



June 2005

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First Year of 104th General Assembly Ends Successful Year for Business Legislative Session Tainted by Scandal

In a dramatic conclusion to the first session of the 104th General Assembly, the Tennessee House of Representatives and Senate completed their work on the state's Fiscal Year 2005-2006 budget appropriations and other miscellaneous bills May 28 while reeling from the arrests of four current and one former state legislator. The General Assembly has adjourned for the year; legislators return January 10, 2006.

As a result of a two-year government sting operation, five legislators were arrested on criminal charges related to exchanging legislative favors for cash. One of the accused, Sen. John Ford (D-Memphis) resigned from the Senate the same day the Legislature adjourned. Despite the scandal, the Legislature stayed on schedule and met its target adjournment date. In addition to passing a \$28 billion balanced budget, the Legislature took action on several important issues including ethics reform affecting legislators' outside income, a TennCare "safety net" for enrollees losing coverage under the Governor's reform plan, and a system to permit generic prescription drug substitution.

During the course of the 2005 session, the Tennessee Chamber helped see through to passage many pro-business bills while successfully opposing a score of anti-business bills. On balance, the Chamber and its members had a winning year on Capitol Hill. No bills the Chamber opposed (due to their potentially negative impact on business) were enacted. More than 2,400 bills and 1,500 resolutions were introduced this year—an all-time record—and, of these bills, the Tennessee Chamber tracked several hundred related to business. As always, we are grateful for the support and political action efforts of all Chamber members.

The Chamber was successful in helping to pass several bills from its *Business Agenda*. The *Business Agenda*, developed with input from Chamber members and from local chambers of commerce across the state, is the Chamber's annual program of proactive legislation designed to provide solutions to the concerns of the business community. It seeks to identify those issues that will improve the business climate, develop solutions and propose them to lawmakers.

In addition its *Business Agenda*, the Chamber carefully monitored and worked on other legislation and initiatives that would impact our state's business climate. A staff-drafted "Position Paper" for each bill was carefully reviewed by a Chamber committee of member-experts (Tax, Environment, Human Resources, and Public Affairs Committees) and recommendations were made to the Chamber's Board of Directors. In 2005, the Chamber took a position on over two-dozen bills. Those positions are then communicated to our membership and to elected officials, and we work to ensure that no anti-business legislation becomes law. *Business Agenda* bills passed this year include:

- *Creation of a voluntary, statewide pre-K system;*
- *Compliance with the federal State Unemployment Tax Act ("SUTA") Dumping Prevention Act;*
- *Expansion of the state's charter schools law; and,*
- *\$20 million worth of economic development initiatives for Tennessee.*

See pages 4-6 of the *Business Insider* for a comprehensive legislative summary.

INSIDER

Published by the
Tennessee Chamber of
Commerce & Industry



Of Legislators, Lobbyists and Ethics...Restoring What We Lost

Deborah K. Woolley ★ President

The 104th should have been—and maybe someday will be—a legislative session to celebrate. But today, the significance of a balanced budget and passage of legislation dealing with TennCare, meth labs, jobs training, charter schools, streamlined sales tax and more is lost to the sounds of one sad refrain of the Tennessee Waltz. The arrests that stunned the Legislature and the state just two days before adjournment cast an unforgettable pall over a session that, in the end, was one that deserved praise for its accomplishments.

In summary, as you will see in this issue of the *Business Insider*, several key components of the Tennessee Chamber's pro-growth, pro-jobs *Business Agenda* were passed into law and no bills that would stifle business and economic growth were enacted. It is a result in which we can all take pride.

Taking the first key steps to extract Tennesseans from the financial noose of TennCare while preserving care for children and others is perhaps the most significant act of state government in years. Creating a safety net in tandem with the disenrollments is not only a sound business decision, but it demonstrates once again the responsibility and caring that the Tennesseans recognize for each other. It is easy to calculate what TennCare has cost as it ballooned out of control; it will never be possible to calculate what it cost the state in lost opportunities in education and other key areas.

