

Chamber Files New Brief in Incentives Battle

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On September 27, 2005, the United States Supreme Court granted permission to DaimlerChrysler to argue its appeal of a Sixth Circuit ruling that effectively calls into question the constitutionality of many tax credits and incentives routinely used by states to attract investment in new plants and equipment. The Sixth Circuit Court of Appeals has jurisdiction over Tennessee, Kentucky, Ohio and Michigan, and its ruling in *Cuno v. DaimlerChrysler, Inc.*, has significant implications for companies currently operating in those states, as well as companies considering expansion in, or relocation of their businesses to, those states. Oral argument before the Court is March 1, 2006.

The Tennessee Chamber of Commerce & Industry, the state chambers of Kentucky, Michigan and Ohio, along with the Toledo, Ohio Area Chamber and the Detroit Regional Chamber have supported DaimlerChrysler with “friend of the court” briefs unsuccessfully urging the Court of Appeals to reconsider its decision, successfully urging the Supreme Court to review the case and, most recently, urging the Supreme Court to reverse. The Tennessee Chamber’s most recent brief was filed on December 5, 2005. In addition to the other state and municipal Chambers, the U.S. Chamber of Commerce, the nation’s largest business organization, signed on to the Tennessee Chamber’s brief.

In *Cuno v. DaimlerChrysler, Inc.*, a group of businesses challenged the incentive package offered by the State of Ohio to DaimlerChrysler in connection with its construction of a \$1.2 billion automotive manufacturing facility which provided several thousand jobs in the Toledo area. The Sixth Circuit Court of Appeals invalidated Ohio’s credit for in-state purchases of machinery—a credit for a percentage of “the excess of the cost of the new manufacturing machinery and equipment” purchased for Ohio manufacturing plants. The Sixth Circuit opined that the Ohio tax credit violated the Commerce Clause of the U.S. Constitution because it discriminated against interstate commerce.

In its most recent friend of the court brief, the Chamber made three arguments. First, relying on its unique understanding of the economic conditions faced by Tennessee businesses, it pointed out that incentives are not simply used by states, as opponents have suggested, to take business from other states, but are rather used to compete with other nations for the global pool of business investment. Second, the Chamber observed that the Supreme Court’s existing rulings have long permitted other, analogous business incentives. Third, the Chamber emphasized that Congress, not the Courts, is the branch of government best equipped to determine whether a national business incentives policy is needed or even preferable.

While the Sixth Circuit stopped short of declaring all tax incentives unconstitutional, its decision in *Cuno*, if permitted to stand, will call into question the constitutionality of numerous credits for jobs or investments which in many instances have figured heavily in corporate re-location and expansion decisions. Businesses relying on those incentives may find them challenged, as in *Cuno*, by competitors, or by departments of revenue unwilling to provide credits under statutes they deem unconstitutional. Either way, Tennessee businesses could potentially be deprived of the benefits provided by many longstanding incentive programs if the *Cuno* decision is not successfully challenged.

By granting DaimlerChrysler’s petition, the Court has taken the steps necessary to scrutinize and address the consequences of the Sixth Circuit’s ruling. The Court specifically instructed DaimlerChrysler to “brief and argue” the following issue, in addition to the issue it presented for review: “whether the respondents have standing to challenge Ohio’s investment tax credit.” This suggests that some on the Court share many commentators’ skepticism regarding the standing of a non-recipient taxpayer to challenge state tax incentives earned by another taxpayer. It is too early to determine what effect this ruling will have on progress of the legislation pending before the U.S. Senate on this issue, but it is likely that the Senate will defer any further action until the Supreme Court has issued its decision on this matter.

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Business Issues Front and Center in 2006

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Welcome to the New Year. As we start 2006, I am amazed by the fact that we are now more than halfway through the first decade of the 21st Century. The 1990s and Y2K (remember that?) have become distant memories, and our new millennium is defined by event about which we never dreamed—the 9-11 terrorist attacks, the wars in Afghanistan and Iraq, high energy costs, natural disasters such as Katrina, the tsunami and earthquakes.

While these global issues define the world in which we live and impact our national policy, we cannot lose sight of the fact that there are a number of policy issues in our state that define your ability to build products, deliver services, profit and create jobs. We asked you to help us define those issues and you responded. That has guided us as we establish our 2006 *Business Agenda*, building on the issues you told us last year were important to you.

The 2006 General Assembly is the second year of a two-year session. Legislation from last year is still alive and new legislation can be introduced this year. The session will start on a most unusual note...a special session devoted to ethics and campaign finance. It will not only fundamentally change how governmental business is conducted, it will set a tone and mood for the remainder of the legislative session. While the session is an unknown quantity, the issues you are concerned about are not.

We asked you about seven issue areas and you rated all of them above 50 percent in importance. We also asked you if addressing these issues would bring value to your company, and you said, resoundingly, that it would.

Look at a quick break down of what we heard from you. Then I invite you to study the 2006 *Business Agenda* (beginning on page 3) and look at the initiatives that will begin addressing your issues.

Issue	Importance	Value To Your Company
Government Regulation	85%	78%
Health Care Costs	84%	79%
Education/Workforce Preparation	76%	66%
Legal Reform	75%	63%
Ethics Reform	71%	42%
Workers' Comp Initiatives	68%	71%
Emergency Readiness	54%	42%

When we delve a little deeper, you helped us define the priorities even more. It is obvious that you feel the impact of government regulation and it hurts. That is not surprising. As one of the most regulated countries in the world, those government-imposed costs impact the creation of jobs, the price of product and the growth of our industries. The Chamber supported last year, and will continue to work hard for this year, a regulatory flexibility act that will make the cost burden of compliance more affordable for small business.

