Division is now including the following language in all Notices of Violation.

Companies are being presented with an opportunity to show cause why additional enforcement action should not be taken. The noncompliance described in this Notice of Violation will be evaluated to determine if additional enforcement action is necessary. If you have any information that proves the allegation of noncompliance is unwarranted, or if you have information that documents mitigating circumstances relative to the noncompliance, you may submit that information in writing to the Technical Secretary, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1531. Your written response must be submitted within 20 days of the receipt of this Notice of Violation.

The Division will acknowledge your additional information prior to finalizing any enforcement action. If the Division determines that a civil penalty, damages assessment or corrective action schedule is needed,

a Technical Secretary’s Order will be issued. Technical inquires surrounding this allegation of noncompliance should be directed to Lacey Hardin at (615) 532-0545 and questions concerning the enforcement process should be directed to Tammy Medlen at (615) 532-0531.

A company that wishes to take advantage of this opportunity is required to submit the additional information within twenty days of receipt of the Notice of Violation. This deadline is consistent with the restrictions in Division regulation 1200-3-20-.06(2).

Upon receipt of a facility’s “show cause” information, the Technical Secretary will review the information and make a final determination regarding further action on the Notice of Violation. Each determination will result in a response letter to the facility. If the Technical Secretary determines that

the additional information nullifies the Notice of Violation, the letter will notify the facility that the Notice of Violation will be retracted. However, if the Technical Secretary determines that the Notice of Violation is valid, further enforcement action will be taken. If further action is to be taken, the specifics of that action would be detailed in a subsequent letter or Technical Secretary’s Order. Enforcement actions can range from no further action on a Notice of Violation due to significant mitigating circumstances to the assessment of a civil penalty and/or compliance schedule. In all cases the additional information will be considered prior to final enforcement action.

Barry Stephens is director of the Tennessee Air Pollution Control Division at the Tennessee Department of Environment and Conservation.

Bradley Jackson Joins Tennessee Chamber As Governmental Relations Vice President

Bradley Jackson has joined the Tennessee Chamber of Commerce & Industry as vice president of Governmental Relations.

Formerly an assistant to Gov. Phil Bredesen, Jackson had previously worked as a legislative liaison to the Tennessee Department of Financial Institutions and for the House Finance Ways and Means Committee.

“Bradley brings a great deal of experience to our governmental relations program,” said Deb Woolley, president of the Tennessee Chamber. “He has knowledge of the system, a career of contacts and the experience of working on projects for the Governor and state agencies. We are fortunate to have him join us.”

The Lawrence County native is a 1999 graduate of the University of Tennessee, Knoxville.

Tennessee Chamber of Commerce & Industry

Upcoming Seminars and Programs

DATE	SEMINAR	LOCATION
March 15, 2007	Maintenance Related TOSHA Compliance	Chattanooga
March 22, 2007	Complying with Air Quality Regulations	Nashville
March 22, 2007	Basic Safety	Dickson
March 27, 2007	Basic Safety	Jackson
March 29, 2007	Basic Safety	Johnson City
April 3, 2007	Basic Safety	Cleveland
April 5, 2007	Basic Safety	Clarksville
April 12-13, 2007	10-Hour OSHA General Industry Course	Nashville
April 17, 2007	Forklift Safety	Nashville
April 19-20, 2007	10-Hour OSHA General Industry Course	Chattanooga
April 24, 2007	Safety Programs	Knoxville
April 25, 2007	TOSHA 101	Kingsport
April 26, 2007	Forklift Safety	Kingsport
May 10, 2007	Safety Programs	Nashville
May 22-25, 2007	30-Hour OSHA General Industry Course	Dickson
June 5, 2007	TOSHA Requirements for Monitoring, Evaluation & Inspection	Jackson
June 7, 2007	TOSHA Requirements for Monitoring, Evaluation & Inspection	Dickson
June 13, 2007	TOSHA Requirements for Monitoring, Evaluation & Inspection	Knoxville
June 19, 2007	TOSHA 101	Jackson
June 21, 2007	TOSHA 101	Nashville



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