

## RECENT LEGISLATIVE CHANGES AFFECTING THE CONSTRUCTION INDUSTRY

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### COMMERCIAL LAW

**SB 1476 / HB 0786\* – Alarm Systems Agreement Requirements.** Requires alarm system agreements to be in writing and signed by the buyer. Also requires alarm system agreements to contain certain language regarding cancellations. Prohibits an alarm system agreements from containing an automatic renewal clause. Specifies other restrictions for alarm systems agreements.

(S: Henry; H: Gilmore)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Referred to House Consumer Affairs Subcommittee.

### CONSTRUCTION

**SB 1417 / HB 1252\* – Waiving of Lien Rights By Subcontractor.** As enacted, provides that if a contractor solicits any person to sign a contract requiring the person to waive a right of lien in violation of law, such person must notify the board for licensing contractors of such fact; upon receiving such information, the executive director of the board for licensing contractors must notify such contractor within a reasonable time after receiving the information that the contract is against the public policy of this state and in violation of law; provides for action against contractor who does not correct violation.

(S: Ketron; H: Curtiss)

**STATUS:** Signed by Governor 6/23/2009. Became Public Chapter No. 483. Amends TCA Title 47, Chapter 18; Title 47, Chapter 25; Title 62, Chapter 6 and Title 66, Chapter 34.

**SB 2241/ HB 2329\* – Convenience Fee-cost of receiving construction plans.** As enacted, authorizes the state fire marshal to implement a convenience fee to cover the costs of receiving construction plans, specifications, and related fees that are electronically submitted pursuant to the laws governing building regulations.

(S: Kyle; H: Cobb T.)

**STATUS:** Signed by Governor 5/13/2009. Became Public Chapter No. 210. Amends TCA Section 68-120-101.

**SB 2283 / HB 2328\* – Energy Efficiency-Building Construction Standards.** Requires the state fire marshal to include provisions relative to energy efficiency in statewide building construction safety standards. Deletes exemption from such standards for one-family and two-family dwellings (Part of Administration Package).

(S: Kyle; H: Turner M.)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture

**HOUSE STATUS:** Assigned to s/c Industrial Impact of COM

## CRIMINAL LAW

**SB 1435\* – Prohibiting Lawful Possession of Firearms on Property.** Prohibits that an owner of public or private property cannot prohibit the lawful possession of firearms within a vehicle on that property unless specific statutory prohibition. Specifies that any employer who fires an employee for legally possessing a firearm in their vehicle on the employer's property can be civilly liable for denying the employee their lawful rights.

(S: Stanley)

**SENATE STATUS:** Referred to Senate Judiciary.

## ECONOMIC DEVELOPMENT

**SB 0650 / HB 0518\* – Surety Bond Guarantee Program for Small Businesses.** Requires the department of economic and community development to create and administer funds to establish a surety bond guarantee program for small and emerging contractors designated as small businesses. Specifies that monies from the fund can be used to guarantee bid, payment and performance bonds on contracts up to \$1,000,000. Stipulates that any such deposited monies or interest must remain in the reserve until expended for purposes consistent with such program and cannot revert to the general fund.

(S: Finney L.; H: Shaw)

**SENATE STATUS:** Senate Finance, Ways and Means Committee

**HOUSE STATUS:** House Budget Subcommittee.

**SB 0943\* / HB 1381 –Study of Effects of Tax Incentives on Economics Development.** Directs the commissioner of economic and community development, in consultation with

the municipal technical advisory service and the county technical advisory service, to study the effects of state and local tax incentives on the economic development of municipalities and counties. Broadly captioned.

(S: Watson; H: McCormick)

**SENATE STATUS:** Referred to Senate State & Local Government.

**HOUSE STATUS:** Caption bill held on House Clerk's desk.

**SB 1836 / HB 1365\* –Tennessee Apprenticeship and Job Stimulus Act Of 2009.** This bill requires the department of labor and workforce development to establish an apprenticeship and job training program to provide critical employment skills to Tennesseans. The program will include, but is not limited to, employment seminars and workshops offered through the department and educational grants for individual training at Tennessee technology centers.

This bill also requires the department, in consultation with the board of regents and Tennessee student assistance corporation, to establish a Tennessee apprenticeship and job stimulus grant program. A student is ineligible for a grant if the student:

- (1) Is not a Tennessee citizen;
- (2) Has not complied with United States selective service system requirements for registration, if such requirements are applicable to the student;
- (3) Is incarcerated; or
- (4) Does not meet each qualification relating to the grant and applicable to the student.

To be eligible for a grant, a student must:

- (1) Be classified as an in-state student under the rules of the board of regents on the date of application for the grant and on the date of reapplication for the grant; and
- (2) Be admitted to, and enroll in, a Tennessee technology center in one of the following programs of study: aesthetics technology; auto body repair; automotive technology; aviation maintenance technology; business systems technology; computer operations technology; cosmetology; data processing technology; dental lab technology; drafting and CAD technology; early childhood education; electronics technology; graphic arts; health insurance specialist; heating, ventilation, air conditioning and refrigeration; industrial electricity; industrial maintenance; machine tool technology; pharmacy technician; phlebotomy; practical nursing; truck driving; technology foundations; or welding technology.

Subject to the amounts appropriated by the general assembly, a grant would be \$500 per semester equivalent. A student may receive a grant for a maximum of four semester equivalents. A grant would be awarded in addition to any other financial aid for which the recipient qualifies. Grants would be awarded on a first come, first served basis. The grants would commence with the 2009-2010 academic year. (S: Kyle; H; Miller L.)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Taken off Notice.

## EDUCATION

### **SB 2140 / HB 2142\* –Green Jobs Vocational and Technical Educational Programs.**

Requires the state board of education to develop a green jobs vocational and technical education program that prepares students for employment in the emerging environmental and sustainability sectors of the economy.

(S: Berke; H: Turner M.)