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BUSINESS AGENDA

The 2006 *Business Agenda* represents the best that our state's business and industry community have to offer in the way of focus points for this year. A collective effort by business leaders across the state—through grassroots meetings, local chamber input, surveys and committee involvement—the *Agenda* identifies those policy issues which are important to our state's business climate.

The *Business Agenda* is an effort by our state's business leaders to help craft public policy by doing what they do best: identify challenges and propose solutions. The issues outlined in the *Agenda* represent the policy areas that can impact the ability of our companies to be competitive and create jobs. The *Agenda* is our effort to create a business climate that enables our state's economy to grow and our citizens to prosper.

We ask for your support. You can reach us at 615-256-5141 or at www.tnchamber.org.

Joe Internicola, Chair, Board of Directors

Affordable and Adequate Health Care *A Statement of Support*

Objective

To preserve and enhance for Tennessee employers and their employees a health care insurance climate in which health care insurance options are available. In addition, to ensure that all proposed health care mandates continue to be fairly evaluated using the Chamber-supported law enacted in 2004 intended to ensure that mandate decisions are based on sound statistical evidence. The Chamber will monitor all future developments in the TennCare reform process.

In the Chamber's 2006 Issues Survey, Chamber members ranked the need to address health care issues, such as continuing the 2005 reforms of TennCare, more insurance options for employers and employee wellness programs, as the Chamber's top priority for 2006.

Background

Health care cost containment is an issue with significant competitive implications for Tennessee businesses and industries. The cost of health insurance is continuing to rise, according to 2005 data from the non-partisan National Coalition on Health Care. Consider these projections:

- By 2006, health insurance premiums will rise to an average of more than \$14,500 for family coverage.
- The premiums for employer-based health insurance rose by 11.2% in 2004, the fourth consecutive year of double-digit increases. All types of health plans, including health maintenance organizations, preferred provider organizations and point-of-service plans (POS) demonstrated double-digit increases.
- The annual premium that a health insurer charges an employer for a health plan covering a family of four averaged \$9,950, or \$829 a month, in 2004. Workers contributed \$2,661 or 10% more than they spent in 2003. For single coverage, workers contributed an average of \$558 toward the \$3,695 annual premium.
- According to the Kaiser Family Foundation and the Health Research and Educational Trust, premiums for employee-sponsored health insurance in the U.S. have been rising five times faster on average than workers' earnings since 2000.

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The problem is particularly acute for small business. Due to rising premiums, many small employers cannot afford to offer health insurance. The percentage of workers covered by employer-sponsored plans has dropped significantly from 65% in 2001 to 61% in 2004. Companies that offer health insurance are requiring employees to contribute a larger share toward their coverage. As a result, an increasing number of Americans have opted not to take advantage of job-based health insurance because they cannot afford it. The situation is further compounded in Tennessee where more than 30 health care mandates are law.

Situation

During the past several years, a great deal of policy attention has been focused on increasing the quality of health and on the increase in the uninsured population. A number of incremental steps have been advanced or adopted in an attempt to deal with these issues.

At the same time, cost has received less attention because it was assumed by many that managed care plans had successfully addressed that issue. Recent trends in health insurance premiums and health care costs overall, however, demonstrate that managed care's ability alone to force cost savings has been maximized and that now policy issues must be examined for their impact on rising costs.

Normal reactions—by large and small businesses—to rising costs have included raising prices, cutting or eliminating health benefits or shifting costs from employers to employees. Even efforts where businesses have banded together to purchase health care insurance more effectively are showing double digit increases in costs.

Traditional factors that have driven up costs in the past continue to do so. They include new medical technology, new drug therapies, overuse and misuse of medical services, oversupply of hospital beds, high administrative costs and cost shifting among payers, and in Tennessee, the use of prescription drugs that is twice the national average.

The federal government is the major governmental entity in determining health care coverage, insurance regulations and other factors impacting its delivery. State policy impact on health care insurance is often directed by or limited by federal law. There are, however, key actions a state can take to ensure that it is not contributing to the cycle of increasing health care costs.

Tennessee Chamber Position

The Chamber believes that health care costs must be addressed to guarantee that health care insurance is an option for working Tennesseans. The Chamber is committed to the preservation of a system in which an employer can negotiate affordable and adequate health care insurance benefits for employees free from governmental mandates. The Chamber supports:

- Protecting employers and employer-sponsored health care programs against direct or indirect cost shifting as a result of the reforms to the TennCare (Medicaid) program.
- The successful implementation of the cost-benefit analysis law designed to measure the fiscal impact of mandates on existing health care costs and to measure the overall, long-term benefit.
- Preserving managed care systems as an option for employers and employees, including the right of health care plan providers to negotiate fees, provide volume discounts to their customers, and to preserve provider and pharmacy networks and their efficiencies free from cost-increasing mandates.
- Encourage the promotion of worksite wellness programs that are data driven and that can control medical plan costs through the management of disease, behavior and other health conditions. A wellness program can make a significant contribution to an employer's health care costs, and provide the company a return on its investment, if the program is effectively administered and utilized.



