

STATE OF TENNESSEE  
106<sup>th</sup> General Assembly

**SENATE REGULAR CALENDAR**

**Tuesday, January 12, 2010**

Summary of General Bills

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**1. \*SJR 0030 by \*Jackson, Woodson**

Constitutional Amendments - As introduced, proposes an election of the people for the purpose of determining whether Article XI, Section 13 of the Constitution of Tennessee should be amended to establish the right to hunt and fish, subject to reasonable regulations and restrictions prescribed by law. -

S. Jud. Comm. 9-0-0.

S. FW&M Comm. 10-0-0

**2. \*SB 0273 by \*Ketron, Stanley, Burchett, Johnson, Beavers, Yager (HB 0381 by \*Sargent)**

Commerce and Insurance, Dept. of - As introduced, allows commissioner to initiate investigation under the Tennessee Insurance Producer Licensing Act of 2002 upon receiving a written complaint from a member of the public or determination by commissioner that "good cause" exists that a violation occurred. - Amends TCA Title 56, Chapter 6 and Title 56, Chapter 8.

S. C,L&A Comm. 7-0-1, with amendment.

**Summary:** This bill requires the commissioner of commerce and insurance to initiate an investigation upon receipt of a written complaint from a member of the public or upon a written determination by the commissioner that "good cause" exists that an insurance producer has violated any of the present law provisions governing managing general agents, administrators, producers, or adjusters, the Health Care Service Utilization Review Act, or the Reinsurance Intermediacy Act. This bill requires the commissioner to dispose of all matters involving alleged misconduct by either dismissal, the prosecution of a formal administrative proceeding, or the suspension or revocation of an insurance producer's license.

Except in matters requiring dismissal because the complaint is frivolous or falls outside the jurisdiction of the commissioner, a disposition would not be recommended or undertaken by the commissioner until the insurance producer subject to the investigation has been afforded the opportunity to review the complaint or commissioner's determination and the entire investigatory file maintained by the commissioner and submit a written response with respect to the allegations made against the insurance producer. Any insurance producer who is subject to investigation would have the same investigatory and subpoena powers granted to the commissioner in the process of submitting the written response to the commissioner's investigation. If, after receipt of the insurance producer's response, the commissioner determines that formal administrative proceedings should be initiated, then proceedings would be conducted by the administrative procedures division of the secretary of state's office.

Any documents or other information provided by the insurance producer would be confidential and privileged, would not be public records, and would not be disclosed without the insurance producer's consent prior to initiation of formal administrative proceedings. An insurance producer or other interested party may, at any time during or after conclusion of an investigation, obtain a protective order prohibiting the disclosure of any documents or information provided by the producer or an interested party. In addition, the protective order may prohibit the disclosure of specific information or documents, order the closure of any hearing, and direct that the proceedings be conducted so as to implement the order. Prior to

initiation of formal administrative proceedings, any application for a protective order under this bill would be submitted to the chancery court of Davidson County. After the initiation of a formal administrative proceeding, any application shall be filed with and decided by the administrative law judge.

Present law authorizes the commissioner to make investigations necessary for the proper administration of the Tennessee Insurance Producer Licensing Act of 2002. This bill requires the department of commerce and insurance to provide a copy of any complaint against an insurance producer or company within 15 days of receipt of the complaint. If the department performs its own investigation, then before seeking a statement or records from the insurance producer under investigation, the department would provide the insurance producer with notice of the existence of the investigation and facts upon which the investigation is based at least 15 days prior to the statement or record production. Any action taken by the department must be based on a preponderance of the evidence. If, after initiation of an investigation, the commissioner determines that the initiation of formal proceedings are not warranted, the commissioner would provide the insurance producer who was the subject of the investigation with a written notice stating that the investigation has been terminated. The letter would be issued by the commissioner within 15 days of that determination.

This bill requires that all investigations of a producer be completed within one year of the earlier of:

- (1) The receipt of the initial complaint; or
- (2) The initiation of an investigation, if the department conducts its own investigation.