**SENATE STATUS:** Assigned to Senate education committee.

**HOUSE STATUS:** Action deferred to House Education K-12 Subcommittee.

## ENERGY & MINING

**SB 0906\* / HB 2001 – State building commission projects ~ energy cost savings.** This bill provides that the following procedures may be used to implement energy conservation techniques for state building commission projects, where deemed appropriate for a particular project by the department or agency responsible:

(1) At the design development stage of a state building commission project, the designer must provide to the state the following information:

(A) Estimated yearly BTU consumption of the project;

(B) Basis for the estimate, such as degree days and other relevant data and measurement; and

(C) A description of the alternatives considered to reduce projected energy consumption for the project such as orientation of the project, thermal envelope design, lighting, high efficiency 1-VAC systems, and ease of retrofitting for renewable energy generation;

(2) A public advertisement must be made at the completion of the design development stage advising the contracting industry of the proposal and date of the bid opening for the project, when final plans and specifications are complete. In this advertisement, prospective bidders will be notified that the state intends to consider

alternative designs as proposed by any bidder which the bidder believes would reduce the estimated energy consumption of the project from that determined by the designer's estimate;

(3) Any contractor must be given the option to propose alternative heating, ventilation, and air conditioning systems and other energy related design changes coupled with calculations of BTU consumption reductions;

(4) The contractor's bid, for purposes of establishing the low bidder only, would be reduced by the energy savings deduction amount based upon the estimated savings according to a formula which recognizes the present value of projected savings in the first 10 years of operation of the project, taking into account projected increases in the cost of energy;

(5) In the event the low bidder is established solely on the basis of utilizing the energy savings deduction amount, the contractor must provide a bond to the state in the amount of the savings for a period of three years that will ensure penalty payments if BTU consumption exceeds the amount estimated by the low bidder as the yearly consumption; and

(6) A penalty would be assessed annually against the successful contractor in the amount of the actual cost of the BTU consumption that is in excess of the estimate provided by the successful bidder. This penalty would not be assessed if the state significantly changes function or usage of the project.

This bill requires the state building commission to report to the general assembly on February 5, 2011, on the implementation and results from the application of this bill.

(S: Burks; H: Curtiss)

**SENATE STATUS:** Assigned to S&L Govt. Comm.

**HOUSE STATUS:** Action Deferred in s/c State Government of S&LG to 2010

**SB 0907\* / HB 2003 – Energy efficient standards for building contracts.** Under this bill, state contracts and contracts by counties, cities, metropolitan governments, towns, utility districts, and other municipal and public corporations of this state must require providers of design services, engineering services, material, and equipment to warrant that annual energy costs for all habitable space contained within newly constructed buildings and substantially renovated buildings meet pre-determined energy cost objectives set by the client. Such costs must be at least 25 percent lower than:

(1) The average costs for similar buildings located in areas with similar average annual temperatures; or

(2) 55,000 BTUs per square foot of conditioned habitable space per year.

This bill requires that a certified business energy professional determine, no sooner than 12 months from the first date of occupancy of a building, whether such providers have complied with the energy efficiency requirements. The business energy professional must not have a financial interest in or be affiliated with the design or construction of the building.

For the purposes of this bill, "business energy professional" means a person certified by the Association of Energy Engineers who is competent in business marketing and energy related disciplines, as well as laws governing and affecting energy professionals.

(S: Burks; H: Curtiss)

**SENATE STATUS:** Assigned to Gen. Sub of: S. S&L Govt. Comm.

**HOUSE STATUS:** Action Def. in s/c State Government of S&LG to 2010.

## GOVERNMENT CONTRACTS

**SB 1563 / HB 1243\* – Wage commission publishing prevailing wage rate decisions.** As introduced, requires the prevailing wage commission to publish its decision concerning prevailing wage rates on the Web site maintained by the state on the same day the commission gives notice of its final determination to contractors who submitted documentation concerning such rates. - Amends TCA Title 12, Chapter 4, Part 4.

(S: Burchett; H: Curtiss)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Referred to House Employee Affairs Subcommittee.

**SB 1577\* / HB 1705 – Competitive bidding process for local governments.** As enacted, (1) establishes requirements for local governments to contract with construction management agents or advisor services for construction of local correctional facilities or additions to existing correctional facility buildings; (2) Provides for procurement of such services through a written request for proposals process through advertisement; and (3) Provides that such services may be performed by (a) A licensed general contractor, provided that none of such services performed by a general contractor involve any of the services exempt from the requirements of the Contractors Licensing Act of 1994 as "normal architectural and engineering services", unless the general contractor is also licensed as an architect or engineer; or (b) A licensed architect or engineer, provided that none of such services performed by an architect or engineer involve any of the services required to be performed by a contractor, unless the architect or engineer is also licensed as a contractor. The statute explicitly prohibits a contract for such services from being based upon competitive bids and that the contract would be awarded to the best qualified and responsive bidder. Cost would not be sole criterion for evaluation of a bid. Requires any construction manager who

provides construction management services to be a contractor licensed in Tennessee, and specifies that construction work that is under the coordination and oversight of a construction manager must be procured through competitive bids.

Present law provides that contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state, for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons or groups of high ethical standards, are not to be based upon competitive bids, but must be awarded on the basis of recognized competence and integrity.

This bill adds that construction management agent or advisor services that are provided for a fee and that involve preconstruction and construction administration and management services are deemed to be professional services and may be performed by a qualified person or entity licensed under general contractor laws. This bill specifies that a contract for such services would not be based upon competitive bids, but would be awarded on the basis of recognized competence and integrity and to the best qualified and responsive proposer. A construction manager who provides construction management services in accordance with this bill must be a contractor licensed in Tennessee. Construction work that is under the coordination and oversight of a construction manager pursuant to this bill must be procured through competitive bids.

ON APRIL 23, 2009, THE SENATE ADOPTED AMENDMENT #1 AND PASSED SENATE BILL 1577, AS AMENDED.

AMENDMENT #1 explicitly authorizes a county, city, metropolitan government or town to contract for construction management agent or advisor services for the construction of local correctional facilities. The bill prohibits a contract for such services from being based upon competitive bids, and specifies that the contract would instead be awarded on the basis of recognized competence and integrity and to the best qualified and responsive proposer pursuant to this section. This amendment revises this provision to clarify that construction management services are to be procured through a written request through advertisement. The contract would be awarded to the best qualified and responsive bidder. Cost would not be sole criterion for evaluation of a bid.

This amendment prohibits a construction manager from undertaking actual construction work on a project over which the construction manager coordinates or oversees the planning, bid or construction phases of the project, except where bids have been solicited twice and no bids have been submitted. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids, and no bids were received, then the construction manager may perform the construction work at a price agreed upon by the construction manager, the architect and the owner of the project. A

governing body may perform work on the project with its own employees and may include the coordination and oversight of this work as part of the services of the construction manager.

ON JUNE 3, 2009, THE HOUSE SUBSTITUTED SENATE BILL 1577 FOR HOUSE BILL 1705, ADOPTED AMENDMENT #3, AND PASSED SENATE BILL 1577, AS AMENDED.

AMENDMENT #3 authorizes the performance of construction management agent or advisor services for the construction of local correctional facility projects or additions to existing correctional facility buildings by:

(1) A licensed general contractor, provided that none of such services performed by a general contractor involve any of the services exempt from the requirements of the Contractors Licensing Act of 1994 as "normal architectural and engineering services", unless the general contractor is also licensed as an architect or engineer; or

(2) A licensed architect or engineer, provided that none of such services performed by an architect or engineer involve any of the services required to be performed by a contractor, unless the architect or engineer is also licensed as a contractor.

