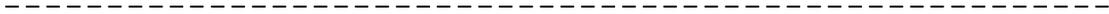


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STATE OF TENNESSEE  
DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT

**EMPLOYEE MISCLASSIFICATION ADVISORY**  
**TASK FORCE MEETING**

September 26, 2013



STONE & GEORGE COURT REPORTING  
2020 Fieldstone Parkway  
Suite 900 - PMB 234  
Franklin, Tennessee 37069  
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APPEARANCES

Voting Members:

- Kim Jefferson, Chair Designee
- Mike Shinnick, Co-Chair Designee

Ex Officio Members:

- Nathan Burton
- Lynn Ivanick, Parliamentarian
- James Milam
- Dan Bailey
- Abbie Hudgens
- Martha Campbell
- William Canak
- Jason Locke
- Randy Thomas
- Carolyn Lazenby

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P R O C E E D I N G S

MS. JEFFERSON: Good afternoon, and welcome to the September 26th, 2013, Employee Misclassification Advisory Task Force meeting. First, we'll have the role called by Lynn Ivanick, please.

MS. IVANICK: Chairman Jefferson.

MS. JEFFERSON: Here.

MS. IVANICK: Carolyn Lazenby.

MS. LAZENBY: Here.

MS. IVANICK: Mike Shinnick.

MR. SHINNICK: Here.

MS. IVANICK: Dan Bailey.

MR. BAILEY: Here.

MS. IVANICK: Nathan Burton.

MR. BURTON: Here.

MS. IVANICK: Martha Campbell.

Jason Locke.

MR. LOCKE: Here.

MS. IVANICK: Abbie Hudgens.

MS. HUDGENS: Here.

MS. IVANICK: Myself.

Dr. Canak.

DR. CANAK: Here.

MS. IVANICK: James Milam.

MR. MILAM: Here.

1 MS. IVANICK: Randy Thomas.

2 MR. THOMAS: Here.

3 MS. IVANICK: You have 11 of 12  
4 present; three of three voting members, Madam  
5 Chairman. You have a quorum.

6 MS. JEFFERSON: Thank you, Ms.  
7 Ivanick. And we'll recognize any additional members  
8 as they come, or the additional member that we have.

9 The next item on the agenda is the July  
10 11, 2013, meeting minutes. The meeting minutes can  
11 always be found on the Task Force website. Because  
12 they're so voluminous, we don't print those anymore.  
13 You can go to the website and take a look at the  
14 meeting minutes prior to each meeting, and I trust  
15 that everyone has had an opportunity to take a look at  
16 the meeting minutes.

17 Is there a motion to adopt the July 11,  
18 2013, meeting minutes?

19 MR. SHINNICK: I have a motion that  
20 we adopt the July 11, 2013, meeting minutes.

21 MS. LAZENBY: Second.

22 MS. JEFFERSON: It's been moved;  
23 properly second. Any discussion?

24 Are you ready for the question? Those in  
25 favor, say "yes."

1 ALL: Yes.

2 MS. JEFFERSON: Those opposed?

3 The motion --

4 MS. IVANICK: The motion carries.

5 You have all three.

6 MS. JEFFERSON: Great. Thank you.

7 And please refer to today's agenda. The  
8 agenda can be found on the front of your material for  
9 today.

10 Do you all have any questions? Okay  
11 great.

12 And we recognize Martha Campbell. She's  
13 here. So now, we have 12 of 12.

14 MS. IVANICK: Correct.

15 MS. CAMPBELL: Sorry I'm late.

16 MS. JEFFERSON: Okay. And if I can  
17 ask that you silence your phones, please.

18 The next item on the agenda is the --  
19 actually, the September 26th, 2013, agenda. Do you  
20 all see any corrections or additions? If not, is  
21 there a motion to adopt?

22 MS. LAZENBY: Motion to adopt.

23 MR. SHINNICK: Second.

24 MS. JEFFERSON: Okay. It's been  
25 moved --

1 MS. IVANICK: All -- oh, I'm sorry.  
2 Go ahead.

3 It's been properly moved and seconded. Is  
4 there any discussion?

5 All in favor, say "aye."

6 ALL: Aye.

7 MS. IVANICK: All opposed?

8 The ayes have it, and the motion carries.

9 MS. JEFFERSON: The next item on the  
10 agenda is the public comment and announcement section.  
11 Do we have anyone who would like to make a public  
12 comment or announcement at this time?

13 Okay. If not, I have a hypothetical.  
14 Maybe this is something that we can take a look at,  
15 and we can have various folks to comment on this  
16 particular item. This is just a basic and vague  
17 hypothetical; however, it has come up, and we just  
18 want to see if there are different ways of handling  
19 it. I think it will be beneficial to the Employee  
20 Misclassification Education and Enforcement Fund or  
21 Program. And so let's just start with the basic  
22 hypothetical.

23 An employer obtains a \$750 minimum deposit  
24 policy. Obviously, does not report any employees to  
25 an insurance company. On August the 1st, 2013, after

1 the new law has gone into effect, that investigator  
2 sees an employee on the job site for this particular  
3 employer.

4 Question -- and again, this is very vague  
5 because I want to take a look at different ways of  
6 handling it.

7 Is this employee misclassification? Why  
8 or why not? What factors do we consider? How do we  
9 build a case for employee misclassification? Okay.  
10 And I'll be happy to re-ask those questions. But I'd  
11 like for someone to -- some brave person to take the  
12 podium and to talk with us about that.

13 MR. BAILEY: Is that a construction  
14 employer?

15 MS. JEFFERSON: Right. This is a  
16 construction case. We're only pursuing construction.

17 MR. BAILEY: All right. You just  
18 said "employer," so --

19 MS. JEFFERSON: Well, that's a good  
20 point.

21 MR. PITTS: Can I have the dates one  
22 more time?

23 MS. JEFFERSON: August the 1st, 2013.

24 MS. LAZENBY: What happened then?

25 MS. JEFFERSON: That's when our

1 investigator saw the employee on the job site.

2 MR. PITTS: When did they buy the 750  
3 policy?

4 MS. JEFFERSON: The policy has been  
5 in effect, say, for ten months.

6 MR. PITTS: I'm going to give you my  
7 opinion, but I was going to stand up and speak because  
8 I didn't realize an insurance representative was here.

9 My name is Bob Pitts, by the way, with  
10 ABC. My comment would go something like this: This  
11 has been a subject that's been called to your all's  
12 attention since this Task Force started. They legally  
13 have qualified under Tennessee law with the \$750  
14 policy. The company who writes that policy will not  
15 finish their audit at the end of the policy year. If  
16 that person is picked up and billed at that time,  
17 they've complied with the existing law.