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Educating and Training Tomorrow's Workforce *A Statement of Support*

Objective

To ensure that students and adults receive the education needed to offer them an opportunity to be successful in life and in the workplace, thereby providing employers with a productive workforce, providing a better quality of life for Tennesseans and a stronger economic future for our state.

In the 2006 Issues Survey, Chamber members ranked education issues as the Chamber's second-highest priority for 2006. Specifically, members support: 1) increased accountability on educators for outcomes; 2) more challenging curriculums; 3) a greater emphasis on higher education; and, 4) a greater emphasis on vocational and technical education.

Background

The business community has found that many students coming out of Tennessee schools are not ready to meet the rigorous demands of today's workplaces. An unprepared workforce impacts the ability of the State of Tennessee to attract new businesses and to encourage existing ones to expand while hampering the economic growth of current employers. It impacts the ability of Tennesseans to find good jobs that support a good quality of life.

Situation

While Tennessee schools have shown improvement, challenges remain. Specifically, the mismatch between preparation and workforce needs continues, the skill level of many graduates does not meet workforce standards, candidates continue to lack "soft skills," such as integrity and being a team player, and the drop-out rate is steadily increasing. Students lacking a successful start in early grades fall further behind as they enter middle and high school. High school students are not challenged to take a curriculum that is challenging and relevant to the modern-day workplace.

Adults in the workplace find the continual training needs a challenge when they lack the basic skills needed to grasp the information. The needs of employers are not being met, and the dreams of students die in the harsh reality of the work place.

Higher education in Tennessee, like many other states, has realized a reduced financial commitment from government in recent years. As a result, Tennessee which lagged other states initially now is in the bottom tier in the nation in its commitment to higher education. Tennesseans must realize that higher education is an economic engine for the state, provides the education and research to support a viable economy and provides the educational resources that allow Tennesseans to succeed in many of our jobs today.

Tennessee Chamber Position

The Chamber, recognizing the need for a prepared workforce that can support economic growth and job creation, supports a cohesive effort that includes long-term investments in a future workforce by ensuring children are prepared to learn, by challenging high school students to challenge themselves with the Tennessee Scholars curriculum and by providing resources for workforce training and re-training. To accomplish this, our state's education system must remain flexible while requiring achievement and being accountable to the taxpaying citizens of the state. Specifically, the Chamber endorses the following:

- Recognizing the changing nature and technology of the workplace, ensure increased availability of training opportunities for today's workforce, recognizing that 21st Century jobs require constant upgrading of skills.
- Increased school to work programs to allow students to obtain skills necessary to earn jobs with Tennessee's employers.
- Increased partnership between the state and business to create educational programs to ensure manufacturing jobs remain within Tennessee.

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- Continued recognition of Tennessee Scholars, noting that its demanding and relevant curriculum prepares students for post high school education and the workplace.
- A continuing commitment to constant and meaningful improvement in student achievement at all levels.
- Programs to ensure that students acquire basic skills, particularly at early grades and that those skills are maintained throughout all grades.
- Support of the future expansion of the state's model pre-kindergarten program on a voluntary basis that does not mandate a new funding requirement on local governments or taxpayers.
- Increased availability and flexibility of charter schools.
- A sound system of accountability ensuring that monies invested in education are resulting in expected returns while encouraging successful educators to remain in the system.
- A commitment to increasing the value of higher education to our citizens and our companies by creating a greater awareness of its value and by ensuring a funding commitment that allows our higher education institutions to succeed in both student education and research.
- The business community needs to establish education priorities, determine key workforce needs and communicate these to local and state officials responsible for education and workforce training curriculums.

A Fair and Effective Workers' Compensation System *A Statement of Support*

Objective

To ensure that the workers' compensation reforms enacted in 2004 restore to the Tennessee workers' compensation system the integrity and fairness that both employees and employers deserve; and, further, to promote legislation that improves the definition of "injury" and "accident," and strengthens the state's existing fraud enforcement statutes. Additionally, to ensure that the reform measures of 2004 are not changed in any manner other than through necessary technical corrections following the Chamber's review.

In the 2006 Issues Survey, Chamber members ranked the need to preserve the recent workers' compensation reforms while working for further refinements to the system as the Chamber's third-highest priority for 2006.

Background

Workers' compensation insurance is thought of by some as a traditional insurance system. Instead, it is a system born of necessity and expediency for both employers and employees. Employees who suffered a work-related injury needed a system in which medical care was immediate and partial wage replacement, until they could return to work, was available. Employers had two desires. First and foremost was the desire that employees be taken care of properly and quickly, ensuring that employees could reach full recovery and return to productive work as soon as possible. Second, employers wanted a non-adversarial system that provided a degree of predictability in terms of costs and liability. Obviously the judicial tort system met neither the needs of the employer nor the employee.

Instead, a workers' compensation system evolved, where every employer with more than five employees was required by law to become insured, where the employee had the commitment of immediate medical care and partial wage replacement and the employer had the assurance of a sole remedy system. It was a true no-fault system.

Tennessee is only one of two court-based systems in the nation; in other states, workers' compensation is based in the more familiar administrative or regulatory system. For those companies or managers new to Tennessee, the court-based system—with its uncertainties, its adversarial nature, its longer delays and its inconsistencies—has been an immediate concern.