But the more than four months of session will be remembered by one Thursday morning and surprise visits by state and federal law enforcement agents. That morning will likely change forever how business is conducted in Tennessee. Perhaps more indicting than the arrests are the comments in newspapers across the state by citizens who say they are not surprised, who say they expect no more of politicians, who believe government in Tennessee is both bought and sold. That is an indictment that should make every Tennessean hang his or her head in shame. The road forward must not only fix the problem but it also must restore faith and credibility. It is a road that is filled with potholes.

Ironically, this was a session about ethics long before the arrests of four current and one former legislator. A slow start resulting from an uncertainty the courts created with proposed TennCare solutions allowed reports about outside contracts, shady dealings and misuse of campaign funds to dominate. An excess of ethics legislation emerged. It seemed almost chillingly prophetic when the men and women in dark suits carrying handcuffs appeared.

Let me digress. In the average citizen's mind, ethics is all about the operations between those who lobby and elected officials—both of whom compete for the bottom of the barrel when it comes to respect. In actuality, ethics is all about the culture that exists in the Legislature and in the voting booth. It begins with us, as citizens and voters. We have a responsibility to select people who are worthy of the office and the trust we put in them, and we have a responsibility to monitor their performances and hold them accountable.

Lobbyists are no different. Each lobbyist represents a company, association, community, an issue or a personal viewpoint. Whether he or she is paid by a contract, by a salary or from association memberships, each is paid to be a messenger—to communicate a particular point of view. Their right to do that stems from the same right every citizen has in this great republic—the right of free speech and the right to petition their government. We must, in the future, hold those rights as sacred as we have in the past.

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Workers' Compensation Reform Reaches First Anniversary of Enactment

Bob Gaskill ★ Vice President of Employment Issues

Medical Fee Schedule

With the exception of the enforcement portion of the medical fee schedule, implementation of the *Workers' Compensation Reform Act of 2004* will be complete July 1, 2005. Legislation was recently passed by the General Assembly delaying the monetary penalties for non-compliance with the fee schedule until January 1, 2006. This delay was supported by the Department of Labor and Workforce Development since the original publication date of the fee schedule was delayed several months. Health care providers made a winning case for the delay due to the time required to change billing and other systems.

Insurance Rate Filings

In connection with the implementation of the fee schedule, the Department of Commerce and Insurance must approve a new rate filing. The National Conference on Compensation Insurance (NCCI) has recommenced an overall average rate decrease of 6.5 percent. The increase in maximum weekly benefit amount for weekly payments increases to 110 percent of the state average weekly wage on July 1, 2005 for accidents occurring on or after that date. The Workers' Compensation Advisory Council met in May and reviewed the rate filing and will recommend its approval to the Department's Commissioner Paula Flowers. It should be noted that there are many factors considered in computing an insurance rate for individual companies. Rates will not be automatically cut by 6.5 percent. Rates will vary based on an individual company's overall experience—both higher and lower. Another rate filing must be considered as well. In March 2005 Commissioner Flowers approved a "loss cost" filing average overall increase of 3.9 percent. Assuming the Commissioner approves the 6.5 percent filing, the impact of the two taken together is a rate decrease of 2.6 percent.

The Net Effect

The overall effect of what will happen to workers' compensation costs remains to be seen as claims work through the recently reformed system. A positive sign was reported in *The Tennessean* newspaper last month. A study of claims filed in Davidson County (Nashville area) for the first of quarters of 2004 and 2005 show about the same number of uncontested claims for each period. However, contested claims in Davidson County dropped from 788 in 2004 to only 94 in 2005. Assuming that these are mostly permanent partial disability claims, it appears that the reform is having a definite effect.

Medical Registry

The article below from the Department of Labor and Workforce Development indicates that it is gearing up for the registry to be in place July 1, 2005. You may want to talk to your panel doctors about applying to the registry. Ideally, the registry would have all the necessary specialties represented from all areas of the state.

Physicians to Serve on Medical Impairment Rating Registry

Tennessee Department of Labor and Workforce Development

Tennessee physicians will soon be able to participate in a new state-sponsored program whose sole purpose is to establish a resource to resolve conflicting opinions regarding workers' compensation permanent impairment ratings. The Medical Impairment Rating (MIR) Registry was created by the *Workers' Compensation Reform Act of 2004* to enhance and to improve the current independent medical examination process.