18 You can ask me anything you want to ask  
19 me, but you might want to direct it to --

20 MS. JEFFERSON: To Ashley.

21 MR. PITTS: -- Big I since a  
22 representative is here.

23 MS. JEFFERSON: Okay. Ashley, if  
24 you'll take the podium.

25 MR. PITTS: Thank you so much.

1 MS. JEFFERSON: Thank you. Okay.

2 MS. ARNOLD: Ashley Arnold with  
3 Insurors of Tennessee.

4 MS. JEFFERSON: Okay. And so the  
5 follow-up question, Ashley, what if that same  
6 employer -- again, this is a construction employer.  
7 What if that same employer has been doing business  
8 for, say, three years, has had previous audits, and  
9 the audits have turned up underreporting payroll,  
10 underreporting employees. How would we proceed in  
11 that case?

12 MR. PITTS: While she's thinking, I  
13 have a question. Were they audited, and did they pay  
14 the audit figure?

15 MS. JEFFERSON: They paid the audit  
16 figure.

17 MR. PITTS: Okay.

18 MS. ARNOLD: You know I'm a lawyer,  
19 right? So I'm going to answer, it depends. I think  
20 you need to know, when was that person hired. I think  
21 the reality is there -- it's every single case is fact  
22 specific, as y'all know. Sorry, Bob. I think that  
23 you've got to look at -- the investigator has to look  
24 at almost -- you know, from a calendar perspective,  
25 when was the policy purchased; when was the employee

1 hired; when was the audit completed; was that person  
2 an employee when the policy was purchased.

3 Because I think, then, if they said, at  
4 the time of purchase, we don't have any employees,  
5 that is a clear misrepresentation. However, if they  
6 didn't have that person as an employee at the time  
7 they purchased the policy, regardless of what's  
8 happened in the past -- because as we know,  
9 construction is cyclical -- then I think -- and I  
10 think that's what happens a lot of times because it  
11 depends on where you are in the process or in the  
12 calendar year.

13 And so if you find out that the policy was  
14 purchased on January 1 and that employee was not hired  
15 until May 1st when they got the bid or the contract or  
16 the job, then they're in complete and total compliance  
17 with the law because upon audit, as long as they  
18 report that employee and that payroll and pay, as Bob  
19 pointed out, then they're in compliance. And so I  
20 think it all depends on hire date and where they are  
21 in the process.

22 MS. JEFFERSON: Right. But --

23 MS. ARNOLD: Now, I would say -- and  
24 I don't know how you go about showing this or proving  
25 this or making a case. But if they're hiring the same

1 person over and over again, and firing the same person  
2 over and over again, and there's a pattern of practice  
3 of terminating them right before purchase, rehiring  
4 them sometime thereafter, I think, is something that  
5 you can, at least, look into.

6 MS. JEFFERSON: Thank you very much.

7 Okay. And who else do we have? Matthew  
8 Capece. I'd like to use a different variation, Matt.

9 MR. CAPECE: Matt Capece with the  
10 United Brotherhood of Carpenters.

11 MS. JEFFERSON: And Matt, before you  
12 start, I would like to give you a different variation  
13 of that. Okay?

14 I'd like for you to consider -- consider a  
15 case where you have the same construction employer who  
16 hired an employee. Okay? This particular employer  
17 had previous policies in place and had been audited.  
18 Let's say the audit did not reveal understatement.  
19 Say, every time this particular employer was working  
20 or had an employee working for him -- let me -- I'm  
21 sorry. Back that up.

22 MR. CAPECE: I think I know where  
23 you're going.

24 MS. JEFFERSON: Okay. This  
25 particular employer had been subject to three audits.

1 The audit never revealed any understatements. Okay?  
2 Investigator finds an employee on August the 1st,  
3 2013, after the new law has gone into effect. Then  
4 what?

5 MR. CAPECE: Before I get to your  
6 hypothetical comment, to Ashley's response, I would  
7 add to hers that, do not focus on the particular  
8 employee in that scenario. It could have been a  
9 different employee, but if they had an employee at the  
10 time of applying for the policy or renewal of the  
11 policy, and then declare them, then there is some  
12 fraud.

13 If you have a fact situation where you  
14 have an employer who is consistently moving from  
15 insurer to insurer to insurer and getting \$750  
16 policies, and then you find that they have had  
17 employees, so they don't give an opportunity to  
18 declare them at renewal, then you have another  
19 instance of fraud.

20 Now, in your hypothetical, the new one  
21 where the insurance company didn't find anyone, yeah,  
22 there's fraud. I wouldn't rely on the insurance  
23 company's previous audit of not finding them because  
24 maybe the employer, at that time, was cagey enough to  
25 have hidden the payroll from the insurer, so the

1 insurer didn't find it.

2           Because as we know, there are people -- a  
3 lot of people are completely paid off the books, and  
4 so they wouldn't necessarily turn up on an insurance  
5 company's audit. And the insurance company's audit  
6 may have been, you know, not up to standards, let's  
7 say. So --

8           MS. JEFFERSON: What other proof --

9           MR. CAPECE: I would rely on the  
10 insurance companies not finding a problem to stop you  
11 from saying that there's fraud.

12           MS. JEFFERSON: What other proof  
13 would you review? Instead of the audits. Because  
14 there's no audit. In that particular case, the last  
15 hypothetical, the audits revealed that there was no  
16 underreporting. So in that case, what would you look  
17 to, to establish the case?

18           MR. CAPECE: Oh, my gosh. Well,  
19 there's companies accounts receivable and their  
20 disbursements, time sheets that are kept by the  
21 company, time sheets that may be kept by the general  
22 contractor or a particular contractor on a project  
23 they've worked on. It could be safeties, safety  
24 sign-in sheets because we see plenty of cases, and  
25 it's kind of strange, where we've had people who are

1 paid off the books, but they will be drug tested, and  
2 they will be required to attend weekly safety meetings  
3 on Mondays. But the workers are paid off the books.

4 So you can look for those types of records  
5 to show employment. And then, of course, you would  
6 need to look at their application for the insurance  
7 policy from the insurer, any renewals that they've --  
8 that they've made.

9 MS. JEFFERSON: Okay.

10 MR. CAPECE: And also, something that  
11 you should consider about the intent of someone, if  
12 you have a company that has people on the payroll with  
13 taxes being deducted, that's one thing. You can  
14 probably have someone there who, as Ashley said, just  
15 got caught in a cycle. But then you've got the other  
16 people who are intentionally 1099ing employees when  
17 they shouldn't be, or paying them off the books with  
18 no 1099s having been filed.

19 We've seen lots of instances where an  
20 employer, a company won't -- the only thing they'll  
21 know about the worker is their name and phone number.  
22 They won't have Social Security numbers and won't have  
23 addresses. And I think that shows an intent to evade  
24 the law.

25 MS. JEFFERSON: Okay. Great. Thank

1 you very much.

2 And Randy, would you like to add anything  
3 before we move on?

4 MR. THOMAS: Yes. Like, it seems to  
5 me, we're focusing too much on the workers' comp  
6 policy. When you go to your initial example, instead  
7 of waiting for the insurance company to come and do  
8 their annual audit, if that employee was working on  
9 August the 1st, well, then by the end of October, they  
10 should have filed an unemployment return where they  
11 paid unemployment taxes on that person. And if they  
12 haven't done that, then they've broken the law because  
13 they misclassified the employee.