With respect to any investigation now existing, the investigation must be completed within one year of the effective date of this bill.

No action may be taken against any insurance producer by the commissioner for any alleged misconduct or other wrongful action:

- (1) Occurring more than five years prior to the date of initiation of the investigation or receipt of the complaint; or
- (2) That is not, of itself, a violation of present law regulating insurance agents, solicitors and administrators and licensing insurance producers and public adjusters.

The licensee, producer, or company may obtain a copy of any complaint or other notice regarding any charges brought against the licensee, producer or company, and a copy of any statements made by the licensee, producer or any officer or employee of the company being investigated, whether it pertains to the claim or defense of the producer.

NOTE: Section 3 of this bill purports to amend TCA Section 56-8-118, but no such section exists.

**3. \*SB 1674 by \*Johnson, Gresham, Black, Faulk, Watson, Tracy, Beavers, Yager, Stanley, Ketron, Southerland (HB 1916 by \*Lynn, Harwell, Floyd, Shepard, Curtiss, Litz, Harmon, Cobb C, Dennis, McCormick, Fitzhugh, Maggart, Coley, Mumpower, Casada, Sargent, Dean, Johnson P, Johnson C, Brooks H, Dunn, Campfield, Rich, Hensley, Weaver, Matlock, Lundberg, Kelsey, Swafford, Hill, Halford, McDaniel)**

Labor - As introduced, enacts the "Secret Ballot Protection Act of 2009". - Amends TCA Title 47; Title 49 and Title 50, Chapter 1.

S. C,L&A Comm. 7-0-1

Summary: The federal Labor Management Relations Act of 1947 requires that all elections to determine whether a bargaining unit of employees will be represented by a union must be conducted by secret ballot.

This bill creates a state statutory right for all employees seeking to select a bargaining representative to do so by secret ballot. This bill prohibits any waiver of the right to secret ballot elections.

This bill declares the following activities to be unfair labor practices under state law for which an aggrieved employee would be authorized to file an unfair labor practice complaint with the department of labor and workforce development:

(1) For any employer to interfere with the formation of a labor organization, or contribute support to it, or recognize any labor organization that was not selected by a majority of employees by secret ballot; and

(2) For any labor organization to cause or attempt to cause an employer to recognize a representative of a labor organization that was not selected by a majority of employees in a secret ballot election.

Any violation of this bill that occurs on or after July 1, 2009, will be a Class C misdemeanor criminal offense.

This bill authorizes any employee or employer who is harmed as a result of a violation of this bill to seek relief in chancery court.

This bill will not apply to collective bargaining relationships in which a labor organization was lawfully recognized as an exclusive bargaining representative on the date that this bill becomes a law.

#### **4. \*SB 1775 by \*Herron (HB 2029 by \*Maddox)**

Education, Higher - As introduced, allows counties to adopt and fund financial assistance programs, in particular last dollar scholarship programs, to assist county residents in attending community colleges and other postsecondary institutions; requires state higher education agencies to assist as appropriate in development of such programs. - Amends TCA Title 5 and Title 49.

S. Ed. Comm. 8-0-0.

S. FW&M Comm. 10-0-0

Summary: This bill authorizes county legislative bodies to appropriate funds for programs of postsecondary financial assistance to enable county residents to attend postsecondary institutions.

This bill specifically authorizes counties to establish programs that assist county residents in accessing any available public and private scholarships and then providing last dollar scholarships that enable students to attend community colleges without incurring debt. This bill authorizes counties to cooperate with private entities in establishing such programs.

This bill requires the board of regents, THEC, TSAC, and the University of Tennessee system to assist counties in developing the programs authorized by this bill, as appropriate.

#### **5. \*HB 0614 by \*Todd, Tindell, Moore, Watson (SB 0872 by \*Ketron)**

Election Laws - As introduced, deletes all provisions requiring the purchase of precinct-based optical scanner voting systems only, including language referring to Help America Vote Act funds; deletes mandatory hand count audits of paper ballots created by such machines; deletes language. - Amends TCA Title 2 and Chapter 1108 of the Public Acts of 2008.