Board-certified and departmentally approved MDs and DOs will be assigned to the MIR Registry. The Workers' Compensation division of the Department has established rules for all parties—employees, employers and insurance carriers—and for physicians participating in the program. The incentives for physicians to serve on the MIR Registry are many. Physicians will be able to limit the scope of their involvement in the program as they will be allowed to choose the chapters of the AMA Guides in which they wish to specialize. Claimants requesting an evaluation will be matched with physicians who have designated corresponding criteria.



A Winning Year for Business on Capitol Hill

In addition to the Chamber's *Business Agenda* bills (page 6), the Chamber took a position on the bills listed below, working in support or opposition to the bill. Of all the legislation introduced in 2005, the Chamber tracked nearly 300 bills and resolutions. Visit www.tnchamber.org/advocacy for a chart of all the bills the Chamber identified this year as affecting business.

Methamphetamine Production

Bill / Sponsors: SB 2318 by Sen. Jim Kyle; HB 2334 by Rep. Kim McMillan

Establishes prohibitions on the sale of raw materials used to manufacture "meth" and increases penalties for its manufacture.

Chamber Position: Support • Status: Signed by the Governor

Tort Reform

Bill / Sponsors: SB 234 by Sen. Jeff Miller; HB 1236 by Rep. Chris Newton / SB 1591 by Sen. Mark Norris; HB 95 by Rep. Doug Overbey / SB 2178 by Sen. Mark Norris; HB 2122 by Rep. Doug Overbey

SB 234 / HB 1236: Limits non-economic damages to injured plaintiff in medical malpractice action to \$1 million dollars.

SB 1591 / HB 95: Limits damages in cases of medical malpractice victims.

SB 2178 / HB 2122: Changes certain procedures relative to medical malpractice including defining non-economic damages.

Chamber Position: Support • Status: Action scheduled for 2006

Workplace

Bill / Sponsors: SB 2240 by Sen. Jerry Cooper; HB 2090 by Rep. Mike Turner

Restricts the ability of employers to obtain injunctions to prevent violence in labor disputes.

Chamber Position: Oppose • Status: No action in 2005

SB 23 by Sen. Raymond Finney; No House Sponsor

Allows employees access to their personnel files up to three times per year and to make copies of these records.

Chamber Position: Oppose • Status: No action in 2005

SB 357 by Sen. John Ford; HB 296 by Rep. Mike Turner

Prohibits temporary employees from being paid less than a full-time employee with similar skills and ability.

Chamber Position: Oppose • Status: No action in 2005

SB 1449 by Sen. Doug Jackson; HB 1176 by Rep. Frank Buck

Triplies the death benefit when a workers' compensation-compensable death occurs in the workplace.

Chamber Position: Oppose • Status: No action in 2005

SB 910 by Sen. Jeff Miller; HB 738 by Rep. Dewayne Bunch

Prohibits local "living-wage" mandates.

Chamber Position: Support • Status: Action scheduled for 2006

SB 1424 by Sen. Thelma Harper; HB 141 by Rep. Mike Turner

Qualifies domestic violence victims as eligible for state unemployment benefits.

Chamber Position: Oppose • Status: No action in 2005

SB 73 by Sen. John Ford; HB 39 by Rep. Kathryn Bowers

Adopts the federal overtime exemption rules in effect before August 2004.

Chamber Position: Oppose • Status: No action in 2005



Environment

Bill / Sponsors: SB 611 by Sen. Doug Jackson; HB 1914 by Rep. Russell Johnson
Increases the number of members on certain state boards by one to be recommended by Tennessee Conservation Voters.
Chamber Position: Oppose • Status: No action in 2005

SB 1687 by Sen. Steve Cohen; HB 164 by Rep. Mike Turner
Establishes new reporting requirements for chip mill sites.
Chamber Position: Oppose • Status: No action in 2005