14 MS. JEFFERSON: Right. And a lot of  
15 times, we deal with employers who don't have  
16 unemployment insurance accounts, unfortunately.

17 MR. THOMAS: But they should.

18 MS. JEFFERSON: They should. And we  
19 notify Unemployment Insurance, Tax Division.

20 So those are all really good points. Is  
21 there anything else you'd like to --

22 MR. THOMAS: Yeah. One other thing  
23 that we do, as the insurance carriers -- and following  
24 up with what Matt said about the other things you can  
25 look at -- we look at our other audits we've done. I

1 mean, if I've audited a general contractor that's  
2 doing home improvement work, and I see where he paid  
3 his roofer \$300,000, and then I audited the roofer and  
4 he says, I've only got one guy, I paid \$20,000 --  
5 well, red flags are going off everywhere. So --

6 MS. JEFFERSON: Great. Okay.

7 And we have people here today from the  
8 Employee Misclassification Program. If you all would  
9 stand up, please. And I just want to -- before we  
10 move on, I just want to ask you all, do you have any  
11 questions, anything else you'd like to discuss today?  
12 Hopefully, some of the questions that we've had in the  
13 past have been clarified. So if you all don't have  
14 any other questions, thank you, and I'd like to give  
15 them -- (applause.)

16 And thank you so much, everyone, who  
17 commented. I really appreciate that. And we're going  
18 to move on with our agenda.

19 The next item on the agenda is the  
20 proposed items for the Employee Misclassification Task  
21 Force, the Advisory Task Force annual report, the 2014  
22 annual report. As you know, it's quickly approaching  
23 us. Just right around the corner. And I'd like to  
24 have Dan Bailey to discuss the employee  
25 misclassification law, Public Chapter 424. He's going

1 to give us a summary and overview of the law.

2 MR. BAILEY: Good afternoon. I'm Dan  
3 Bailey. I'm an attorney with the Tennessee Department  
4 of Labor & Workforce Development. Public Chapter 424,  
5 which is a law that was passed this last legislative  
6 session has three sections. Section one, it adds the  
7 language to Tennessee Code Annotated Section 50-6-411.  
8 And that section of the code prior to this did not  
9 have any language. So it was a vacant chapter. The  
10 previous language had been repealed in 2000, under the  
11 old law.

12 But anyways. This language was added into  
13 that statutory code that makes it a violation of the  
14 workers' comp law or a construction service provider  
15 to misclassify employees to avoid proper  
16 classification for workers' comp insurance premium  
17 calculations by concealing any -- and I would  
18 underscore the word "any" -- information pertinent to  
19 the computation and application of an experience  
20 rating modification factor, or by materially -- I  
21 would underscore that -- understating or concealing  
22 the amount of payroll, the number of employees, or the  
23 employee's duties.

24 Also, under Section 1, the new chapter  
25 also provides authority for the Commissioner or the

1 Commissioner's designee of the Tennessee Department of  
2 Labor & Workforce Development to assess the civil  
3 penalty of up to the greater of \$1,000 or  
4 one-and-one-half times the average yearly workers'  
5 comp insurance premium that is applicable to  
6 particular construction services provider, given all  
7 the factors -- given all the factors, minus any  
8 premium dollars that have been paid on the workers'  
9 comp policy that was the object of the understatement  
10 or concealment.

11 Paragraph C provides that in addition to  
12 the penalties provided for in subdivision (a)(2), the  
13 Department shall refer cases to the TBI or appropriate  
14 District Attorney General for any action deemed  
15 necessary under any applicable criminal law.

16 I have to say that the lead-in words to  
17 paragraph C that quote, in addition to the penalties  
18 provided in subdivision (a)(2), causes me some concern  
19 because it implies proceeding against a noncompliant  
20 employer, both civilly and criminally. And I think  
21 trying to proceed against a noncompliant employer,  
22 both civilly and criminally, poses problems, as we  
23 discussed some in the last Task Force meeting.

24 An administrative investigation is much  
25 different than the criminal investigation. There's

1 constitutional differences. There's standard of proof  
2 issues and things like that. So I believe that when a  
3 noncompliant employer comes on to our -- to the  
4 Division's radar screen, that a decision needs to be  
5 made at the very start, as to whether this is a case  
6 that's going to proceed civilly or criminally.

7 And I think that decision needs to be made  
8 before there's any contact with that employer because  
9 if we proceed criminally, we certainly don't want to  
10 tip them off in any way before the investigation gets  
11 started.

12 DR. CANAK: Would the recent case in  
13 Ohio where employers had concealed employees from  
14 workers' comp and had to pay a \$200,000 fine, but  
15 also, have been sent to jail for two years, would that  
16 have been -- would that fall under both sides?

17 MR. BAILEY: Well, the fine that they  
18 may have paid might have been criminal restitution.

19 DR. CANAK: May have been a  
20 criminal -- yeah.

21 MR. BAILEY: I mean, I don't know if  
22 it was a mix of civil and criminal. And there's other  
23 areas of our law here at the Tennessee Department of  
24 Labor. Like, in our Labor Standards Division, I  
25 represent them where it imposes a civil penalty and a

1 criminal penalty, but it specifically says in there  
2 that the Commissioner may decide to proceed civilly or  
3 criminally, but you can't do both, kind of thing. So  
4 this law doesn't particularly say that, but I think,  
5 as it's applied, it probably ought to be done that  
6 way.

7           The last part of Section 1 provides that  
8 any civil penalties collected from noncompliant  
9 employers be deposited in the Employee  
10 Misclassification Education and Enforcement Fund,  
11 established by Tennessee Code Annotated Section  
12 50-6-913, to be administered by the Commissioner of  
13 the Tennessee Department of Labor & Workforce  
14 Development.

15           Section 2 of the statute adds language in  
16 the second sentence of Tennessee Code Annotated  
17 Section 50-6-913(b) regarding expenditures of funds in  
18 the Employee Misclassification Education and  
19 Enforcement Fund. The additional language provides  
20 that the funds may be expended, quote, for the  
21 purchase of computer software and hardware designed to  
22 identify potential employee misclassification  
23 activity, comma, with the hiring of additional  
24 employees to investigate potential employee  
25 misclassification activity, comma, end quote.

1                   And so as amended, the sentence now reads  
2 as follows, quote: Moneys remaining in the Fund after  
3 such payment may be expended, comma, subject to  
4 procreation by the General Assembly, comma, at the  
5 direction of the Commissioner of Labor & Workforce  
6 Development for the purchase of computer software and  
7 hardware, designed to identify potential employee  
8 misclassification activity, comma, for the hiring of  
9 additional employees to investigate potential employee  
10 misclassification activity, comma, or education for  
11 the employers and employees regarding the requirements  
12 of this part, and in support of the ongoing  
13 investigation and prosecution of employee  
14 misclassification, period, end of quote.