Summary: ON JUNE 17, 2009, THE HOUSE ADOPTED AMENDMENT #2 AND PASSED HOUSE BILL 614, AS AMENDED.

AMENDMENT #2 rewrites this bill to delay the implementation or application of the following present law provisions and requirements regarding voting systems:

(1) The provisions of the Tennessee Voter Confidence Act that require replacement or modification of voting systems, if federal funds are available for such purposes, from "no later than the general election of 2010" to "no later than the general election of 2012";

(2) The requirement that any voting system purchased or leased use precinct-based optical scanners from "after January 1, 2009" to "after November 1, 2012";

(3) The requirement that each county use a precinct-based optical scanner voting system from "on or before the November 2010 general election" to "on or before the November 2012 general election"; and

(4) The requirement that "All new electronic voting systems purchased or leased on or after August 1, 2001", instead of "All electronic voting systems in use on or after January 1, 2009":

(A) Be certified by the election assistance commission as having met the applicable voluntary voting systems guidelines and be certified under present law regarding the use of non-standard machines; and

(B) Be made available for review by an independent expert, selected by the state election commission or the secretary of state, to ensure the functionality and security of its systems.

This amendment requires that every effort be made to purchase United States manufactured precinct-based optical scanner voting systems.

Present law requires that for each election, each county election commission must conduct mandatory hand count audits of the voter-verified paper ballots of at least the top race in the federal, state, county or municipal election, if on the ballot, which audits must include three percent of the votes cast prior to the election for the races to be audited, and must also be conducted in at least three percent of the precincts. The "top race" means the presidential race, if the presidential race is on the ballot, the governor's race, if the governor's race is on the ballot, and, if other races are on the ballot, the race that receives the most votes as determined by the unofficial machine vote count for each political subdivision election held and on the ballot.

This amendment limits the meaning of "top race" to the race for president and the race for governor. This amendment limits the elections for which county election commissions will be required to conduct an automatic mandatory audit of voter-verified paper ballots to November general elections for president and governor. In order to prepare for the audits, this amendment requires that the county election commission must first obtain a certificate from the optical scanner manufacturer that all optical scan tabulators have been cleaned of debris.

This amendment replaces the present law requirement that at least three percent of the votes cast prior to the election be audited with a requirement that the county election commission randomly select at least one precinct-based optical scan tabulator used to count ballots cast during early voting. This amendment also replaces the present law requirement that at least three percent of the precincts be selected for audit with a requirement that:

(1) For counties having a population less than 300,000, at least one voting precinct must be randomly selected; or

(2) For counties having a population of 300,000 or more, at least five precincts must be randomly selected.

This amendment replaces the present law process for auditing the ballots by hand counting ballots with a process for conducting the audit by means of inserting the ballots into a randomly selected optical scanner. If the initial audit reveals a variance of more than one percent between the unofficial results of the top race and the automatic audit, the county election commission will be required to conduct an expanded audit of at least three percent of the voting precincts in the county using a different optical scanner. In addition, the county election commission will be authorized to manually hand count the ballots as part of the expanded audit.

Present law requires the coordinator of elections to promulgate rules to determine the minimum number of paper ballots furnished to each precinct on election day and the number of paper ballots to be held in reserve by the county election commission for emergency use. This amendment removes authorization for the coordinator to promulgate such rules and instead

requires the coordinator to make the determinations concerning the number of paper ballots furnished and held in reserve.

ON JUNE 18, 2009, THE SENATE SUBSTITUTED HOUSE BILL 614 FOR SENATE BILL 872. HOUSE BILL 614 FAILED TO RECEIVED A CONSTITUTIONAL MAJORITY VOTE AND WAS RE-REFERRED TO THE CALENDAR COMMITTEE.