Added to the uniqueness of the court-based system has been the uniqueness of a set of "multipliers" that could be arbitrarily applied to impairment ratings, and employers in and out of the state have looked with dismay and disbelief at



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the Tennessee workers' compensation system. The results have been manifested in concerns about the system and in decisions to create new jobs elsewhere.

Situation

By 2004, Tennessee's workers' compensation system had gone awry—serving neither the employee nor the employer. With its escalating costs and inconsistent awards, both employees and employers were victims. The system had been compromised to the point that it was successfully serving only those who feed off the system and profit from it.

The Workers' Compensation Research Institute, a nonpartisan, not-for-profit research organization, in looking at Tennessee and the eight states contiguous to it, stated in 2004, "Among surrounding states, Tennessee ranked second highest, 19% above the median state. Among 20 states with 7-day waiting periods, Tennessee ranked seventh, 17% above the median state." Even more indicting is the uniqueness of the Tennessee system. In a global economy where political lines are of little consequence, companies and individuals are increasingly taken aback by the Tennessee court-based workers' compensation system. Unlike any other system, its complexity and unfamiliarity breed distrust; in practice, the distrust becomes dismay.

Specifically, employers and employees had been victimized for years by inconsistencies and blatant unfairness in the areas of Permanent Partial Disability settlements, understanding of what is a compensable injury or illness, inconsistency in the application of the law to repetitive motion injuries and the wide inconsistencies delivered by a court-based system.

The Chamber recognized the crisis situation that existed in workers' compensation and was successful in its coalition-based efforts to pass a meaningful reform bill during the 2004 legislative session. The reforms are now providing needed relief for employers and employees, and are restoring a degree of fairness to both employees and employers. Over one-half of the respondents to the 2006 Issues Survey said that the 2004 reforms have benefited their company.

Tennessee Chamber Position

The Chamber will resist all efforts in 2006 to undo these reforms to allow the system, and Tennessee's employers and employees with it, the time to realize the positive effects of a fully implemented law. Tennessee ultimately must end its reliance on court administration of the system and join the 48 other states using a commission-based system. Specifically for 2006, the Chamber will focus on several areas that need to be addressed:

- Determine the need for clear definitions of injuries and illnesses which are compensable under the workers' compensation system, eliminating non-work-related claims.
- Strengthen Tennessee's fraud statutes; or, new rules calling attention to the problem of systemic fraud and encouraging the investigation of acts of fraud leading to the prosecution of anyone who is intentionally attempting to defraud the system.
- The Chamber should oppose attempts to liberalize eligibility for state workers' compensation benefits for former federal government workers who have already received federal compensation for workplace injuries and illnesses.

Comprehensive and Common Sense Legal Reform

A Statement of Support

Objective

To advocate for a fair, efficient and uniform civil justice system; to support efforts aimed at enacting comprehensive legislation to limit non-economic damages for medical malpractice, product liability, and frivolous lawsuits.

Background

The U.S. tort system has come under heavy fire in recent years for being too costly and inefficient. Studies

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indicate that as a result of greater awards in tort cases, individuals must pay higher insurance costs which lead to more expensive goods and services. Today's climate of excessive and baseless lawsuits discourages risk-taking and hampers the development and introduction of new products, services and technologies.

According to the Tillinghaust-Towers Perrin study, U.S. Tort Costs: 2004 Update, (New York, New York, 2005):

- The cost of the U.S. tort system for 2003 was \$246 billion or \$845 per citizen or \$3,380 for a family of four. U.S. tort costs increased 35.4% from 2000 to 2003.
- The growth of U.S. tort costs have exceeded the Gross Domestic Product by 2-3% points in the past 50 years.
- The U.S. tort system is inefficient; it returns less than 50 cents on the dollar and less than 22 cents for actual economic loss to claimants.

States have begun to enact reform measures. In 2002, Mississippi—a state long known for lucrative class action and mass tort settlements—passed legislation that included venue reform, limits on non-economic damage awards to \$500,000 for the medical industry and \$1 million for general businesses. Mississippi also capped punitive damages on a sliding scale based on the net worth of the defendant.

In addition, in a 2004 legislative special session, Mississippi passed legislation that included reforms relating to: product liability; joint and several liability; jury service; medical liability; and, non-economic damages. Improvements in the state's economy and healthcare system already are being demonstrated since the law took effect on September 1, 2004.

Businesses have made new investments in the state starting in 2004. These include: a \$35 million investment by Textron, a \$3.5 million investment by Winchester Ammunition, a \$1.8 billion expansion by Fed Ex Ground, and, a \$20 million investment by Kingsford Charcoal (*The Clarion-Ledger, February 27, 2005*).

Situation

Tennessee is ripe for legal reform. All of the states surrounding Tennessee are now considering, or have already enacted, reform measures. The national trends of excessive awards, high malpractice insurance costs, “defensive” medicine, and business raising prices to pay to compensate for increased insurance premiums all are present today in Tennessee. By enacting serious legal reform measures, Tennessee will provide a fair, efficient and uniform civil justice system—lowering the cost of business and insurance while making the state more attractive to economic development and medical professionals.

Tennessee Chamber Position

The Chamber will support comprehensive efforts in 2006 to enact meaningful legal reform measures. Comprehensive reform will include aspects of medical malpractice liability, limits on product liability claims, and limits on putative and non-economic damages.

A Stable and Strong Tax Structure

A Statement of Support

Objective

To identify and address tax policy changes that will facilitate the maintenance of a balanced, fair and stable tax system in Tennessee.