Sponsors:

(S: Stanley; H: Hensley)

**STATUS:** Signed by Governor 6/25/2009. Became Public Chapter No. 518. Amends TCA Title 12, Chapter 4, Part 1.

**SB 1972 / HB 2191 - Governmental utility board -bidding procedures.** Establishes an alternative procedure for competitive bids for a governmental utility board if the board finds it is unlikely such procedure will encourage favoritism or substantially diminish competition for contracts.

(S: Norris; H: DeBerry L.)

**SENATE STATUS:** Action Def. in S. S&L Govt. Comm.

**HOUSE STATUS:** Action Def. in s/c State Government of S&LG to 2010

## GOVERNMENT ORGANIZATION

**SB 1000 / HB 0993\* – Sunset- prevailing wage commission.** changes the sunset date of the prevailing wage commission to June 30, 2011. This amendment requires the commission to update the appropriate joint subcommittee in one year on the progress of the commission's responses to the audit findings. This amendment clarifies that the comptroller would not be required to conduct a new audit prior to the update by the commission.

(S: Johnson, J.; H: Lynn)

**STATUS:** Signed by Governor 5/13/2009. Became Public Chapter No. 246. Amends TCA Title 4, Chapter 29 and Title 12, Chapter 4.

**SB 1953\* / HB 1845 – Creates diversity business enterprise oversight committee.** As introduced, creates six-member diversity business enterprise select oversight committee to review and evaluate diversity in state contracting and procurement; three members to be appointed by the speaker of the senate, one from each grand division; three members to be appointed by the speaker of the house, one from each grand division.

(S: Tate; H: Miller L.)

**SENATE STATUS:** Referred to Senate Delayed Bills Committee.

**HOUSE STATUS:** Taken Off Notice IN State & Local Government Committee.

## JUDICIARY

**SB 0379\* / HB 1086 – Judicial Selection Commission -appointment process, panels.** As introduced, revises appointment process of judicial selection commission, clarifies that person on panel rejected by the governor cannot be on second panel of nominees. Requires judicial selection commission be composed of 14 lawyer members and three non-lawyer members. Requires senate speaker and the house speaker to each appoint seven lawyer members, with no more than three being from anyone grand division, and one non-lawyer member. Requires the speakers to appoint jointly the third non-lawyer member. Specifies that the three non-lawyer members must be from different grand divisions. Clarifies that a person on a first panel of nominees rejected by the governor shall not be eligible to be on the second panel of nominees.

(S: Johnson J.; H: Lynn)

**SENATE STATUS:** Assigned to Gen. Sub of Jud. Comm.

**HOUSE STATUS:** Referred to House Judiciary Civil Practice Subcommittee.

**SB 1573 / HB 1448 – Judicial Selection and Judicial evaluation.** As enacted, rewrites provisions governing selection and retention of judges; replaces judicial selection commission with judicial nominating commission. - Amends TCA Title 2; Title 4, Chapter 29, Part 2; Title 16 and Title 17. This bill renames the "judicial selection commission" as the "judicial nominating commission." The "judicial nominating commission" would be conducted in the same manner as the "judicial selection commission" under present law, except as described below.

Under this bill, the members of the judicial nominating commission would be appointed as follows:

(1) Eight members would be appointed by the speaker of the senate. Two would be appointed from each of the state's three grand divisions, and the remaining two would be appointed at-large. At least five of the members would be lawyers, and at least one would be a nonlawyer;

(2) Eight members would be appointed by the speaker of the house. Two would be appointed from each of the state's three grand divisions, and the remaining two would be appointed at-large. At least five of the members would be lawyers, and at least one would be a nonlawyer; and

(3) One member would be jointly appointed at-large by the speaker of the senate and the speaker of the house of representatives, and the member would be a non-lawyer.

In making lawyer appointments to the commission, this bill requires that the speaker receive recommendations from any interested bar group, including those mentioned in present law and described above.

Effective July 1, 2009, the entire membership of the judicial selection commission would be vacated and replaced by new appointments of the judicial nominating commission made pursuant to this bill. This bill decreases the length of the term from "six years" to "four years." This bill clarifies that for the purposes of the present law two term limit, a term would include any initial, partial, or regular term.

Under this bill, the term of office of each member would begin on July 1, 2009. As soon as practicable after July 1, 2009, the commission would meet in organizational session as convened by the chief justice of the supreme court.

This bill requires that each member be a citizen of the United States, be at least 30 years of age, and have been a citizen of this state for at least five years immediately prior to appointment. Any member appointed from one of the state's grand divisions must have been a resident of that grand division for at least one year immediately prior to appointment.

This bill prohibits a member from being a lobbyist registered in this state. Any member becoming a registered lobbyist ipso facto vacates the member's office as a member of the commission.

This bill specifies that any member who misses four meetings of the commission during the member's term of office, ipso facto vacates the member's office as a member of the commission.

The bill authorizes the commission, in selecting candidates for nomination to fill a judicial vacancy and after holding a public hearing, to hold such additional private interviews with the candidates as it deems necessary. Once the private interviews have concluded, the commission would conduct its deliberations in public. The bill revises the ballot in retention elections to ask if the candidate should be "replaced or retained" instead of "elected and

retained."

Under present law, when a vacancy occurs in the office of an appellate court by death, resignation or otherwise, the governor must fill the vacancy by appointing one of the three persons nominated by the judicial selection commission within 60 days after receipt of the list of the persons nominated. In the alternative, the governor may require the commission to submit one other panel of three nominees. If the governor rejects the first panel of nominees, the governor must select one of the nominees in the second panel and state in writing the reasons for the rejection of the first panel.

Under this bill, the governor would not have to state any reasons for requesting a second panel, and the governor may fill the vacancy from any nominee in either the first or second panel. Also, under this bill, upon receiving the commission's panel of nominees but prior to making the appointment, the governor must direct the TBI or other appropriate agencies to perform appropriate financial and criminal background investigations and inquiries of the nominees. The governor must review and assess the results of these investigations.

The bill requires that all hearing, interviews, meetings, and deliberations of the judicial nominating commission be conducted publicly and in accordance with present law regarding public meetings. Similarly, this bill clarifies that after one public hearing, the commission may hold such additional "interviews" instead of "private interviews" with the candidates as it deems necessary. This bill clarifies that when selecting nominees, commissioner members must vote by secret ballot.

This bill also renames the "judicial evaluation commission" as the "judicial performance evaluation commission."

This bill requires that all rules, procedures, records, reports, functions and duties carried out by the prior commissions are hereby transferred to the judicial nominating commission and the judicial performance evaluation commission. This bill requires that the commissions created by this bill terminate on June 30, 2014.