15                   Section 3 of the Act just makes this law  
16 effective July 1, 2013.

17                   Regarding the Task Force's 2013  
18 recommendations, this Act clearly addresses one of the  
19 four recommendations made by the Task Force in our  
20 2013 annual report. It does authorize the assessment  
21 of civil and monetary penalties against employers  
22 found to have committed workers' comp insurance fraud  
23 or insurance premium avoidance or fraud, which was the  
24 first recommendation of the Task Force in last year's  
25 report. Or I guess, that was this year's report,

1 2013.

2 The Task Force's second recommendation in  
3 the 2013 report was to enact legislation, authorizing  
4 the Workers' Comp Division to issue stop-work orders.  
5 This Act does not address that.

6 The Task Force's third recommendation was,  
7 quote, provide -- and I would underscore "provide" --  
8 funding for fraud detection software that's crucial to  
9 enforcing the legislation proposed above, period, end  
10 quote.

11 And the Task Force's fourth recommendation  
12 was, quote, provide funding to hire 12 additional  
13 investigators, parentheses, four in each grand  
14 division of Tennessee, end parentheses, comma, with at  
15 least, one per grand division having interpretation,  
16 slash, translation skills, period, end of quote.

17 This Act does not provide funding for  
18 either of those things. The language that was added  
19 to Tennessee Code Annotated Section 50-6-913(b)  
20 mentions those things, but that additional language  
21 was not necessary in order to use those funds to  
22 purchase fraud detection software or to hire  
23 additional investigators. Fraud detection software  
24 and additional investigators would come under the,  
25 quote, in support of the ongoing investigation and

1 prosecution of employee misclassification, end quote,  
2 language that was already in the statute.

3 So in my view, the legislature acted on  
4 one of this Task Force's four recommendations by  
5 authorizing the issuance of civil monetary penalties.

6 And one other observation I would make is,  
7 in this statute, there's still a lot of references to  
8 the authority being granted to the Commissioner of the  
9 Tennessee Department of Labor & Workforce Development,  
10 and I think, as I understand the new workers' comp  
11 forum law, that the Administrator or whatever the  
12 title is of you, Abbie, I think there should be a  
13 clean-up amendment put in to change references to the  
14 Commissioner to the Administrator --

15 MS. HUDGENS: It will be in this  
16 year's. There was -- the people that do the  
17 codification felt like they had to not do it in this  
18 year's statute because of the timing of the various  
19 bills.

20 MR. BAILEY: Okay.

21 MS. HUDGENS: But it's already in the  
22 mill for this year.

23 MR. BAILEY: And why I say that, I  
24 mean, it could give an employer a defense as to who is  
25 really authorized to do such, and just make sure we

1 don't run into unneeded obstacles.

2 If there's any questions, I'll be glad to  
3 try to answer them for you.

4 MS. JEFFERSON: As far as that  
5 appropriation, I know that Nathan is probably more  
6 versed on how that works with having to go to the  
7 legislature and request approval for the appropriate  
8 or for the ability to use money.

9 Can you explain to us how that works and  
10 why we had to include those items in the legislation?

11 MR. BURTON: Well, I'll do the best I  
12 can. Ultimately, it's up to the Department of Finance  
13 & Administration when they put the budget together,  
14 and I think they draft that budget, based on  
15 recommendations and conversations with each  
16 department.

17 So in the statute, generally, you can't  
18 expend money without an appropriation. So I think the  
19 language that's included specifically in the workers'  
20 comp statute just mimics language that's already in  
21 the general statute relative to appropriation. So  
22 it's the legislature's -- it allows the legislature to  
23 fulfill their duty, which is to fund state  
24 appropriations.

25 So I think it just mimics what's already

1 in the general statute. I think it's up to the  
2 Administrator to make those recommendations, based on  
3 information that she has that sees fit. So I'm sure  
4 it can come from information from this Task Force, as  
5 well as other information from the visits within the  
6 Department, if she foresees expenditures are  
7 necessary.

8 MS. JEFFERSON: Okay. Thank you.  
9 Thank you, Dan. I appreciate that. Okay.

10 And the next item on the agenda are  
11 investigations, administrative penalty statistics.  
12 And I'm just going to talk briefly about these things.

13 The law only recently became effective  
14 July the 1st, 2013. And since that time, we've had,  
15 approximately, 74 on-site investigations. That number  
16 includes both construction and nonconstruction cases.  
17 We understand that we are not putting our resources  
18 into the nonconstruction cases. However, for purposes  
19 of statistics and for the annual report, we do want to  
20 show the number of construction versus nonconstruction  
21 cases. We did that in the last report, and we plan to  
22 do it in the 2014 report, as well.

23 Just to tell you a little bit about our  
24 investigations and how we receive information, we  
25 generally receive information from telephone calls.

1 People call us, and sometimes they report competitors.  
2 Sometimes employees call on behalf of their employers.  
3 Sometimes we receive calls from, say, Commerce &  
4 Insurance and Secretary of State's office. Other  
5 agencies and departments within the State. Sometimes  
6 within our own division. Benefit Review, they'll make  
7 referrals to us.

8 We just receive referrals and tips from a  
9 number of different sources. And when we do, we  
10 complete a form that's called a Request For  
11 Investigation, and that's the document or form that --  
12 actually, we create that form. We complete that form.  
13 We actually make that a part of our file in the event  
14 that we have to refer to it later because that  
15 documents that we actually received a tip or referral  
16 on a particular date, and it actually includes  
17 information about the employer, the employer's name,  
18 the owner's name, the address, VIN number, different  
19 information that can help us with the investigation.  
20 And so we keep that as part of our file.

21 Now, we receive information from people,  
22 like I said, by telephone, e-mail. Sometimes other  
23 people send us completed RFIs. Not all the time. If  
24 they don't, then we complete them ourselves, based on  
25 the information that we receive from others. And what

1 we do is we have a spreadsheet. This is where it  
2 starts. We have a spreadsheet. Our spreadsheet is  
3 updated. The spreadsheet includes things, like, the  
4 employer's name. We create a docket number, the type  
5 of case that we're pursuing.

6           Since we're dealing with employee  
7 misclassification, we're trying to distinguish  
8 underreporting payroll from underreporting employees,  
9 from misrepresenting the type of work that's being  
10 performed, from misclassifying workers. And so we're  
11 trying to keep up with all of that information. And  
12 like we did last time with the statistics, we're  
13 creating all these metrics so that we can use it in  
14 the 2014 annual report.

15           Now, if you take a look at this  
16 information. It's in your information that you have  
17 today, showing all the statistics, the pie charts and  
18 so forth, the diagram. Shara Hamlett is our program  
19 coordinator. And Shara, can you stand so they'll know  
20 who you are? She's our program coordinator, and last  
21 year, she helped us to prepare these charts and  
22 diagrams. And she did a really good job because we  
23 put these together -- I think we started working on  
24 this last October or so.

25           And the first page that you see was

1 actually prepared by another member. Shara didn't  
2 prepare the first page. Actually, someone in  
3 Unemployment Insurance, I believe, prepared this for  
4 us. And that person was able to actually break down  
5 different classifications. As you can see on this  
6 particular chart, drywall, 73 percent; roofing and  
7 painting, 9 percent; general contractor, 6 percent;  
8 framing, 3 percent.