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Background

Tennessee's state budget, unavoidably, rises and falls with economic times. While government policy can not control the economy, it can certainly impact the ability to weather economic cycles. One of the key components of Tennessee's pro-business climate has been the recognition that all citizens—corporate and individual—should bear the responsibility of paying the costs of government and its services. That burden, however, must be fair and equitable, recognizing that business and industry are job creators that fuel the economy and its growth. To unfairly burden the businesses and industries of the state with a non-competitive tax structure is to stifle future growth and the creation of wealth for citizens.

In the same way that government needs stability and predictability in its revenue, citizens—both individual and corporate—need stability and predictability in their governmental services and tax liabilities.

Situation

Tennessee has weathered prolonged battles over the adoption of an individual state income tax. The failed battles for the tax fueled an active populace that is prepared to fight tax changes which may or may not be detrimental to business. As a result, Tennessee's government has struggled to weather the economic downturn with revenues from existing sources and management of expenses. As in most public policy matters, sound tax policy is a balancing act. As governments continue to search for revenues, businesses and industries are increasingly at risk for new taxes or fees or tax shifts from individual taxpayers.

Tennessee Chamber Position

The Chamber must be a catalyst and a leader in ensuring a stable and predictable tax system that ensures government service, accountability and strong business growth and retention. With such a system, the opportunity for increased trust and credibility between citizens and their governments should exist. The Chamber supports these policies to accomplish the following goals:

Accountability

- Require understandable, ongoing reporting from the State of Tennessee, using common methods that allow fair and understandable comparisons to other states.
- Cap spending growth in state funds at the growth in the state's economy and not allow simple legislative override, but instead require reserving or rebating funds above that rate.
- Require cost/benefit analysis of all spending, recognizing some expenditures are mandated.
- Use funds for their intended purpose, and enforce policies protecting those funds.
- Require stability and consistency in tax policy, prohibiting retroactive taxation.

Adequacy

- To ensure competitiveness, and benchmark all state performance, not just spending, at or above the Southeastern states' average.
- Fund reasonable reserves for current, future and unforeseen financial needs, specifically the statutorily required 5% of the state's General Fund.

Balance

- Ensure that the tax burden on Tennessee's business community is competitive in both the national and southeastern comparisons.
- Ensure that all business taxpayers are treated equally and fairly, regardless of sector, size or location.
- Recognize that a tax burden on the state's job creators includes state and local taxes and review all state policy in light of the tax burden it could create by a local political subdivision or district.

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- Ensure that the tax system is balanced regardless of economic cycles by encompassing a proper mix and array of tax types that are applicable to all taxpayers, corporate and individual, to create predictability and stability.

Promotion of Growth and Economic Security

- Protect and retain existing businesses and industries.
- Ensure that the Tennessee tax climate, including incentives, proactively encourages job creation and capital investment by new and existing industries.
- Retain the use of a statutory depreciation table for personal property tax.
- Ensure that any changes or modifications in the Streamlined Sales Tax system adopted in 2003 do not deviate from the original intent of the legislation, which was to create conformity, not raise revenues.
- The state needs to address the increasing dependency on sales tax, recognizing its impact on economic growth.

Stability, Predictability and Reliability

- Protect and restore the state's credit rating.
- Ensure the reasonable prediction of revenues and mirror other economic indicators.
- Reflect a measurable relationship to the economy.
- Need to address increasing dependency on sales tax, recognizing impact on economic growth.
- PILOT (Payment In Lieu of Taxes) programs are beneficial to businesses and industries in Tennessee and must be protected.

Positive Employee Relations and Business Prosperity *A Statement of Support*

Objective

To preserve and enhance for Tennessee employers and their employees a workplace climate that provides an opportunity for professional and economic growth for employees while ensuring that competitive and productive companies can continue to prosper while offering economic stability and job creation.

In the 2006 Issues Survey, Chamber members ranked the importance of supporting efforts to reduce government interference and the burden of regulation, and the need to control regulatory costs as their fourth-highest priority.

Background

The most valuable asset any employer has, regardless of size, is its employees. Employees are the key to productivity, quality, safety and profitability—core components of a company's ability to create jobs and job stability.

Situation

The number of state, federal and even local laws governing the workplace continues to increase at an exponential rate. New court decisions, regulations and statutes all impact the way an employer manages his or her workplace. Many are good laws that are instrumental in creating a healthy, safe and fair workplace. Others, however, place a cost and regulatory burden on a company that is not counterbalanced by benefit to those they intend to help.

While most laws governing the workplace are federal, the state does maintain a body of employment law to meet the needs of Tennessee employers and employees. In some instances, local governments have also attempted to venture into the world of employment law. Increasingly, however, state laws are being proposed that exceed or differ from federal laws, doubling the compliance burden and, in many cases, creating a confusing situation for employees and employers.



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Because so many businesses have multi-state operations, it is critical to the state's economic growth to have a minimum number of employment law differences from the states with which Tennessee competes. Adding to the state body of employment law creates administrative burdens as well as increased costs for Tennessee employers.