NOTE: The reference in Section 15(a) to the "judicial evaluation commission" should be to the "judicial performance evaluation commission."

(S. Woodson; H. McCord)

**STATUS:** Signed by Governor 6/25/2009. Became Public Chapter No. 517. Amends TCA Title 2; Title 4, Chapter 29, Part 2; Title 16 and Title 17.

## LABOR LAW

**SB 0083 / HB 0311 – Prohibits local governments from setting minimum wage.** As introduced, prohibits local governments from requiring private employer to pay its

employees any wage not required to be paid to such employee under state or federal law. - Amends TCA Title 50, Chapter 2, Part 1.

(S. Stanley; H. Sargent).

**SENATE STATUS:** Passed with Amendments 1 & 3

**HOUSE STATUS:** Failed in House Employee Affairs Subcommittee

**SB 0469 / HB 0480 – English-only policy in the workplace.** As introduced, clarifies it is not a discriminatory practice under state law for an employer to institute an English-only policy in the employer’s workplace based on business necessity. AMENDMENT #1 adds a requirement that the employer must provide notice to employees of the English-only policy and the consequences of violating the policy in order for institution of the policy to not constitute a discriminatory practice under state law. Amends TCA Title 4, Chapter 21, Part 4.

(S. Johnson; H. Hill).

**SENATE STATUS:** Passed

**HOUSE STATUS:** Failed in House Employee Affairs Subcommittee.

**SB 0820 / HB 0773 – Unemployment benefits – victims of domestic violence.** As introduced, authorizes unemployment insurance benefits to individual who leaves work or is discharged due to circumstances resulting from being victim of domestic violence. This bill prohibits denial of unemployment benefits to an individual who leaves work or is discharged due to circumstances resulting from the person's being a domestic violence victim. This bill requires a person asserting domestic violence victim status to provide one of the following as proof:

- (1) A restraining order or injunction;
- (2) A police record documenting domestic violence;
- (3) Documentation that the perpetrator has been convicted of a domestic violence offense;
- (4) Medical documentation of domestic violence;
- (5) Certification of domestic violence victim status from the director of a family violence shelter; or
- (6) Documentation from a social worker, cleric, shelter worker, or other professional that has assisted the person in dealing with domestic violence.

An employer's account would not be charged for payment of unemployment to a person who leaves work because of domestic violence.

Amends TCA Title 50, Chapter 7.  
(S. Marrero; H. Turner M).

**SENATE STATUS:** Taken Off Notice

**HOUSE STATUS:** Referred to House Employee Affairs Subcommittee.

**SB 0825 / HB 0763 – Pay Equity in the Workplace act of 2009.** Enacts the “Pay Equity in the Workplace Act of 2009” and creates incentives for businesses that voluntarily submit to an inspection designed to identify any discrepancies in wages paid to male and female employees within such companies. This bill revises various present law provisions regarding wage discrimination.

Under present law, wage differentials between employees of the opposite sex are permissible only if such differentials are based on a system of seniority, merit, quality or quantity of production, or any "other reasonable differential" that is based on a factor other than sex. This bill restricts the "other reasonable differentials" mentioned in present law to those based on a bona fide factor such as education, training, or experience. Further, to be considered a bona fide factor, the factor must have been actually and reasonably applied and the employer must be able to demonstrate that the factor is job-related with respect to the particular position or that it furthers a legitimate business purpose that could not be met by a demonstrated alternative employment practice that avoids such wage differential.

Present law prohibits employers from discharging or discriminating against employees for taking action to enforce current pay equity standards. This bill also prohibits employers from discharging or discriminating against employees for inquiring about, discussing, or otherwise disclosing wages of the employee or another employee. This bill specifies that the prohibition on wage discrimination and retaliation applies to those applicants for employment who, if employed, would be subject to the provisions. This bill requires the commissioner of labor and workforce development to establish a program under which the governor would provide for the recognition of employers who, pursuant to a voluntary job evaluation, adjust their wage scales to ensure that women are paid fairly in comparison to men. The commissioner must develop guidelines for employers to evaluate job categories based on objective criteria so that the employers could voluntarily compare wages paid for different jobs and determine if the pay scales adequately and fairly compensate men and women. The commissioner may also provide technical assistance to help an employer carry out an evaluation of wage scales.

Under present law, those employers who violate the wage discrimination laws are liable to the employees affected in the amount of their unpaid wages. Where violations are committed knowingly, up to an additional equal amount of unpaid wages may be awarded as liquidated damages. On a second distinct violation, the employer is liable for up to an additional two times the amount of unpaid wages as liquidated damages. On a third distinct violation, the employer is liable for up to an additional three times the amount of unpaid

wages as liquidated damages. A court may also assess reasonable fees and costs of the action to the defendant.

Under this bill, employers, other than the United States and the state of Tennessee, would additionally be liable for any compensatory or punitive damages deemed appropriate. This bill establishes an award to be annually presented to businesses that demonstrate substantial efforts made to eliminate pay disparities between men and women.

Present law authorizes the Economic Council on Women to conduct research regarding wage disparities between sexes. The council reports its findings to the commissioner. This bill additionally authorizes the council to provide training to commission employees and affected individuals on matters involving wage discrimination and to train women and girls in developing negotiation skills. Beginning February 15, 2011, the council would report to the commissioner regarding training provided. The commissioner may transmit the report to the governor and speakers of the houses of the general assembly.

This bill would become effective on January 1, 2010.

(S. Marrero; H. Turner M).

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Referred to House Employee Affairs Subcommittee.

**SB 1664 / HB 0776\* – Pay Equity in the Workplace Act.** Prohibits an employer from discriminating between employees on the basis of sex by paying any employee salary or wage rates less than the rates the employer pays to any employee of the opposite sex for comparable work. Authorizes the commissioner of labor and workforce development to endeavor to eliminate such pay practices by informal means of conference, conciliation, and persuasion. Also authorizes the commissioner to supervise the payment of wages owing to an employee who has been discriminated against. Requires commissioner to develop guidelines to enable employers to evaluate job categories based on objective criteria.

(S: Harper; H: Turner M.)

**SENATE STATUS:** Taken off notice in Senate Commerce, Labor & Agriculture 3/03/2009.

**HOUSE STATUS:** Set for House Employee Affairs Subcommittee deferred to 2010.

**SB 0827 / HB 0838\* – TN Minimum Wage Act.** As introduced, adopts the federal minimum wage as the minimum wage within this state, but provides for the automatic increase in a certain amount whenever Congress fails to increase the minimum wage for five full calendar years. - Amends TCA Title 50, Chapter 2.

This bill requires employers to pay each employee the greater of:

(1) Wages at an hourly rate not less than the federal minimum wage; or

(2) Wages at an hourly rate not less than the Tennessee minimum wage, established pursuant to this bill.