9 And what this means, this is a chart that  
10 shows shared investigations for July 2011, through  
11 July 2012. Shared investigations by different  
12 investigators within our department. We have  
13 investigators who work for Employee Misclassification  
14 Fund, the Uninsured Employers Fund. We have auditors  
15 who work for Unemployment Insurance Tax, and we also  
16 have auditors for Labor Standards and some of the  
17 other areas within our department.

18 MR. BAILEY: Madam Chair, if I could,  
19 people may not know him. I'd like for Mark Howell to  
20 stand. He's the Director of Employment Security tax  
21 office. I may have lost your title.

22 MR. HOWELL: That's all right. I'm  
23 the Director of employer accounts, and that's part of  
24 what I do oversee.

25 MS. JEFFERSON: All right. Thank

1 you. And he has been very helpful to us. I know  
2 Shara works with him a great deal in referring cases  
3 where employers don't have an unemployment insurance  
4 tax account. So we work very closely with them. And  
5 we also work very closely with some of other divisions  
6 within the Department. And so these results are  
7 shared results, as a result of the investigators'  
8 efforts.

9 Now, the second page identifies employee  
10 misclassification investigations from July 1st, 2011,  
11 to June 30th, 2012. And this particular pie chart  
12 breaks employee misclassification down in four  
13 categories. And so that's, basically, what we  
14 attempted to do in that chart. We hope to do  
15 something similar this year. So I just want you all  
16 to take a look at these. I'm not going to go over  
17 each one.

18 But just take a look at those, and you'll  
19 have an idea of what we plan to do in next year's  
20 report. And if you think of other metrics that would  
21 be helpful to us, please e-mail me. I think that's  
22 probably the best way to do it. E-mail me, and we'll  
23 try to come up with other ways to measure those  
24 things.

25 Do y'all have anything else you'd like to

1 add in the way of statistics at this point? If not, I  
2 believe, I've covered investigations, statistics.  
3 Administrative penalties. Like I said, the law just  
4 became effective. We do not have any penalties at  
5 this time. However, we have conducted 74 on-site  
6 inspections. And again, those inspections include  
7 both construction and nonconstruction because we have  
8 to keep up with both for purposes of statistics.

9 And next on the agenda --

10 MR. PITTS: Before you move on to the  
11 next agenda item --

12 MS. JEFFERSON: Yes.

13 MR. PITTS: -- how many investigators  
14 do we now have?

15 MS. JEFFERSON: We have seven funded  
16 positions; however, we only have five investigators.  
17 We had one person -- we actually had two to retire.  
18 We've been -- two people to retire. Jackson -- the  
19 person in Jackson retired, and also, we had an  
20 investigator in Jefferson City, and he retired. We've  
21 been interviewing for the Jackson position. We're  
22 almost at a point to where we can fill that position.  
23 And we're going to have to interview for the  
24 Tri-Cities position.

25 And as soon as we're done with those,

1 we'll interview for the other positions. But Abbie is  
2 going to talk about that during her presentation.

3 MR. PITTS: How many did we add  
4 during the last legislative session?

5 MS. JEFFERSON: We're going to --  
6 yeah. We're going to hire six.

7 MR. PITTS: We have approval to hire  
8 six on top of seven?

9 MS. JEFFERSON: Abbie is going to  
10 talk about that. We -- yes. She's the Administrator,  
11 so --

12 MR. PITTS: Is that coming, or -- we  
13 only have seven funded positions now?

14 MS. JEFFERSON: Yes, we have seven  
15 funded positions.

16 MR. PITTS: Thank you.

17 MS. JEFFERSON: And for the entire  
18 state, just to let you all know, we have one in  
19 Memphis. We have two in Nashville, Chattanooga,  
20 Knoxville. Where am I? I'm having a brain freeze.  
21 Okay. And then the two funded positions. I guess,  
22 that's it. So yeah. Memphis; two in Nashville;  
23 Chattanooga; Knoxville. Yes. And then we have the  
24 two vacancies. And so once we fill those positions,  
25 then we hope to start hiring for the six that we have.

1                   And speaking of that, this is a good time  
2 to talk about the new positions and an update on the  
3 fraud detection software, and Abbie is going to talk  
4 about those things.

5                   MS. HUDGENS: Thank you, Kim. Shall  
6 I start with the positions first since that's what  
7 we're talking about?

8                   As Kim said, we have seven positions right  
9 now. That's what we've had for a number of years.  
10 Those have been funded. We're in the process of  
11 totally filling all those positions. So probably in  
12 two weeks, we'll only have one vacant. And we'll  
13 begin on the other. Fortunately, for us, when we went  
14 through the process, there were three really good  
15 candidates in Jackson. So we may be able to fill the  
16 new position for Jackson very rapidly because we  
17 already had good candidates.

18                   The budget had an additional six, which  
19 will bring us to 13. Six, rather than 12, which was  
20 in the annual report because of the funding issues.  
21 We had to look at how much was available to us in the  
22 EMEEF Fund, how much we thought it would take for the  
23 fraud detection software, and back into the number of  
24 positions. When we get more penalties in, of course,  
25 it'll be -- able to get more positions, and we have

1 high hopes for the fraud detection software.

2 Let me tell you a little bit about where  
3 we are with the fraud detection software. We are  
4 going with SAS. We're already involved in  
5 negotiations with that company. The only thing that  
6 is slowing the process down a little bit is we are  
7 working with the rest of the Department of Labor to  
8 see just how many components we will have. But we've  
9 reached the point where we're actually looking at  
10 contracts and that type of thing.

11 Since it's already a state contract, the  
12 process for us will be much shorter because we won't  
13 have to go through an RFP process. If you all  
14 remember, SAS is the vendor that Washington is using  
15 and has used with great success. So we're looking  
16 forward to that. We're also looking -- as we remodel  
17 our software system for the Workers' Comp Division as  
18 a whole, we are looking at additional programs that  
19 will help us do some auditing of Social Security  
20 numbers, and that will be helpful. That will feed  
21 into this process, as well.

22 That's it, an overview. Now, if anybody  
23 has any questions on either the positions or the  
24 software, I'll be happy to do my best to answer them.

25 MR. PITTS: I've got a couple. Could

1 you be a little more specific when you say we're  
2 discussing with unemployment comp, the components?  
3 What are we saying?

4 MS. HUDGENS: When I said that the  
5 one thing that is -- hadn't been finalized yet is  
6 whether we will enter into an agreement with SAS, just  
7 the Workers' Comp Division, or whether it will be the  
8 Workers' Comp Division, Employment Security. There  
9 are other parts of the Department of Labor that are  
10 looking into this, as well. We would like to package  
11 all the pieces that go with the Department of Labor  
12 together. If that doesn't work out, we will go  
13 forward on our own.

