



April 12, 2015

**SUMMARY OF ORIGINAL BILL:** Creates an alternative to the *Tennessee Workers' Compensation Law* (WCL). This plan is entitled the "Tennessee Employee Injury Benefit Alternative" (TEIBA). Defines a "qualified employer" as an employer that has elected to become exempt from WCL and is assumed to have met all qualifications of registering under TEIBA. To be accepted as a qualified employer, the employer must satisfy applicable filing requirements, pay an annual, nonrefundable \$500 fee, prove its ability to provide sufficient funds to cover its employees' occupational injuries, agree to establish a written benefit plan, notify employees of its qualified employer status, and receive confirmation from the Tennessee Department of Commerce and Insurance (TDCI) that it is a qualified employer. TDCI is required to maintain a list of all qualified employers on its website.

Creates requirements for the written benefit plan of qualified employers. Such plan must include the following minimum benefits:

- Medical expense coverage for at least 156 weeks and \$300,000 per employee;
- Temporary total disability benefits beginning on the fourth day of disability, of at least 70 percent of the employee's average weekly wages up to 110 percent of the state's average weekly wage, for at least 156 weeks; and
- Death and scheduled dismemberment benefits up to \$300,000 per employee.

The benefit plan may include a single limit for all benefits payable due to an occupational injury; provided, the combined limit is at least \$750,000 per employee and \$2,000,000 per occurrence.

Authorizes a qualified employer to self-insure benefits and liabilities with a licensed insurance carrier. States that any current surety bond posted with TDCI as required under TWCL guarantees the payment of claims, or surety for a benefit plan under TEIBA.

Authorizes any related employer, being part of a qualified employer's controlled group of companies, to submit a qualified employer application with a single filing fee for a single qualified employer certificate that will name all related employers as qualified employers. Authorizes one or more member companies within a controlled group of companies to become qualified employers, notwithstanding the election of other members of such controlled group to offer workers' compensation coverage under the WCL. If related employers under a controlled group of companies plan to adopt separate injury benefit plans, purchase separate insurance policies, or use different claims administrators, then each set of employers must complete a separate qualified employer application and submit separate filing fees to TDCI. All filing fees under TEIBA shall be credited by the treasurer to TDCI for purposes of administering TEIBA,

and revenue collected, in excess of TEIBA expenditures, will not revert to the state's general fund but will remain with TEIBA.

Creates the "Tennessee option guaranty fund" (TOGF) for the purpose of protecting any insured employee who is a member to a plan administered by a qualified employer, whom is found unable to meet its compensation obligations with regards to an occupational injury. The TOGF, until it reaches a balance of \$10,000,000, shall be funded by all qualified employers, through the following:

- An assessment against each qualified employer equal to two percent of all gross direct premiums written each quarter of the calendar year, after deducting from such gross direct premiums any return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings, and other similar returns paid or credited to policyholders; and
- Assessments against each qualified employer that does not purchase insurance covering a benefit plan under TEIBA, in an amount equal to one percent of the temporary total disability benefits paid out during each quarter of the calendar year by the employer.

The Tennessee Insurance Guaranty Association (TIGA) will collect revenue from such assessments and create a separate account for the TOGF and it shall not be combined with any other account managed by TIGA. TIGA has the authority to administer, disburse, and invest funds placed into the TOGF. On December 31 of each year, TIGA shall determine the balance of the TOGF and collect any necessary information from each applicable insurer and qualified employer in order to determine the necessary amount of assessment to properly administer the TEIBA program.

Establishes a penalty to be levied against any qualified employer that fails to provide payment of any applicable assessment. All revenue collected from fines and penalties assessed against a qualified employer will be paid to the association and deposited into the TOGF. No other tax, fee, or assessment applicable to a workers' compensation carrier, employer, or third-party claims administrator shall apply to a qualified employer's injury benefit plan, other than premiums or surplus lines taxes collected from carriers.

The Commissioner of TDCI may promulgate rules to effectuate the requirements of TEIBA. TIGA may promulgate rules for the administration and assessment and collection process. No administrative agency of the state or a court shall promulgate rules or procedures related to design, documentation, implementation, administration, or funding of a qualified employer's benefit plan. No regulatory authority shall have the right or duties to approve insurance rates or prescribe policy forms for coverage obtained pursuant to TEIBA. This legislation has an effective date of July 1, 2015.