Under this bill, if the U.S. Congress fails to increase the federal minimum wage for a period of five consecutive, full calendar years, then every employer in this state who is subject to the federal Fair Labor Standards Act must thereafter pay the Tennessee minimum wage beginning February 1 next succeeding such fifth calendar year.

The department of labor and workforce development would establish the amount of the Tennessee minimum wage. The minimum wage would equal the federal minimum wage as adjusted to reflect the percentage increase in the average consumer price index for the period of the five consecutive, full calendar years of congressional inaction. On February 1 each year thereafter, the Tennessee minimum wage would be adjusted by the department to reflect the percentage increase in the average consumer price index for the previous calendar year.

The annual adjustment would continue until such time as the U.S. Congress increases the federal minimum wage to a level that equals or exceeds the Tennessee minimum wage. Upon the effective date of such congressional enactment, the Tennessee minimum wage would be suspended and the tolling of a new period would begin for purposes of any subsequent implementation of the Tennessee minimum wage.

Any employer who violates the minimum wage requirements of this bill would be liable to the employee or employees affected for the amount of unpaid minimum wages. Upon a judgment being rendered in favor of any employee or employees, in any action brought in any court of competent jurisdiction to recover unpaid wages under this bill, the judgment would include, in addition to the unpaid wages adjudged to be due, an additional amount equal to such wages as damages. The court would also require the defendant to pay court costs and reasonable attorney's fees incurred by the employee or employees. Action to recover must be instituted within three years from the date the wages should have been paid.

(S: Marrero; H: Moore)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Referred to House Employee Affairs Subcommittee.

**SB 1201\* / HB 1760 – Unemployment compensation benefit provisions.** As enacted, defines "misconduct" for purposes of provisions whereby if an administrator finds that a claimant for unemployment benefits has been discharged for misconduct connected with the claimant's work, then the claimant is disqualified from collecting unemployment

benefits; requires any person who receives unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact, or by making a false statement or false representation without a good faith belief as to the correctness of the statement or representation to repay the amount of benefits received. - Amends TCA Title 50, Chapter 7.

The Tennessee Employment Security Law provides unemployment benefits to eligible individuals who are unemployed involuntarily.

Under present law, a person is disqualified from receiving unemployment benefits if the person was discharged from the person's most recent work for "misconduct connected with the person's work." This bill specifies that a discharge for dishonesty constituting a crime or any felony of Class A misdemeanor in connection with the claimant's work as shown by either the facts together with the claimant's admission or the claimant's conviction of that crime would be deemed to be a discharge for "misconduct connected with the claimant's work."

Under present law, a person is disqualified from receiving benefits if the administrator finds that the person has failed without good cause either to apply for available, suitable work, when so directed by the employment office or the administrator, or to accept suitable work when offered, or to return to the claimant's customary self-employment, if any, when so directed by the administrator. This bill adds a disqualifier, a person's failure, without good cause, to return a potential employer's telephone call to schedule an employment interview.

Under present law, a claimant is disqualified from receiving unemployment benefits if the claimant makes any false or fraudulent representation or intentionally withholds material information in order to wrongfully obtain benefits. The person's benefits are disqualified for the week or weeks in which the administrator finds that the claimant has made any such representation or so intentionally withheld material information and for not less than four or more than the 52 next following weeks, as determined by the administrator in each case according to the seriousness of the facts.

This bill revises the length of time such a person would be disqualified from receiving benefits to the number of weeks the claimant made any such representation or so intentionally withheld information plus an additional 13 weeks for the first week the representation was made or fact was withheld and an additional six weeks for each week thereafter. The additional weeks would not exceed 49 weeks. Under this bill, such a person must repay to the department's employment security division any overpayment and, as a civil penalty, an additional amount equal to the amount of the overpayment. The proceeds from the civil penalty would be used to defray the costs of enforcing the Tennessee

Employment Security Law. A person would be ineligible for future benefits or waiting week credit until all amounts owed under these provisions have been paid.

Under this bill, if an employer has a written policy on notification of tardiness or absences that complies with this bill, provides a copy of the policy to each employee, and gives at least one warning to the employee concerning the employee excessively failing to notify the employer of absenteeism or tardiness and if an employee is discharged for this failure, then the employee will be ineligible to receive benefits until six weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after such week equal to at least six times the employees weekly benefit rate. Under this bill, tardiness becomes excessive if an employee is late for six or more scheduled workdays in a 12-month period without providing adequate notice. Absenteeism becomes excessive if an employee is absent for two or more scheduled workdays in a 12-month period without providing adequate notice.

Under present law, a person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under the Tennessee Employment Security Law commits a Class C misdemeanor. Any person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled to benefits, or to avoid becoming or remaining subject to Tennessee Employment Security Law, or to avoid or reduce any premium or other payment required from an employing unit, or who willfully fails or refuses to make the premiums or other payments, or to furnish any reports required under the Tennessee Employment Security Law, or to produce or permit the inspection or copying of records as required under the Tennessee Employment Security Law, commits a Class E felony.

This bill creates the offense of "unemployment security fraud." Under this bill, a person who commits any of the acts described immediately above would be guilty of "unemployment security fraud." Instead of being either a Class C misdemeanor or a Class E felony, the offense would be punished based on the amount the person obtained or sought to obtain in the same manner as a person is punished in theft cases and as described below:

- (1) Class A misdemeanor if the amount is \$500 or less;
- (2) Class E felony if the amount is more than \$500 but less than \$1,000;
- (3) Class D felony if the amount is \$1,000 or more but less than \$10,000;
- (4) Class C felony if the amount is \$10,000 or more but less than \$60,000; or
- (5) Class B felony if amount is \$60,000 or more.

This bill requires any person who has reasonable belief that a person is committing "unemployment security fraud" or is knowingly making misrepresentation in order to obtain benefits under laws other than Tennessee law to furnish and disclose any information in the person's possession concerning the act to the appropriate law enforcement authority or to the department of commerce and insurance, subject to any legal privilege protecting the information. If disclosure would not jeopardize an ongoing investigation or prosecution, then a governmental agency that receives a request for information in the possession or control of the agency concerning a suspected violation or a pattern of related activity by a person who has provided information to any such agency would provide the requested information to the person.

This bill specifies that before making a determination of a claim or an appeal, the hearing office, appeals tribunal, and board of review, as appropriate, must review relevant employer documentation, which may include personnel files, separation notices and other materials germane to employment.

ON MAY 18, 2009, THE SENATE ADOPTED AMENDMENTS #1 AND #2 AND PASSED SENATE BILL 1201, AS AMENDED.