14 So there's really no obstacle towards SAS.  
15 The only thing is a little bit of a slowdown so that  
16 the Department of Labor, all the components can move  
17 forward together. SAS has been very competitive in  
18 their negotiations about what they're willing to do  
19 for the Department, especially if we put all the  
20 packages together.

21 Did you have any thoughts or anything you  
22 want to share about the SAS software?

23 MR. HOWELL: No.

24 MR. PITTS: My second question, I'll  
25 try to roll up into one. To the six potential people

1 we're looking at, going forward, are they presently  
2 authorized, or will they have to go through the  
3 budget?

4 MS. HUDGENS: Will they have to go  
5 through the budget? No. The six positions were part  
6 of the piece of legislation that was funded that was  
7 passed last year and is part of the appropriation.

8 MR. PITTS: The other thing that  
9 hadn't been commented on, Task Force recommendation  
10 was to try to get some bilingual people in the  
11 program. Is that still the intent of the committee?

12 MS. HUDGENS: Yes, that's still the  
13 intent of the Division.

14 MR. PITTS: Do we have any --

15 MS. HUDGENS: Any investigators?

16 MR. PITTS: Any bilingual.

17 MS. HUDGENS: No. What we've done so  
18 far is have our forms sent to the Institute of Foreign  
19 Languages so that all our forms are updated, as being  
20 in Spanish, as well as English. Since we're talking  
21 about a hiring process, we didn't have any to begin  
22 with. That will be part of the new positions that are  
23 hired.

24 MR. PITTS: Are we still looking at  
25 one for each region?

1 MS. HUDGENS: I think what Kim said  
2 was we were looking for two for each region; one, who  
3 is bilingual.

4 MR. PITTS: Thank you.

5 MR. BAILEY: Regarding SAS, they  
6 already have a contract with our department, or just  
7 somewhere in the State?

8 MS. HUDGENS: They have a contract  
9 with the State.

10 MR. BAILEY: Okay.

11 MS. HUDGENS: It's not our department  
12 yet. There -- we anticipate there will be one. If  
13 it's not with the whole department, it will, at least,  
14 be with the Division.

15 MR. BAILEY: If I recall right, SAS,  
16 they will perform all the IT function of the system.  
17 In other words, it won't involve our IT?

18 MS. HUDGENS: That's my  
19 understanding. That's still in the negotiation  
20 process.

21 MR. BAILEY: Because I think that  
22 would be good.

23 MS. HUDGENS: Yes, me, too.

24 MR. BAILEY: Personal opinion.

25 MS. HUDGENS: Right. But even so,

1 even if they do everything, we will probably have to  
2 have someone dedicated on the IT staff here to be the  
3 interface.

4 MR. BAILEY: Right. Okay. Do you  
5 have an idea when --

6 MS. HUDGENS: Well, I will say that  
7 I've discussed it with the Deputy Commissioner and  
8 said we are anxious to move forward, and they are  
9 aware of that. So I think it will go forward fairly  
10 quickly.

11 MR. BAILEY: Because I think  
12 that's -- once that's in place, that's when we're  
13 going to start opening up some doors.

14 MS. HUDGENS: Yes.

15 MS. JEFFERSON: And Dr. Canak?

16 DR. CANAK: When you say that SAS is  
17 being very competitive, I'm not sure I understood.  
18 Does that mean they're tough negotiations, or does  
19 that mean that they're being very helpful, or --

20 MS. HUDGENS: They're demonstrating,  
21 by the terms of what they're offering, that they would  
22 very much like to have our business.

23 DR. CANAK: Thank you.

24 MS. JEFFERSON: Okay. Do we have any  
25 other questions?

1 MR. THOMAS: On your six  
2 investigators that you're hoping to hire, do you have  
3 a plan on where you want them to be? Like, I mean,  
4 seems like we're way understaffed in Middle Tennessee  
5 right now. So I mean, after it's all said and done --

6 MS. HUDGENS: I'll let Kim respond to  
7 that.

8 MS. JEFFERSON: Well, at one point,  
9 we had nine investigators -- well, nine funded  
10 positions for the Uninsured Employers Fund. That was  
11 prior to employee misclassification. Now, our seven  
12 funded positions with five people, now, we have all  
13 these -- well, these investigators who are working  
14 in -- actually, in two programs. So they're doing two  
15 different things.

16 Because with the Uninsured Employers Fund,  
17 we're investigating employers who don't have workers'  
18 comp coverage or qualifies being self-insurers. So  
19 that's a task in and of itself because over the past  
20 few years, we've collected over \$1 million, just for  
21 that particular program. So that requires a lot of  
22 our time and resources.

23 So in addition to that, now, we have these  
24 same investigators who are actually pursuing employee  
25 misclassification, and we know that that's a task in

1 and of itself. So again, we previously had four  
2 investigators here in Middle Tennessee.

3 I'd like to actually -- as Abbie indicated  
4 before, I think it would be a good idea to place two  
5 in each grand division. Where they will be at this  
6 point, I can't say. I would look at the larger areas,  
7 though. And I'm sure I will have to sit down and talk  
8 with Abbie about this so that we can decide  
9 specifically where these people are going to be  
10 placed.

11 I can't say, on the record today, where  
12 they're going to be placed because I hate to put a  
13 city out there, and then we have to decide somewhere  
14 else later. So let us further discuss that. And as  
15 soon as we know for sure, we'll let you all know.

16 MS. HUDGENS: Obviously, where  
17 there's the greatest amount of construction will have  
18 an effect on where these people are placed since we  
19 are dealing -- the new ones will be dealing with the  
20 construction industry. So we wouldn't want to put  
21 them in a rural area where there's no construction  
22 going on.

23 MR. BAILEY: If I may, Mark, how many  
24 funded tax auditors do you have?

25 MR. HOWELL: Well, at the present

1 time, we have 46 positions that are filled. We do  
2 have a number of vacancies.

3 MR. BAILEY: Okay. About how many  
4 vacancies do you have? Do you know?

5 MR. HOWELL: I would estimate that to  
6 be about 12 to 15 vacant positions.

7 MR. BAILEY: That's statewide?

8 MR. HOWELL: Yes, sir.

9 MR. BAILEY: Is there -- are you in  
10 the process of filling those, or --

11 MR. HOWELL: Yes. If powers at be  
12 and through our funding mechanism, I would like to  
13 fill all of them.

14 MS. JEFFERSON: Okay.

15 MS. HUDGENS: Just to be helpful for  
16 comparison purposes, we don't have the advantage of  
17 being funded by -- with federal dollars.

18 MR. BAILEY: Right. I understand.

19 MS. HUDGENS: So that certainly makes  
20 a difference. And you understand that the State  
21 Government has an emphasis on being lean. And every  
22 year, they do require us to have a reversion and cut  
23 vacant positions. So while they want us to go  
24 forward, it's always to go forward without costing any  
25 additional money. So just bear that in mind, as you

1 think about this.