**FISCAL IMPACT OF ORIGINAL BILL:**

Increase State Expenditures - \$12,800/One-Time  
\$356,400/Recurring

Other Fiscal Impact – Any employers who opt out of the current workers’ compensation system and become qualified employers will pay a one-time \$500 application fee and will reduce costs incurred in providing workers’ compensation coverage under the WCL. A reduction in premiums will lead to a reduction in premium tax revenue. Any reduction in premium tax revenue will likely reduce allocations to the Second Injury Fund. Based on a median salary of \$30,987 and an average workers’ compensation rate of \$1.95 per \$100 in payroll, the average premium tax and surcharge is estimated to be \$2,659 per 100 employees. Due to a number of unknown factors, an exact impact to state revenue cannot be determined. If one employer with 100 employees can reduce their premiums by 50 percent, there would be a reduction of premium tax and surcharge revenue exceeding \$1,000 recurring and a recurring increase in state revenue of \$500.

#### IMPACT TO COMMERCE OF ORIGINAL BILL:

Other Fiscal Impact – Any employers who opt out of the current workers’ compensation system and become qualified employers will pay a one-time \$500 fee and will reduce costs incurred in providing workers’ compensation coverage under the WCL. A reduction in premiums will lead to a reduction in premium tax revenue. Any reduction in premium tax revenue will likely reduce allocations to the Second Injury Fund. Based on a median salary of \$30,987 and an average workers’ compensation rate of \$1.95 per \$100 in payroll, the average premium tax and surcharge is estimated to be \$2,659 per 100 employees. Due to a number of unknown factors, an exact impact to state revenue cannot be determined. If one employer with 100 employees can reduce their premiums by 50 percent, there would be a reduction of premium tax and surcharge revenue exceeding \$1,000 recurring and a recurring increase in state revenue of \$500.

**SUMMARY OF AMENDMENT (005574):** Deletes all language after the enacting clause. Creates an alternative to the *Tennessee Workers’ Compensation Law* (WCL). This plan is entitled the “Tennessee Employee Injury Benefit Alternative” (TEIBA). Defines a “qualified employer” as an employer that has elected to become exempt from WCL and is assumed to have met all qualifications of registering under TEIBA. To be accepted as a qualified employer, the employer must satisfy applicable filing requirements, pay an annual, nonrefundable \$500 application fee, prove its ability to provide sufficient funds to cover its employees’ occupational injuries, agree to establish a written benefit plan, notify employees of its qualified employer status, and receive confirmation from the Tennessee Department of Commerce and Insurance (TDCI) that it is a qualified employer. TDCI is required to maintain a list of all qualified employers and certain accompanying information regarding each qualified employer on its website.

Creates requirements for the written benefit plan of qualified employers. Such plan must include the following minimum benefits:

- Medical expense coverage for at least 156 weeks and \$300,000 per employee;
- Temporary total disability benefits beginning on the fourth day of disability, of at least 70 percent of the employee’s average weekly wages up to 110 percent of the state’s average weekly wage, for at least 156 weeks;
- Permanent partial disability benefits of at least 70 percent of the employee’s average weekly wages up to 110 percent of the state average weekly wage, based on criteria

established by the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the impairment rating, and subject to a whole body maximum of 450 weeks; provided, however, that permanent partial disability benefits need not be paid unless the employee agrees in a form acceptable to the employer to waive the cause of action provided in this legislation;

- Permanent total disability benefits of at least 70 percent of the employee's average weekly wages up to 110 percent of the state average weekly wage, until the later of the employee, by age, becomes eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act (42 U.S.C § 50-10-13) or 260 weeks; and Death benefits in at least an amount equal to the lesser of three times the employee's average annualized wages, or \$300,000 per employee; provided, if the employee leaves no surviving spouse or dependents, then a death benefit may be reduced to not less than \$20,000; and further provide that:
  - A death benefit may be reduced by the amount of any other disability benefits payable with respect to the employee;
  - A death benefit may be paid in a lump sum or monthly installments over a period up to three years;
  - Death benefits shall include a funeral benefit of at least \$7,500 for burial expenses, regardless of any reductions equal to other disability benefits payable with respect to the employee;
  - A death benefit need not be paid unless the employee's person representative, dependents, or next of kin agrees in a form acceptable to the employer to waive cause of action.
- The benefit plan may have a combined single limit for all benefits payable due to an occupational injury; provided that the combined limit is at least \$1,000,000 per employee, and there is no limit per occurrence.