Tennessee Chamber Position

The Chamber believes that governments should respect the relationship between employer and employee, refusing to enact laws and regulations that will interfere with management of the workplace or create adversarial relationships. Additionally, laws and regulations should be clearly worded to avoid re-interpretation by regulatory agencies or the judicial branch which could circumvent the actual intent of the legislature. To that end, the Chamber will work to:

- Preserve the right-to-work law, recognizing that Tennessee employees have the right to work free from harassment or intimidation and that each has the right and ability to decide freely whether he or she wants to join or not join a labor union, knowing that the decision has no impact on the right to be employed.
- Ensure that Tennessee does not adopt a policy of enforceable public sector union contracts.
- Preserve employees' rights to select union representation by secret ballot election.
- Preserve the Tennessee employment-at-will doctrine, recognizing that it provides economic flexibility for both employees and employers.
- Maintain the integrity of the state's unemployment compensation system, opposing the expansion of payment of benefits for any purpose other than providing supplements to employees who qualify because they have lost employment through no fault of their own, recognizing that it was designed specifically to provide resources for those individuals seeking a new job.
- An adequate trust fund balance must be maintained to ensure adequate funds to provide benefits and to provide stability in employers' unemployment taxes.
- Oppose legislation that would impose new fines, penalties, or compliance on employers where existing state or federal law provides adequate safeguards, punitive or corrective action in cases where the employer is found to be at fault.
- Support the continuation of the state plan for Occupational Safety and Health Administration, recognizing that Tennessee can more effectively administer the program directly for the benefit of all Tennesseans.
- Support efforts to enact regulatory relief and flexibility legislation that would require state agencies to consider the impact of proposed regulations on business (such as the model legislation proposed by the Office of Advocacy of the U.S. Small Business Administration).
- Support programs that encourage the development of workplace skills such as dependability, loyalty, communication, teamwork and engagement.
- The safety and well-being of an employee while on the job site is paramount to an employer. In the event of a natural or man-made disaster, employers must be confident that they are ready, and that the local and state governments are also prepared to respond to a crisis.
- Support the development of services for companies preparing for or engaged in negotiations or disputes with organized labor.

Environmental Stewardship *A Statement of Support*

Objective

Environmental stewardship and economic growth must be viewed as complementary, providing the basic elements for a desirable quality of life for Tennessee citizens. Tennesseans must work for a balance between conservation of our environment and maintaining a climate that allows companies—large and small—to be competitive and successful and to create jobs.

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Background

Environmental regulation—fueled by three decades of environmental activism—creates a significant expense to American business and industry. As a result, environmental considerations have an increasingly greater impact on business decisions. In an increasingly global marketplace where the elasticity between price and cost is diminishing, regulatory costs become a factor in the profit and success of a company. Too often, the costs of American regulations place American companies at a global disadvantage, forcing companies to delay expansions in the United States or to choose to move overseas.

Such disadvantage was documented in the report “How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness” (2003, Prepared for the Manufacturing Institute of the National Association of Manufacturers by Jeremy A. Leonard, Economic Consultant, Manufacturers Alliance/MAPI). The report indicates that “external overhead costs add at least 22.4% to unit labor costs of U.S. manufacturers (nearly \$5 per hour worked) relative to major foreign competitors.” That burden includes an increase of an estimated 4.25% for regulatory compliance cost.

The report also indicated that “(O)n a trade-weighted basis, the burden of pollution abatement expenditures alone reduces U.S. cost competitiveness by at least 3.5% points. It bears repeating that pollution abatement is the only regulatory area where reliable comparative data exists; by excluding other costly areas of regulation, it substantially understates the total burden to U.S. manufacturers.” Clearly, considering the regulatory compliance costs and the pollution abatement expenditures, U.S. manufacturers operate with a significant cost disadvantage.

Situation

The business and industry community remains the target of many environmental activists—often with the goal of putting companies out of business through increased regulation. Environmental extremism—even at the expense of jobs for our state’s citizens—is often the mission. Government mandates that are often arbitrarily imposed and cost prohibitive do not always result in the protections they intend, but they render companies non-competitive and cause a loss in jobs. Environmental policy must be driven by sound science, not emotion, and the fact that most businesses strive constantly to balance and provide environmental leadership and economic success must be recognized.

The Tennessee Department of Environment and Conservation, as the state’s environmental agency, should enforce regulations and actively encourage compliance as a means of promoting and conserving the environment. Conservation of the environment is in the interest of all Tennessee citizens, both corporate and individual, who desire a favorable quality of life. To that end, the Chamber must maintain a commitment to reasonable actions that sustain the environment and provides for appropriate restoration where such activity is warranted.

The government of Tennessee must ensure that people in all communities are protected from unreasonable risks to human health, that laws and regulations are enforced fairly and uniformly, that timely and meaningful communications are delivered to citizens when decisions affect their local environment and that policies support and encourage economic development in an environmentally responsible manner.

Tennessee Chamber Position

The Chamber must be a leader in conserving our state’s environment, retaining responsible industry, and in promoting its economic growth. The Chamber must work to see that:

- Businesses and industries are credited with their leadership roles in environmental stewardship and that they are able to identify and correct problems without being unjustly penalized.
- Environmental legislation and regulation does not unnecessarily increase the administrative burden, result in unnecessary regulations or become cost prohibitive.
- State environmental regulations are not unjustifiably more stringent than federal regulations.
- Regulations and legislation are based on current sound science and technology, not emotion.
- The cost and responsibility of ensuring the quality of the environment is borne fairly by citizens and regulated industries.