2 And as -- that's one reason the fraud  
3 detection software becomes very important because to  
4 the extent more penalties come in, we can do more  
5 value-added type services with those moneys. So --

6 MS. JEFFERSON: Okay. We have  
7 another question.

8 MR. PITTS: Well -- and an  
9 observation. Also, in defense of what Abbie says, at  
10 this point, your priority has been construction. So  
11 there's a great disparity between the number of  
12 companies you're dealing with and what unemployment  
13 comp is dealing with. Just everybody ought to  
14 remember.

15 I guess, my final question -- and I don't  
16 know that you've made a decision. But since you're  
17 now in a combination role of serving two specific  
18 activities with these investigators, once you get  
19 full, is it your intent that all of these  
20 investigators fill a dual role, or will it be your  
21 intent to put X number in enforcement of  
22 misclassification and X number of chasing people who  
23 are not paying for workers' comp?

24 MS. HUDGENS: I expect that it will  
25 not be either one of those possibilities. It occurs

1 to me that what's likely is Kim and her staff are  
2 going to have to sit down and look at all the  
3 processes. They're doing that right now, as we're  
4 looking at the process flows for our new software  
5 update. But given that all of these people, whether  
6 it's EMEEF or UEF, start out with being un-compliant  
7 in some way, and we may start having an awful lot more  
8 tips coming from our fraud detection software.

9 It conceivable that the third way might be  
10 to have a group of people that look at things  
11 initially, and then based on what they find, that we  
12 may have specialists. But I think it's too soon to  
13 make that determination. I think we need to get our  
14 fraud detection software in, get the people who are  
15 coming in, and make some decision.

16 I think, probably, even the bilingual  
17 people, there will be certainly an advantage for them  
18 in both programs because, you know, UEF is just a  
19 situation where it's even worse than misclassification  
20 in many cases. Bottom line is, these are all people  
21 that are not doing what they should do. They're not  
22 providing the appropriate workers' comp insurance.  
23 Misclassification, it's not the appropriate, but they  
24 may be providing something. So I think it's too  
25 soon --

1                   MR. PITTS: Can I interpret what you  
2 just said? Does that mean what I think I heard you  
3 say, is there might be a group of people who may, in  
4 fact, be centrally located that are involved with the  
5 software detection system for IDing purposes, and then  
6 the other group will be in the field of enforcement?  
7 Is that what I'm hearing?

8                   MS. HUDGENS: Actually, I think what  
9 you're hearing is me throwing an idea out at Kim she's  
10 never heard before because I think we have to be open  
11 to looking at this in a new way. If we have new  
12 investigators, and we have new fraud detection  
13 software, and since we're looking at the new flows,  
14 it's just a good time to look at it from top to bottom  
15 to see if we can -- how we can be as efficient as  
16 possible. That's certainly a possibility, but you  
17 know, we've got a long way to go before we know.

18                   MR. PITTS: Well, I'll highly  
19 recommend that you think seriously about that  
20 direction because that's -- you've got to learn to  
21 work smarter and efficiently, and once you get to a  
22 decent --

23                   MS. HUDGENS: I think we all agree  
24 there.

25                   MS. JEFFERSON: And Ashley, I know

1 you've had your hand up for a while.

2 MS. ARNOLD: That's okay. It was an  
3 observation from listening to this. I know Kim, I  
4 guess, has to make an annual report to legislature.

5 MS. JEFFERSON: Well, actually, the  
6 Task Force.

7 MS. ARNOLD: For the Task Force.

8 MS. JEFFERSON: Yes.

9 MS. ARNOLD: And in looking at the  
10 numbers -- and we were talking over here in the  
11 corner -- I think, even though your report is on the  
12 Task Force or what the EMEEF is doing, I think it  
13 would also be useful or important for a full picture,  
14 especially for the legislature and those that are  
15 going to review the report, to include information on  
16 the fact that when Norm and these guys aren't doing  
17 this, they're not sitting back in the office,  
18 twiddling their thumbs. They've also been doing the  
19 following on UEF.

20 Because I think when you look just at the  
21 stats you have, it looks like they're not doing  
22 anything. That's not actually the case. And so I  
23 think, for a big picture, they need to know that  
24 they're fully employed right now. You're just adding  
25 to their job description.

1 MS. JEFFERSON: Right. And we  
2 certainly understand that because we definitely know  
3 that they're working their hearts out.

4 MS. ARNOLD: Right. And I know that,  
5 and so I just -- as far as I know, I know that's not  
6 actually in what y'all are tasked to report.

7 MS. JEFFERSON: And generally -- and  
8 I think it's because the Task Force focuses on  
9 employee misclassification.

10 MS. ARNOLD: Right.

11 MS. JEFFERSON: However, it won't  
12 hurt. I think that's an excellent point to mention.

13 MS. ARNOLD: Yeah. That's what I'm  
14 saying; by the way, this is what's going on. So --

15 MS. JEFFERSON: Right.

16 MS. HUDGENS: I think it's  
17 particularly important this year for that to be in the  
18 Task Force report because I don't know how many people  
19 are aware of the history behind the UEF fund. But  
20 when that legislation first came up, the idea was that  
21 there would be some sort of benefit for people who  
22 ended up being injured, and their employer was  
23 noncompliant. And they couldn't quite figure out how  
24 to do that, so the UEF legislation just gave us the  
25 right to impose penalties, and also, allowed us to use

1 that money for administrative cost.

2 We need to bring that subject back up in  
3 front of the legislature and see if we can get some  
4 movement. We're the only state in the United States  
5 who has a UEF program and collects penalties and does  
6 not provide any benefit for people who find themselves  
7 injured and have a noncompliant employer.

8 So I think that's something that the Task  
9 Force might want to consider in the bigger picture of  
10 its report this year. And that would give the perfect  
11 opportunity to talk about the statistics and what's  
12 been doing. We've just identified this as an area  
13 that troubles us greatly.

14 MS. JEFFERSON: Okay.

15 MR. PITTS: For that reason, and  
16 also, with what Ashley said, you know, your strict  
17 interpretation of the direction you were given with a  
18 piece of legislation, it's easy to stay within the  
19 confines.

20 But if you really look at the joint  
21 mission, it's certainly appropriate to have a section  
22 in this report, and just remind the legislature that  
23 this composite issue is bigger than just  
24 misclassification, and explain the total program.

25 Because I think that benefits all of us,

1 if that is done because otherwise, they don't get told  
2 what's going on in your recovery efforts for people  
3 who are not paying workers' comp, and your issue that  
4 you would like to see a policy decision made.

5 MS. JEFFERSON: Well, since we're on  
6 that point, before I get to Dan, I'd just like to have  
7 our penalty unit people to stand up to show you  
8 something else that we do. The compliance program is  
9 made up of three different units, and so the  
10 attorneys, of course, are cross-trained between all of  
11 the programs. So they handle cases and litigate cases  
12 under all programs.

13 But Robert Marioni and April Verdoni are  
14 our two specialists in that area. And what they do is  
15 help to pursue penalties in all other areas. For  
16 instance, cases involving benefit review sometimes  
17 produce orders for certain penalties for an employer  
18 or for a carrier not being compliant with the law.  
19 They don't comply with the orders, as issued by  
20 benefit review.