The benefit plan may provide for settlement agreements between a covered employee and qualified employer that pay more or less than an amount actuarially equivalent to expected future payments. Authorizes a qualified employer to self-insure benefits and liabilities with a licensed insurance carrier.

Authorizes any related employer, being part of a qualified employer's controlled group of companies, to submit a qualified employer application with a single filing fee for a single qualified employer certificate that will name all related employers as qualified employers. Authorizes one or more member companies within a controlled group of companies to become qualified employers, notwithstanding the election of other members of such controlled group to offer workers' compensation coverage under the WCL. If related employers under a controlled group of companies plan to adopt separate injury benefit plans, purchase separate insurance policies, or use different claims administrators, then each set of employers must complete a separate qualified employer application and submit separate filing fees to TDCI. All filing fees under TEIBA shall be credited by the treasurer to TDCI for purposes of administering TEIBA, and revenue collected, in excess of TEIBA expenditures, will not revert to the state's general fund but will remain with TEIBA.

Specifies that in the event that the insurer of injury benefit obligations for a qualified employer is a member of the Tennessee Insurance Guaranty Association (TIGA), and is determined by a court of competent jurisdiction to be an insolvent insurer, and a final order of liquidation is entered, the *Tennessee Insurance Guaranty Association Act* shall become applicable for the purposes of continuation of benefits. In the event the insurer of injury benefit obligations of a qualified employer is a member of the Life and Health Insurance Guaranty Association, and is determined by a court of competent jurisdiction to be an insolvent insurer, and a final order of liquidation is entered, the *Tennessee Life and Health Insurance Guaranty Association Act* shall become applicable for the purposes of continuation of benefits. For guaranty fund assessments, all insurance covering the benefit obligations of such a qualified employer shall be deemed to be life and health insurance premiums.

Establishes a penalty to be levied against any qualified employer that fails to provide payment of any applicable assessment. All revenue collected from fines and penalties assessed against a qualified employer shall be credited by the Treasurer to the TDCI for the purposes of administering this Act and will not revert to the general fund. No other tax, fee, or assessment applicable to a workers' compensation carrier, employer, or third-party claims administrator shall apply to a qualified employer's injury benefit plan, other than taxes on premiums, relative to each qualified employer.

The Commissioner of TDCI may promulgate rules to effectuate the requirements of TEIBA... No administrative agency of the state or a court shall promulgate rules or procedures related to design, documentation, implementation, administration, or funding of a qualified employer's benefit plan. No regulatory authority shall have the right or duties to approve insurance rates or prescribe policy forms for coverage obtained pursuant to TEIBA. This legislation has an effective date of July 1, 2016.

### **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Increase State Expenditures - \$369,200/FY16-17  
\$356,400/FY17-18 and Subsequent**

**Other Fiscal Impact – Any employers who opt out of the current workers' compensation system and become qualified employers will pay a one-time \$500 application fee, an annual renewal fee of \$500 and will reduce costs incurred in providing workers' compensation coverage under the WCL. A reduction in workers' compensation premiums will lead to a reduction in premium tax revenue. Any reduction in premium tax revenue will likely reduce allocations to the Second Injury Fund. Based on a median salary of \$30,987 and an average workers' compensation rate of \$1.95 per \$100 in payroll, the average premium tax and surcharge is estimated to be \$2,659 per 100 employees. Due to a number of unknown factors, an exact impact to state revenue cannot be determined. If one employer with 100 employees can reduce their premiums by 50 percent, there would be a reduction of premium tax and surcharge**

**revenue exceeding \$1,000 recurring and a recurring increase in state revenue of \$500.**

Assumptions for the bill as amended:

- The proposed legislation will result in a significant departure from the current workers' compensation law (WCL).
- A qualified employer will create a written benefit plan which allows great autonomy as to the coverage it provides to workers injured on the job.
- In determination of this legislation's impact, the following factors are unable to be determined: how many businesses and individuals in this state will choose to become qualified employers, the aspects of each written benefit plan by each qualified employer, and the number of employees who will work for such qualified employers.
- It is assumed that those businesses and individuals who seek to become qualified employers are seeking this new alternative in order to reduce costs associated with workers' compensation coverage. Qualified employers will either self-insure or insure workers' compensation liabilities through a third-party insurer. It is assumed that this opt-out to the WCL will reduce premiums paid by the qualified employer to its subsidiary (self-insured) or a third-party insurer. A reduction in premiums would reduce premium taxes collected by the state. Due to numerous unknown factors, any decrease in premium taxes remitted to the state is unable to be quantified.
- Based on the Department of Labor and Workforce Development, Labor Market Information published in June 2014, the median wage for approximately 2,700,050 employees is \$30,987.
- Based on the Oregon Department of Consumer and Business Services *2014 Oregon Workers' Compensation Premium Rate Ranking Summary*, Tennessee's workers' compensation premium rate is approximately \$1.95 per \$100 of payroll.
- Therefore, a company with 100 employees would have a payroll of approximately \$3,098,700 (\$30,987 median wage x 100 employees). The workers' compensation premiums would be approximately \$60,425 [\$3,098,700 x (\$1.95/\$100)].
- Pursuant to Tenn. Code Ann. §56-4-206, there is a four percent (4%) tax on gross premiums collected for workers' compensation insurance plus a four tenths of one percent (0.4%) surcharge on gross premiums; or if self-insured, the employer is to pay four percent (4%) tax on premiums the employer would be required to pay if carrying the full coverage for workers' compensation insurance plus a four tenths of one percent (0.4%) surcharge.
- In the scenario above, either the insurance company or the self-insured employer would pay \$2,659 [(\$60,425 x 0.04) + (\$60,425 x 0.004)] in both premium tax and the surcharge. A 50 percent reduction resulting from opting out of the current WCL would result in a recurring decrease in revenue exceeding \$1,000.
- Based on information provided by the Division of Workers' Compensation (DWC), this legislation is assumed to reduce the amount of premium tax revenue provided to the Second Injury Fund, pursuant to Tenn. Code Ann. § 50-6-208(b). Due to multiple unknown factors, any reduction is unable to be determined. The Second Injury Fund reimburses an employee when such employee can prove that he or she previously sustained a permanent disability and that, as a result of a second injury, has become

permanently and totally disabled. This fund limits the employer's liability to the amount of disability caused by a new or second injury, thereby encouraging employers to hire workers with existing handicaps or permanent disabilities. The fund reimburses employers for all amounts paid pursuant to an order of a workers' compensation specialist, when a court subsequently finds that the injury was not compensable. The Second Injury Fund is funded in statute pursuant to Tenn. Code Ann. § 50-6-401(c), which states that a sum sufficient shall be allocated from and equal to an amount not greater than 50 percent of the revenues derived from the premium tax levied on premiums received for workers compensation coverage.

- TDCI will be responsible for enforcing provisions under TEIBA, including initial review of all applicants to qualified employers, review of all written benefit plans, and monitoring of all qualified employers with respect to each written benefit plan.
- Based on information provided by TDCI, it will need four additional positions to review and approve applications within 30 days of receipt, enforce compliance of all requirements, annually monitor all renewal requests and verify eligibility, and promulgate rules to effectuate this bill. These positions include one administrative assistant-4, 2 certified fraud examiners, and 1 actuary-2.
- A recurring increase in state expenditures of \$356,380 (salaries \$240,576 + benefits \$79,900 + FICA \$18,404 + office lease \$8,700 + supplies/phone/network \$8,800) and a one-time increase in state expenditures of \$12,800 (computer \$4,800 + office furniture \$8,000).
- Disputes between a qualified employer and its employees may result in additional court filing by employees claiming employer negligence. Any increase in court cases cannot be quantified, but it is assumed that any increase can be handled within the existing resources of state and local courts.

## **IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:**

### **Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- Due to numerous unknown factors, including: how many businesses in this state will choose to become qualified employers, the aspects of each written benefit plan by each qualified employer, and the number of employees who will work for such qualified employers; an impact to business is unable to be quantified.
- It is assumed that businesses will opt of the current WCL and become qualified employers in order to gain more control over costs associated with compensating employees for injuries sustained on the job; therefore, this is assumed to be positive for business.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

/jdb