SB 1278 by Sen. Ron Ramsey; HB 925 by Rep. John Tidwell
Clarifies that state Water Quality Control Board members can participate in contested cases of permit appeals.
Chamber Position: Support • Status: Signed by the Governor

SB 498 by Sen. Doug Henry; HB0659 by Rep. Mike Kernell
Requires TDEC to study forested watershed and control of non-point sources of water pollution issues.
Chamber Position: Oppose • Status: Passed Senate, Did not pass Committee in House in 2005

Health Insurance

Bill / Sponsors: SB 786 by Sen. Tim Burchett; HB 90 by Rep. Doug Overbey: Requires coverage for gastric bypass procedures.
SB 1623 by Sen. Diane Black; HB 1422 by Rep. Ben West: Requires employer-paid coverage for hearing aids.
SB 276 by Sen. Thelma Harper; HB 147 by Rep. Mike Turner: Requires employer-paid coverage for lumpectomies.
Chamber Position: Oppose • Status: No action in 2005

SB 1091 by Sen. Ward Crutchfield; HB 1013 by Rep. Kathryn Bowers
Mandates that employers continue health benefits for an employee's spouse or dependent children after the employee's divorce or death.
Chamber Position: Oppose • Status: Amended to be business-neutral; Did not pass House or Senate in 2005

SB 72 by Sen. John Ford; HB 38 by Rep. Kathryn Bowers
Requires the state to give the General Assembly an annual report on employers who employ 25 or more people on TennCare.
Chamber Position: Oppose • Status: Failed in Committee in 2005

Tax

Bill / Sponsors: SB 186 by Sen. Don McLeary; HB 591 by Rep. Charlie Curtiss
SB 278 by Sen. Don McLeary; HB 192 by Rep. Jim Hackworth
SB 1956 by Sen. David Fowler; HB 1543 by Rep. Bill Harmon
Bills authorize tax credits to business for research and development; high-tech activities.
Chamber Position: Support • Status: Action scheduled for 2006

SB 614 by Sen. Doug Jackson; HB 819 by Rep. Bob McKee
Increases the period for carrying forward the tax exemption for purchases of industrial machinery from 15 to 20 years.
Chamber Position: Support • Status: Action scheduled for 2006

SB 1734 by Sen. Curtiss Person; HB 1601 by Rep. Larry Miller
Requires property assessors to list and appraise property subject to PILOTs (Payments In Lieu Of Tax).
Chamber Position: Oppose • Status: No action in 2005

Workers' Compensation

SB 1864 by Sen. Roy Herron; HB 1697 by Rep. Joe Fowlkes
Imposes a \$1,000 fine on any employee who is found to have committed workers' compensation claim fraud.
Chamber Position: Support • Status: Action scheduled for 2006



2005 Business Agenda Scorecard

WORKERS' COMPENSATION			
<i>Bill</i>	<i>Sponsor</i>	<i>Summary</i>	<i>Status</i>
SB 2068	Sen. Mark Norris (R-Collierville)	Requires the Tennessee Department of Labor and Workforce Development to report on incidents of workers' compensation fraud to the Legislature and creates new definitions of workplace injuries.	Scheduled for 2006
EDUCATION and ECONOMIC DEVELOPMENT			
<i>Bill</i>	<i>Sponsors</i>	<i>Summary</i>	<i>Status</i>
SB 2167 HB 2137	Sen. Jamie Hagood (R-Knoxville) and Rep. Ulysses Jones (D-Memphis)	Expands the application and availability of charter schools by allowing students failing to make adequate yearly progress to attend charter schools.	Approved by Legislature; Awaiting the Governor's Signature
SB 2317 HB 2333	Sen. Jim Kyle (D-Memphis) and Rep. Kim McMillan (D-Clarksville)	Creates the parameters of and funding for a state-wide voluntary Pre-Kindergarten system.	Approved by Legislature; Awaiting the Governor's Signature
SB 2272 HB 2287	Sen. Jim Kyle and Rep. Kim McMillan	Creates \$20 million worth of "FastTrack" infrastructure development and job training assistance program in the Department of Economic and Community Development.	Signed by the Governor
WORKPLACE			
<i>Bill</i>	<i>Sponsors</i>	<i>Summary</i>	<i>Status</i>
SB 1276 HB 279	Sen. Ron Ramsey (R-Blountville) and Rep. Steve McDaniel (R-Parkers Crossroads)	Requires state agencies to prepare an economic impact statement before the adoption of any proposed rule that could adversely affect small businesses	Scheduled for 2006
SB 2285 HB 2303	Sen. Jim Kyle and Rep. Kim McMillan	Brings Tennessee state into compliance with the federal State Unemployment Tax Act ("SUTA") Dumping Prevention Act.	Approved by Legislature; Awaiting the Governor's Signature