AMENDMENT #1 rewrites the bill. Under present employment security law, if an administrator finds that a claimant for unemployment benefits has been discharged for misconduct connected with the claimant's work, then the claimant is disqualified from collecting unemployment benefits. The disqualification is for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten times the claimant's weekly benefit amount. This amendment adds that "misconduct" includes:

- (1) Willful or wanton disregard of the rights or interests of the employer;
- (2) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;
- (3) Carelessness or negligence of a degree or recurrence that shows an intentional or substantial disregard of the employer's interest or manifests equal culpability, wrongful intent or evil design; and
- (4) Any conduct by a claimant involving dishonesty related to the claimant's employment that constitutes an essential element of a crime for which the claimant was convicted.

This amendment also clarifies that "misconduct" does not include: inefficiency as the result of inability or incapacity; inadvertence or ordinary negligence in isolated instances; or good faith errors in judgment or discretion.

Under present law, it is a Class C misdemeanor for a person to knowingly make a false statement or fail to disclose a material fact in order to obtain or increase any unemployment benefits. This amendment adds that it is a Class E felony if the offense occurs on or after January 1, 2010 and:

- (1) The offense is a second or subsequent offense; or
- (2) The person has a prior conviction for a similar offense in another jurisdiction.

This amendment also adds that any person who receives unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact, or by making a false statement or false representation without a good faith belief as to the correctness of the statement or representation would, after a determination by the commissioner of labor and workforce development that the violation has occurred, be required to repay the amount of benefits received. Additionally, the commissioner would assess interest at a rate of no more than 1.5 percent per month on the total amount due that remains unpaid 30 days after the date on which the commissioner sends notice of the commissioner's determination to the last known address of the claimant. A pending appeal of the order of the commissioner would not suspend the assessment of interest. Such monies collected by the department of labor and workforce development would be used to defray the costs of deterring, detecting, or collecting overpayments.

This amendment would take effect January 1, 2010.

AMENDMENT #2 clarifies that misconduct includes conduct involving dishonesty "arising out of", instead of "related to", the claimant's employment.

(S: Tracy; H: Curtiss)

**STATUS:** Signed by Governor 6/23/2009. Became Public Chapter No. 479. Amends TCA Title 50, Chapter 7.

**SB 1385\* / HB 1595 – Employees and the right to privately decide to unionize.** Specifies that the general assembly supports democracy in the workplace by maintaining every employee's right to privately decide whether or not to elect union representation.

(S: Johnson J.; H: Lynn)

**SENATE STATUS:** Taken off Notice  
**HOUSE STATUS:** Referred to House Employee Affairs Subcommittee.

**SB 1442 / HB 0775\* – Paid sick and vacation leave for employees.** Enacts the “Healthy Families Act”. Requires certain employers to give employees who work 30 hours a week seven days of paid sick and vacation leave annually and those who work between 20 and 30 hours a week must receive four days of paid sick and vacation leave annually.

(S: Haynes; H: Turner, M)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Referred to House Employee Affairs Subcommittee

**SB 1491\* / HB 2092 – Reducing unemployment benefits due to college enrollment.** Prohibits reduction or termination of claimant’s unemployment benefits due to claimant enrolling in an institution of higher education.

(S: Ford; H: Towns)

**SENATE STATUS:** Assigned to Gen. Sub of: Senate Commerce, Labor & Agriculture Comm.

**HOUSE STATUS:** Passed House 95 - 0

**SB 1595\* / HB 2005 – Freedom in Contracting Act. Enacts the “Freedom in Contracting Act.”** Prohibits the public agencies from imposing certain labor and wage requirements as a condition of performing public works that are state funded.

This bill requires the state and its political subdivisions, agencies and instrumentalities (hereinafter referred to as "the state"), when engaged in procuring products or services or letting contracts for manufacture of public works, or overseeing such procurement, construction or manufacture to be funded with state funds, to ensure that no bid specifications, project agreements or other controlling documents, entered into, required or subject to approval by the state:

- (1) Requires bidders, offerors, contractors or subcontractors to enter into any agreement with one or more labor organizations on the same or related projects;
- (2) Discriminates against bidders, offerors, contractors or subcontractors for refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations on the same or related construction projects; or
- (3) Requires any bidder, offeror, contractor or subcontractor to enter into or enforce any agreement that requires its employees as a condition of employment to:
  - (A) Become members of or become affiliated with a labor organization or employee organization of any kind; or

(B) Pay dues or fees to a labor organization or employee organization, over an employee's objection, in excess of the employee's share of labor or employee organization costs relating to collective bargaining, contract administration or grievance adjustment; or

(4) Requires any bidder, offeror, contractor or subcontractor to pay wages that exceed the state's most current prevailing wage or a specific dollar amount for the provision of fringe benefits for employees.

This bill prohibits the state from issuing grants or entering into cooperative agreements for construction projects conditioned on a requirement that bid specifications, project agreements or other controlling documents pertaining to the grant or cooperative agreement contain any of the elements described above in (1)-(4). Similarly, this bill requires the state to preclude a grant recipient or party to a cooperative agreement from imposing any of the elements described above in (1)-(4).

Any interested party would have standing to challenge any bid specification, project agreement, controlling document, grant or cooperative agreement that the party alleges has violated this bill. The party would be awarded costs and attorney's fees in the event that the challenge prevails.

(S: Stanley; H: McDaniel)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture

**HOUSE STATUS:** House Consumer Affairs Subcommittee deferred to 2010.

**SB 1731 / HB 0397\* – Employers cannot require employees to use vacation on FMLA.**

Prohibits an employer from requiring an employee to use vacation time while on leave for adoption, pregnancy, childbirth, nursing an infant or pursuant to the Family and Medical Leave Act.

(S: Burks; H: Fincher)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Failed in House Employee Affairs Subcommittee.

**HJR 0050 – Urges Congress to enact Employee Free Choice Act.** Urges Congress to enact Employee Free Choice Act, which would authorize the National Labor Relations Board to certify a union as the bargaining representative when a majority of employees voluntarily sign authorizations designating that union to represent them.

(H: Cooper B.)

**HOUSE STATUS:** Failed in House Employee Affairs Subcommittee 3/24/2009.

**HJR 0109 – Amending the National Labor Relations Act of 1935.** Expresses opposition to efforts to amend the National Labor Relations Act of 1935 to remove the private election

phase of union recognition campaigns and force binding arbitration on employers during union negotiations.

(H: Lynn)

**HOUSE STATUS:** Referred to House Consumer & Employee Affairs Committee.

**SR 0026 – Private election phase of union recognition campaigns.** Expresses opposition to efforts to amend the National Labor Relations Act of 1935 to remove the private election phase of union recognition campaigns and force binding arbitration on employers during union negotiations.