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- The environmental fees and increases must go strictly for the purposes for which they were implemented.
- Environmental regulation encourages and supports a growing economy.
- The primary role and focus of environmental regulators is proactive conservation of the environment through compliance, not prosecution.
- Environmentally responsible businesses are not held accountable—through increased regulations or costs—for the actions of environmentally irresponsible companies.
- Scientific facts used to develop regulations or new laws must be available to all parties.
- Extreme positions must not be allowed to compromise facts or result in policies that hamper job creation and growth.
- Regulatory agencies are willing and able to work cooperatively with regulated businesses and industries that are expanding to provide for timely and cost-effective issuance of necessary approvals and permits.
- Regulatory agencies are willing and able to work cooperatively with regulated businesses and industries that are expanding to provide for timely and cost-effective evaluation and cleanup of contaminated media.

Ethics Reform and the Rights of Citizens *A Statement of Support*

Objective

The Chamber supports meaningful legislation that sets standards for ethical practices, requires meaningful reporting from lobbyists and legislators and ensures that this information is easily available for public scrutiny in a timely manner. The Chamber opposes legislation that will hamper a citizen's right to interact with local, state or federal officials and engage in political action.

Background

As a result of a two-year government sting operation, current and former legislators and local government officials, as well as several private citizens were arrested on criminal charges related to exchanging legislative favors for cash. These arrests came on the heels of legislation passed during 2005 to prohibit legislators from doing consulting or lobbying related to state government.

Situation

The Chamber operates in a strategic and ethical manner. The Chamber's lobbying strategy is simple – Chamber members provide clear direction, staff gathers the facts and delivers the information to legislators in a timely manner from both Chamber staff and Chamber members. The Chamber's political action fund operates under clear guidelines established by members. Any decision to make a campaign contribution is made by Chamber members, not Chamber staff.

As of late 2005, recommendations for ethics reform propose that lobbyists be required to disclose payments they receive for lobbying activities and that employers or principals of lobbyists be required to disclose payments to lobbyists or payments in support of lobbyists—either in actual amounts or pre-determined ranges. In other words, any business, association or other group will have to either report publicly the salary of any employees who are registered lobbyists or the value of any private contracts with a person engaged in lobbying. While recommendations such as these would do nothing to ensure ethical behavior or to expose unethical behavior, they would extend the tentacles of government deep into private business contracts.

The Chamber, for example, has four staff lobbyists. If legislation embracing these recommendations were to pass, salaries of all four staff members would become public record. That begs the question, would the highest paid person be the unethical one or would it be the lowest paid person. Should a contract between a company and a lobbyist be lower than average to ensure ethical behavior—or should it be higher? In the end, such recommendations would do nothing, absolutely nothing, to ensure ethical practices.

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What they would do is discourage the involvement of businesses and trade associations in public policy. Would a company continue to invest in public policy if salaries and private contracts suddenly become public information? What will a session of the General Assembly will be like when business representatives are not present and trial lawyers, organized labor, taxpayer protection groups, environmentalists and other special interest groups claim the only seats at the table? How long would Tennessee remain a good place to do business?

Tennessee Chamber Position

The Chamber supports meaningful legislation that sets standards for ethical practices, that requires meaningful reporting from lobbyists and legislators and that ensures the information is easily available for public scrutiny in a timely manner.

The Chamber recognizes the importance of providing the citizens of our state, through strong ethics rules, the assurance that government officials and lobbyists conform to high standards. The Chamber, however, opposes any requirements that would hold certain entities accountable to a different standard by making public the private financial agreements between companies and the lobbyists who represent them. It is a government intrusion into private business that serves no public purpose.

Chamber Lobbyist Joins Retail Association

Roland Myers, the Tennessee Chamber's director of government relations, has been named president of the Tennessee Retail Association effective January 3, 2006. Roland joined the Chamber staff in 2000 after 8 years in Washington, DC as a lobbyist and Congressional staff member.

"We will miss Roland's contributions to the Chamber and its members," said Chamber President Deb Woolley. "I'm pleased, however, that such a strong and effective advocate for business issues as the Tennessee Retail Association will be represented by a former member of the Chamber's lobbying team." Roland said, "I'm looking forward to lobbying in support of pro-business issues in my new role. I expect to continue to work closely with the Chamber's members and staff." *After January 3, Roland can be contacted at the Tennessee Retail Association at 615-256-4771 or by e-mail at rmyers@tnretail.com.*

State Proposes Change in Software Tax

The Tennessee State Board of Equalization is proposing rule changes that would make application software taxable "tangible personal property" for property tax purposes. Currently, for property tax purposes software other than operating software embedded in equipment (such as DOS or Windows) is considered intangible property not subject to tax. This is a change for

taxpayers with significant applications software (e.g. SAP, Peoplesoft, Oracle, etc.) as it will mean a significant annual property tax increase if made. The change will be particularly problematic for small businesses, many of which maintain significant amounts of valuable software.

The Board will hold a hearing January 23, 2006 to formally hear public comments on these rules. The

Tennessee Chamber intends to oppose the Board's proposed change. Kelsie Jones, the Executive Director of the State Board of Equalization has also indicated that the Board would consider other rule changes in this process to clarify other areas of their rules if suggested by the public. Therefore, it is possible that other rule changes will emerge as this process continues.

For more information, contact J. Leigh Griffith, Charlie Trost or Mike Stewart of Waller Lansden Dortch & Davis at 615-244-6380.