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MIR Registry

Also, MIR physicians will be recognized as experts in the field of impairment evaluation. Opinions issued by physicians on the Registry for cases involving the MIR program will be considered statutorily accurate and can be overcome only by clear and convincing evidence to the contrary. An established Fee Table will generously reward registry physicians who are able to complete evaluations and the rating report in a timely manner. The fees are to be pre-paid by the employer and include cancellation fees, late fees and penalties if needed.

The MIR Registry will be available to any party who disputes the impairment rating of a physician in a workers' compensation claim for injuries that occur on or after July 1, 2005. The expense of the evaluation will be borne by the employer. Other potential issues such as causation, apportionment, appropriateness of treatment, work restrictions, and job modifications will not be considered or addressed by this program. It is expected that any invasive tests and procedures, excluding venipuncture, required for an impairment rating and essential under the applicable edition of the "AMA Guides to the Evaluation of Permanent Impairment" will have been performed prior to the impairment evaluation and, therefore, will not need to be performed by the MIR Registry physician.

Physicians interested in serving on the registry are encouraged to contact MIR Program Coordinator Jeff Francis. Rules of the program, including minimum qualifications for physicians, the fees for the evaluation, and application procedures are available from Mr. Francis at 615-253-1613 or at b.jeff.francis@state.tn.us.



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Restoring What We Lost

But that doesn't give anyone the right to abuse them. Your membership in the Tennessee Chamber supports lobbying activities on behalf of the business community. We learn from you what issues are important, we talk with legislators and provide them meaningful information on what the issues are and why they are important, and we tell you what they think. Then, we ask you to also talk to your legislators about the issues and explain how they will impact your business and your employees.

It is a process built on credibility and respect...never on the grainy black-and-white images we have seen the last couple weeks of legislators, alleged "bagmen" and envelopes with \$100 bills. It is a process for which we are accountable—to the law and to you.

All that we abhor in the "Tennessee Waltz" sting—and all that we abhor about corrupt lobbyists and crooked elected officials—is already illegal. Those who were arrested that Thursday morning were arrested for breaking laws that are on the books. They were arrested for taking money in exchange for their vote, for violating that most sacred right that we, as citizens, entrusted to them. To me, there can be no greater shame.

So what does it all have to do with ethics legislation? Ethics legislation, in my estimation, must do two things. It should set the parameters about an acceptable relationship between a lobbyist and an elected official. It should shine sunshine on all that is done so that everyone—from law enforcement to voters—can hold them accountable.

What doesn't serve any useful purpose, in my estimation, is legislation—like we saw promoted this year—that pushes for greater restrictions and sunshine on lobbyists but not legislators. For example,

one proposal would have required that any registered lobbyist must report his or her personal salary. I cannot imagine how that can possibly relate to or prevent a lobbyist from offering a bribe or a legislator from accepting it.

What we must guard against in this post-sting period is legislation that is called "ethics" but does nothing to further the cause

Ethics legislation, in my estimation, must do two things. It should set the parameters about an acceptable relationship between a lobbyist and an elected official. It should shine sunshine on all that is done so that everyone—from law enforcement to voters—can hold them accountable.

of ethics. Already we have heard legislators talking about stronger laws governing lobbyists. There must be corresponding stronger legislation governing legislators. Bribery, extortion, illegal activities—you name it and it all takes two. Allowing the General Assembly to pass ethics legislation that is aimed at lobbyists but not at themselves will serve no meaningful purpose.