(S: Stanley)

**SENATE STATUS:** Signed by Senate Speaker, 6/8/2009.

## LOCAL GOVERNMENT

**SB 2079 / HB 1905 – Competitive reverse auction process.** As enacted, creates a mechanism for local governmental units to purchase goods and services through a competitive reverse auction process after filing a plan with the comptroller to document internal controls to ensure the integrity of the process. - Amends TCA Title 4; Title 5; Title 6; Title 7; Title 12; Title 13; Title 41; Title 42; Title 49; Title 64 and Title 68.

Authorizes any local government unit to purchase goods or services through a competitive reverse auction process that allows offerors to bid on specified goods or services electronically and adjust bid pricing during a specified time period. "Local governmental unit" means any county, city, municipality, special district, utility district, school district, authority, or other entity created or appointed by a local governmental unit of the state. **This bill would not apply to construction services other than those relating to maintenance, repairs and renovations, or to architectural or engineering services, "the cost of which is less than \$25,000."** This bill would not apply to new or unused construction equipment or new or unused motor vehicles, unless they are manufactured for a special purpose. "Manufactured for a special purpose" includes school buses, garbage trucks, fire trucks and ambulances.

Requires the purchasing agent of the local government unit to solicit bids by public notice inserted at least once in a newspaper of county-wide circulation five days prior to the first day bids can be submitted, or if there is not a newspaper of county-wide circulation in the County where the local government unit is located a Notice may be posted at the Courthouse in the County where the local government unit is located; or distribute invitations to bid electronically via e-mail or by a posting to the entity's Web site.

This bill requires that all bids received be made available publicly at the time and place identified in the invitation to bid. All bids must be preserved for five years.

Prior to the initial utilization of a reverse auction, the local governmental unit must file a plan with the comptroller of the treasury. The plan must indicate the technology to be utilized, whether a third party source will be utilized to conduct a reverse auction, a description of policies and procedures related to the implementation of the reverse auction process, and documentation of internal controls that will ensure the integrity of the process. Furthermore, the plan must indicate whether the process will be implemented within the existing operating resources of the local governmental unit or indicate prior approval of the governing body of the local governmental unit if additional operating resources are needed.

(S: Ketron; H: Curtiss)

**STATUS:** Signed by Governor 6/9/2009. Became Public Chapter No. 399. Amends TCA Title 4; Title 5; Title 6; Title 7; Title 12; Title 13; Title 41; Title 42; Title 49; Title 64 and Title 68.

**SB 1310 / HB 1354\* – Immigration laws -local cooperation with federal officials.** As enacted, prohibits local government entities from adopting any ordinance or written policy that expressly prohibits a local government entity, official or employee from complying with applicable federal law pertaining to persons who reside in Tennessee illegally; prohibits local government officials from materially interfering with the ability of a local government entity, official or employee to comply with applicable federal law pertaining to persons who reside in Tennessee illegally; authorizes any person who believes that a violation of act has occurred to file a complaint in chancery court. - Amends TCA Title 7.

This bill prohibits local government entities from adopting any ordinance or written policy that expressly prohibits a local government entity, official or employee from complying with applicable federal law pertaining to persons who reside in Tennessee illegally. This amendment also prohibits local government officials from materially interfering with the ability of a local government entity, official or employee to comply with applicable federal law pertaining to persons who reside in Tennessee illegally.

This amendment authorizes any person who believes that a violation of the prohibitions that this amendment will impose has occurred to file a complaint in chancery court. If the complainant proves by a preponderance of the evidence that a violation has occurred, then the court will be authorized to issue a writ of mandamus against the local government entity, enjoin the official from further interference, or take such other action to ensure compliance as is within the court's jurisdiction. Any local government entity or official who is found to have committed a violation will have at least 90 days, but no more than 120 days, from the date of the court's order to comply with such order before the court is authorized to take additional action to enforce compliance.

(S: Tracy; H: Carr)

**STATUS:** Signed by Governor 6/23/2009. Became Public Chapter No. 447. Amends TCA Title 7.

## PROFESSIONS & LICENSURE

**SB 0571\* / HB 1566 – Certification for crane operators.** As introduced, requires certain persons who operate cranes over five tons in lifting capacity be certified by a national organization approved by the commissioner of labor and workforce development.

This bill requires that any individual who operates a crane with a lifting capacity of over five tons on a construction site must have a crane operator certificate received from a nationally recognized and accredited certification program that is approved by the commissioner of labor and workforce development. This bill prohibits any employer from permitting a crane operator who is not properly certificated from working on a construction site. This bill requires that crane operator certification be renewed every five years. This bill does not require crane operator certification for the following persons:

- (1) A crane operator trainee or apprentice who is under the direct supervision of an operator who holds a certificate;
- (2) A person employed directly by a class 1 or 2 railroad who is qualified by the employing railroad as a crane operator or boom truck operator while performing work on railroad property;
- (3) A person employed by or performing work for a public utility, rural electric cooperative, municipality, telephone company, or industrial manufacturing plant;
- (4) A person who is subject to inspection and regulation under the federal Mine Safety and Health Act;
- (5) A person who is a member of and performing work for a uniformed service or the U.S. Merchant Marines;
- (6) A person engaged in boating, fishing, agriculture, or arboriculture;
- (7) A person operating a crane for personal use on the person's own premises;  
or
- (8) A person operating a crane in an emergency situation.

(S: Jackson; H: West)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Taken Off Notice

**SB 1413 / HB 1249 – Delay on issuance of General Contractor’s license.** As enacted, provides that any contractor required to be licensed who is in violation of the law or rules governing contractors may not recover any damages in any court other than actual documented expenses that must be shown by clear and convincing proof. This bill also changes the period of time for which a person, firm or corporation is ineligible to receive a license under the above-described circumstances from "six months" to "at least six months." This bill authorizes a longer delay in the issuance of a license in instances deemed appropriate by the board. - Amends TCA Title 62, Chapter 6.

(S. Ketron; H. Curtiss).

**STATUS:** Signed by Governor 6/23/2009. Became Public Chapter No. 482. Amends TCA Title 62, Chapter 6.

**SB 1431 / HB 1704 – Auditing general contractor’s financial statement.** As introduced, increases the amount from \$1.5 million to \$2 million above which a general contractor's financial statement has to be audited. - Amends TCA Title 62, Chapter 6.

(S. Stanley; H. Hensley).

**SENATE STATUS:** Referred. to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Referred to House Commerce Industrial Impact Subcommittee.

## PROPERTY & HOUSING

**SB 1351 / HB 0057\* – Requires energy audit for commercial buildings.** Requires each owner of an existing commercial building to have a comprehensive energy audit conducted. Specifies that audit must identify building’s energy consumption and conservation procedures, and indicate if there is need for energy conservation measures. Requires that each owner must display notice containing energy audit results by January 1, 2010.