2006 Board of Directors and Officers

Joe Internicola, plant manager of the DuPont facility in Old Hickory, has been elected chairman of the Tennessee Chamber of Commerce & Industry for 2006.

Other officers for 2006 are Crawford Gallimore, chief financial officer of Hamilton-Ryker in Martin, as Chairman-Elect, Dennis Barber, treasurer of Saturn Corporation for General Motors in Spring Hill, Treasurer; and, Christine Karbowskiak, vice president of Public Affairs for Bridgestone Americas Holding in Nashville as Immediate Past Chair.

Elected to a first term on the Board of Directors are Anthony Haynes, University of Tennessee, Knoxville; Geoff Cromer, Alcoa, Knoxville; Elaine Patterson, Olin Chemical, Charleston; Fred Contreras, Whirlpool Corp., LaVergne; Richard Holland, Packaging Corporation of America, Counce; Matt Lonergan, Boulton Cummings, Nashville; Alex Rom-Roginski, Colortech, Morristown; Bill Ozier, Bass Berry & Sims, Nashville; Tom Ballard, ORNL, Oak Ridge; and, Phil Andrews, The Boeing Company, Oak Ridge.

Elected to a second term are Ron Harr, Blue Cross Blue Shield of Tennessee, Chattanooga; Stuart Speyer, Tennsco, Dickson; Randy Kennedy, Procter & Gamble, Jackson; Brad Walthen, Buckman Laboratories, Memphis; and, Jerry Dodds, Brother International Corp., Bartlett.

Elected to the 2006 Executive Committee are Eva Lynne Disbro of McKee Foods in Collegedale as chair of the Human Resources Committee; Andy Wagner of FedEx in Memphis as chairman of the Tax Committee; Darrell Corpening of Eastman Chemical Co. in Kingsport as chairman of the Manufacturing Excellence Council; John Van Mol of Dye, Van Mol & Lawrence in Nashville as chairman of the Public Affairs Committee; Dean Jim Burton of Middle Tennessee State University in Murfreesboro as chairman of the Education Committee; and, Richard Holland of Packaging Corporation of America in Counce as chairman of the Environmental Committee.

At-large members of the Executive Committee are Tracy Woodard, Nissan North American Inc., Smyrna; Jerry Dodds, Brother International Corp., Bartlett; and, Geoff Cromer, Alcoa, Knoxville.

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Business Issues in 2006

Your responses on health care costs demonstrated once again your understanding of the issue and that the solution must emerge from national policy. But you know we can address costs at the state level, first by continuing TennCare reforms (65 percent) and second by creating a climate in which there are more health insurance options and competition, (64 percent). In the education arena, 74 percent of you told us that vocational and technical training must be the top priority while 66 percent said we need greater accountability in our educational systems—a clear sign that you want to know where your money is going, what it is buying and what the outcomes are. It is simply what we do in a business.

A comprehensive workers' compensation reform initiative passed in 2004 and is now fully implemented. You told us that we must work, at all costs, to preserve the reforms we enacted, and 81 percent of you told us that we had to address the fraud that threatens the system—and the reforms. Another area that you placed a high priority on...and which is sure to be addressed this session, is ethics reform. While you don't see it as a direct cost impact on your business, you do see it as a public policy issue that the business community must be a party to addressing. You will see a whole new policy statement in the *Business Agenda* on ethics, the need for an accountable government and then need to treat all parties fairly and responsibly.

Read the *Business Agenda* carefully, take time to talk with your legislators and let them know these issues are important to you and then plan to help us work for a better business climate this legislative session.



Tennessee Chamber of Commerce

State Officials and Legislators Headline Conference

Join your colleagues in Nashville January 9 at the Sheraton Downtown Hotel and get up-to-date on the latest legislative, political and regulatory developments. Robert Gowan, senior adviser for legislation and policy for Governor Phil Bredesen, will share the Governor's legislative plans for 2006. Invited to speak are Commissioners Paula Flowers (Commerce and Insurance); Matt Kisber (Economic and Community Development); Jim Neeley (Labor and Workforce Development); and, Jim Fyke (Environment and Conservation).

Legislative leaders are also expected to participate, including: Bill Dunn, (R-Knoxville), State Representative and Republican Leader; Kim McMillan (D-Clarksville), State Representative and Majority Leader; Ron Ramsey (R-Blountville), State Senator and Majority Leader; and, Jim Kyle (D-Memphis), State Senator and Minority Leader. The conference begins at 11:30 am January 9 with a luncheon and speaker and is scheduled to wrap-up at 4 pm. The Tennessee General Assembly convenes for a Special Session January 10. *For more information, contact Suzie Lusk at the Tennessee Chamber at 615-256-5141.*

Chamber Calendar

January 9	Public Affairs Conference	Nashville
January 13	Effectively Managing in Challenging Times	Knoxville
January 23	Wage & Hour Compliance/Workplace Investigations	Nashville
February 1	Maintenance Related TOSHA Compliance	Johnson City
February 3	Air Pollution Permit Compliance	Nashville
February 7	Maintenance Related TOSHA Compliance	Clarksville
February 23	Maintenance Related TOSHA Compliance	Dyersburg
March 1	Annual Membership Meeting	Nashville
March 10	Basic Safety	Nashville
March 14	Basic Safety	Jackson
March 23	Basic Safety	Chattanooga
March 29	Basic Safety	Morristown



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