We have some good laws in Tennessee that govern the relationships between legislators and lobbyists. Sadly, the laws are often times stricter in words than in practice, and certainly stricter than the culture in which they exist.

So, what do we need? We need ethics legislation that recognizes the roles of legislators, lobbyists and voters. We need to recognize that the vast majority of

legislators and lobbyists are honest and trustworthy.

We need clear parameters of what is and is not allowed, and we need meaningful reporting—from both lobbyists and legislators—on what is spent and what is accepted.

We need, also, to re-examine the role of lobbyists in campaign fundraising—where money takes on an even more critical role. We need to enforce our rules.

We need legislation that lets law enforcement officials and citizens shine a light on what is going on. No, it will not stop the bad ones, those who will stretch and break the law...but it will make it easier to spot them and easier to convict them.

We need legislators, political parties and lobbyists' organizations that police themselves—who put petty politics aside because they recognize the most important thing they can do is protect the sanctity of our democracy and our representative form of government.

We need voters who let candidates know what is expected—in terms of representation and ethics—and then hold them accountable for any breaches. Good "sunshine" laws that require reporting of relevant information by both lobbyists and elected officials will allow voters to make educated and meaningful choices about which elected officials should be returned to office. That is the best check and balance we have.

We need to pull together to work with the Governor, Legislature and citizens to enact meaningful, comprehensive legislation that restores integrity and pride to our State House.

We must change the culture in which we do business in Tennessee. As the Tennessee Waltz so poignantly says, "Now I know just how much I have lost." It is up to us, as citizens, to restore it.

State Economic Incentives Battle Heads to Congress

Deborah K. Woolley ★ President

During the last few weeks when we have all been questioning how broken our system of government really is, it is healthy to reflect on a time when it really worked. It all started last fall with a ruling by the 6th Circuit Court of Appeals in a case involving Elizabeth Cuno, Daimler Chrysler and a new automotive assembly plant in Ohio. The lawsuit challenged the constitutionality of jobs tax credits. The Court agreed, saying the use of incentives such as the jobs tax credit, violate the Commerce Clause of the U.S. Constitution. The decision had particular interest to Tennessee businesses because Tennessee is one of the four states in the 6th Circuit.

The Tennessee Chamber filed an *amicus* (“friend-of-the-court”) brief to the 6th Circuit, asking that the ruling of a three-judge panel be reviewed by the full court. The court refused, and the ruling stood. The Chamber then moved quickly to prepare a new *amicus*, asking the U.S. Supreme Court to review the 6th Circuit ruling. That brief will be filed next month. In the meantime, Congressional leaders from Tennessee, Kentucky, Ohio and Michigan began crafting a legislative solution to the court’s ruling. The draft of that legislative solution emerged in late April and a quick review by the Chamber’s Tax Committee and the state Department of Revenue raised questions about whether the federal bill would indeed protect Tennessee’s incentives—or those of other states, for that matter.

That triggered an intense two weeks by a small group in Tennessee to “fix” the bill before it was introduced. With the help and support of Tennessee Senator and Majority Leader Bill Frist, the planned introduction of the bill was delayed. A working group comprised of Tax Committee Chairman Andy Wagner of FedEx, Tennessee Revenue Commissioner Loren Chumley, Assistant Revenue Commissioner Reagan Farr and Tax Committee attorneys Charlie Trost and Mike Stewart, both of Waller Lansden Dortch & Davis, worked nonstop to develop language to provide the needed protections for state economic development tax incentives. Then the group had to convince the Washington-based tax coalitions supporting the bill that the changes were needed and would ensure the bill would do what it purported to do—fix the Cuno decision.

The *Economic Development Act of 2005* (S. 1066 / H.R. 2471) was introduced in the U.S. House of Representatives and Senate the week of May 16. The language in the bills is the language supported by the Revenue Department and the Chamber. It was a positive effort by the public and private sectors to craft a solution that served the best interests of both. It was a process that demonstrates how well our American form of government can work. The challenge remains, however, to pass the bill. The same well-funded special interests that financed the court case in Ohio can be expected to wage a campaign against the bill. We can’t let them win.



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