(S: Tate, H: Hardaway)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Deferred to subcommittee on Utilities & Banking in the House Commerce Committee.

## TAXES BUSINESS

**SB 0822 / HB 0769 – Tax credits as incentives for establishing operations.** As introduced, requires companies locating in state to establish defined benefit plans and health insurance prior to receiving tax credits and state funding. - Amends TCA Title 4; Title 12; Title 53 and Title 67.

(S. Marrero; H. Turner)

**SENATE STATUS:** Placed on S. Tax Sub Committee of F,W&M

**HOUSE STATUS:** Assigned to Budget subcommittee of House Finance, Ways &7 Means Committee

**SB 2290 / HB 2264 – revises excise tax exemption for FONCE’s.** As introduced, revises the excise tax exemption for certain family-owned non-corporate entities (FONCEs). - Amends TCA Title 67.

This bill revises the franchise/excise tax exemption for a family-owned noncorporate entity (FONCE), where substantially all the activity of the entity is either the production of passive investment income or the combination of the production of passive investment income and farming. Under present law, "family-owned" means, among other things, that at least 95 percent of the ownership units of the entity are owned by members of the family, which means, with respect to an individual, only the estate or trust of a deceased individual who, while living, was an ancestor of such individual; the spouse or former spouse of such individual; a lineal descendent of such individual, of such individual's spouse or former spouse, or of a parent of such individual; or the spouse or former spouse of any lineal descendent of such persons.

Under present law "passive income" includes "rents." This bill redefines passive income so that it includes "rents from residential property or farm property." This bill specifically excludes from the definition of "passive income" (and thereby removes the exemption for) rents from tangible personal property, from industrial and commercial property, or from acreage used for recreational purposes by clubs, including golf course playing hole improvements. This bill further specifies that ownership units that are held in trust are not to be treated as owned by members of the family, unless such ownership units are property of a trust under present law, as described above.

(S. Kyle; H. Turner M)

**SENATE STATUS:** Assigned to General subcommittee of Senate Finance, Ways & Means Committee.

**HOUSE STATUS:** Taken Off Notice for Cal. in Budget subcommittee of House Finance, Ways &7 Means Committee.

## TRANSPORTATION GENERAL

**SB 0398 / HB 1505 – Prohibits transfer of Highway fund money.** As introduced, deletes the authority of the commissioner of finance and administration to transfer department of transportation funds and programs in the highway fund to the state general fund. - Amends TCA Section 4-3-1016.

(S. Tracy; H. Harmon).

**SENATE STATUS:** Referred to Senate Transportation.

**HOUSE STATUS:** Referred to House Finance Budget Subcommittee.

## TRANSPORTATION VEHICLES

**SB 0011 / HB 0293 – Examination for driver license shall be in English.** As introduced, requires all written driver license examinations be given in English. AMENDMENT #1 authorizes a person who presents documentation demonstrating that their presence in the United States is authorized by the United States secretary of homeland security to take a written driver license exam in German, in addition to in Korean, Japanese or Spanish-Amends TCA Title 55, Chapter 50, Part 3.

(S. Ketron; H. Carr).

**SENATE STATUS:** Senate Passed

**HOUSE STATUS:** Failed in House Transportation Public Safety Subcommittee.

**SB 0025 / HB 2068 – Registration plates for front and back of certain trucks.** As introduced, requires all trucks and truck tractors, other than trucks with a three-quarter ton rating or less and motor homes, to have registration plates attached to both the front and rear of such vehicles. - Amends TCA Title 55, Chapter 4, Part 1.

(S. Harper; H. Lynn).

**SENATE STATUS:** Referred to Senate Transportation.

**HOUSE STATUS:** Referred to House Transportation Public Safety Subcommittee.

## UTILITIES

**SB 0818 / HB 0852 – Underground Utility Damage Prevention Act.** As enacted, requires the Tennessee advisory commission on intergovernmental relations to study the effectiveness of the state's current underground utility damage prevention program and report its findings to the general assembly by January 29, 2010. - Amends TCA Title 65, Chapter 31.

(S. Norris; H. Odom).

**STATUS:** Signed by Governor 6/23/2009. Became Public Chapter No. 470. Amends TCA Title 65, Chapter 31.

## WORKERS COMPENSATION

**SB 1909\* / HB 1500 – Recreational activities not covered by workers' comp.** As enacted, adds additional injuries that are not covered by workers' compensation. - Amends TCA Section 50-6-110.

In order for an injury to be compensable under workers' compensation, present law generally requires that an injury must arise out of and in the course of an employee's

employment. In *Gooden v. Coors Technical Ceramic Company*, 236 S.W.3d 151 (2007), the supreme court of Tennessee held that a fatal heart attack suffered by an employee during a voluntary basketball game played on the employer's premises during a work break was a compensable injury because the employer was aware that its employees regularly played basketball games on the premises during breaks and it acquiesced to such activity.

This bill prohibits awards of workers' compensation when an injury or death is due to an employee's voluntary participation in recreational, social, athletic, or exercise activities whether or not the employer pays some or all of the costs thereof, unless:

- (1) Participation was expressly or impliedly required by the employer;
- (2) Participation produced a direct benefit to the employer beyond improvement in employee health and morale;
- (3) Participation was during work hours and was part of the employee's job duties; or
- (4) The injury occurred due to an unsafe condition during voluntary participation using facilities designated by, furnished by, or maintained by the employer on or off the employer's premises and the employer had actual knowledge of the unsafe condition and failed to curtail the activity or cure the unsafe condition.

(S: Norris; H: Fitzhugh)

**STATUS:** Signed by Governor 6/11/2009. Became Public Chapter No. 407. Amends TCA Section 50-6-110.

**SB 1524\* / HB 1604 – Alcohol and drug use – cause of injury or death.** Changes standard for denying workers' compensation benefits in cases involving alcohol and drug use from such use being a proximate cause of the injury or death to such use being a contributing cause of such injury or death. Removes the provision that does not allow compensation for an injury or death due to an employee's willful failure to use a safety appliance or perform a duty required by law.

(S: Burchett; H: Brooks, Harry).

**SENATE STATUS:** Assigned to Gen. Sub of Senate Finance, Ways & Means Committee.

**HOUSE STATUS:** House Employee Affairs Subcommittee deferred to 2010.

**SB 2231 / HB 2102\* – Illegal immigrants -workers' compensation benefits.** Requires that illegal immigrants receive lesser workers' compensation benefits unless it is demonstrated that the employer had actual knowledge that the worker was an illegal immigrant at the time of being hired.

(S: Southerland; H: Sargent)

**SENATE STATUS:** Referred to Senate Commerce, Labor & Agriculture.

**HOUSE STATUS:** Withdrawn.