21 As a result of that, if persons fail to  
22 comply with benefit review orders, then the  
23 specialists can penalize them or assess a penalty for  
24 failure to comply with the specialist's order. There  
25 are also penalties for failing to comply with the

1 order to pay disability benefits. So if those things  
2 aren't complied with and there are certain penalties  
3 associated with that.

4 So we have lots of different things within  
5 our compliance program, lots of different issues that  
6 we handle. And I didn't want them to go unrecognized  
7 because they have a really important job, as well.

8 So now that you all know everything about  
9 the compliance program, I'm going to move for a  
10 recess. Let's come back in ten minutes.

11 MR. BAILEY: One quick question.

12 MS. JEFFERSON: I'm sorry.

13 MR. BAILEY: I was just curious on  
14 that SAS. Once it's in place, would the investigators  
15 be able to access that out on the field?

16 MS. HUDGENS: That's a real good  
17 question. Now, if they had iPads with 3G. I don't  
18 think they do.

19 MS. JEFFERSON: Well, they have  
20 iPads. I'm not really sure if --

21 MS. HUDGENS: They need 3G and be  
22 able to tap in to the State system.

23 MS. JEFFERSON: I don't see why not,  
24 though. I really don't see why --

25 MS. HUDGENS: Yeah.

1 MS. JEFFERSON: -- they wouldn't be  
2 able to. They access other programs out in the field,  
3 so I don't really see why they wouldn't be able to do  
4 that.

5 MS. HUDGENS: One of the components  
6 of a really effective program is for your  
7 investigators to be able to function in the field.

8 MS. JEFFERSON: Do we have another  
9 question?

10 MR. PITTS: Before you break, one  
11 other comment. Jim and I serve on the Advisory  
12 Counsel on unemployment comp, and we made a strong --  
13 and I guess, I'll give Jim credit for leading it, to  
14 the Commissioner in a meeting the other day. Once we  
15 learned they're also involved in moving toward, over  
16 time, a new computer system, the extreme importance  
17 that there needed to be interface with the  
18 unemployment effort, with the work that you all are  
19 doing --

20 And I certainly believe you're going to  
21 get an outreach. But if you don't make an inquiry --  
22 because there was agreement in the meeting, at the  
23 Commissioner level, that he certainly wanted to do  
24 that.

25 MS. JEFFERSON: Okay. Great. Well,

1 if we don't have any other questions, let's take a  
2 recess for ten minutes. Thank you.

3 (Whereupon, a recess was taken.)

4 MS. JEFFERSON: All right. We want  
5 to give everybody the opportunity to be seated. And  
6 we're going to start, now, with education. And I'm  
7 going to ask Lynn Ivanick to tell us a little about  
8 the brochure.

9 MS. IVANICK: There should be a  
10 brochure in your packet. I'm assuming everyone has --  
11 it looks like this, two-sided. For several years now,  
12 you have been presented with a tri-fold brochure that  
13 was very general in nature that we stole, with  
14 permission, from another state, and had the  
15 explanation of what misclassification was, how to  
16 determine if you're an independent contractor or an  
17 employee, et cetera.

18 Now that we have Public Chapter 424, Kim's  
19 team has put together a very specific, very nice, very  
20 detailed brochure to use instead. It clarifies what  
21 the law says. It still has the characteristics of  
22 determining whether you're an employee or an  
23 independent contractor, but it also gives a formula  
24 for employers to use on the back. Are you finding it?  
25 Front and back. Well, I guess, it's two pages, but

1       yeah. We have it front and back.

2                       MS. JEFFERSON: Lynn, can you show  
3 that so they'll know what it looks like? Great.  
4 Thank you.

5                       MS. IVANICK: So you'll see, on the  
6 back, it has the contact information, as well as the  
7 calculation that an employer can look to, to see what  
8 they're going to be hit up with, if they don't behave.  
9 We are still working on it. We were refining it as  
10 recently as yesterday. So if you have any  
11 suggestions, if you would, take a look at it. If you  
12 have any suggestions as to corrections -- oh, we see  
13 one already at the top. Right here.

14                      MS. JEFFERSON: Okay.

15                      MS. IVANICK: -- we would appreciate  
16 that. As well, the tip form is now printable. The  
17 tip form on the website is now printable. Although,  
18 depending on what formatting your machine at your user  
19 end has, sometimes it comes out in five pages instead  
20 of two. So we're still working on that. And so we  
21 still need cleanup.

22                      If you have an opportunity to go to the  
23 website, Chapter 424 is now listed. Well, a link to  
24 it is listed. And it's updated continually with the  
25 meeting minutes, et cetera. So always feel free to

1 call myself or send an e-mail about anything that you  
2 see that needs correcting or updating. We would  
3 really appreciate that.

4 Any questions on the form? Any input you  
5 might have would be great. Yes, Mr. Dan?

6 MR. BAILEY: I mean, one thing that I  
7 just might suggest, throughout this thing, other than  
8 one spot, it says "employers." And this -- you know,  
9 the penalties apply only to construction employers.

10 MS. IVANICK: Oh.

11 MR. BAILEY: So --

12 MS. IVANICK: Good point.

13 MS. JEFFERSON: Well, at the very  
14 top -- you see the very top? It says, employee  
15 misclassification in the construction industry.

16 MS. IVANICK: In the construction  
17 industry.

18 MR. BAILEY: Yeah.

19 MS. IVANICK: Maybe we should make --  
20 maybe we should underline "construction" just to kind  
21 of bring it to --

22 MR. BAILEY: When I get down here in  
23 the bold, it says, employers have a right to contest.  
24 I mean, I don't know. I don't know if it's good to  
25 make sure it's --

1 MS. IVANICK: Make it a little  
2 bigger. So we need to highlight the word  
3 "construction" a little more. Good. Good idea. Yes?

4 DR. CANAK: We were just saying that  
5 if other employers see it, it might actually lead  
6 other employers outside of construction to comply.

7 MS. IVANICK: So maybe leave it  
8 alone.

9 MR. BAILEY: That's true, but you  
10 can't penalize them.

11 DR. CANAK: Doesn't matter, if  
12 they're complying, is what we want.

13 MR. BAILEY: Oh, I understand. But  
14 also don't want a misleading brochure, either. So --  
15 but whatever.

16 MS. JEFFERSON: Okay. Well, I'll  
17 tell you all what. Let's do this, Lynn, if you don't  
18 mind: Let's send e-mail messages to Lynn with your  
19 suggestions, and if you'll copy me on those, then I'd  
20 really appreciate it. If you will, copy both me and  
21 Mike and Carolyn on those, and send them directly to  
22 Lynn. Okay?

23 MS. IVANICK: That'd be great. Yeah.  
24 Any type. You have any kind of input with respect to  
25 the website, the tip form. And if you all would try

1 printing out the tip form, and let us know how that  
2 turns out for you, as well. It might just be my  
3 machine. I don't know.

4 MS. JEFFERSON: Okay. And actually,  
5 I had a meeting with IT a couple weeks ago, and we're  
6 in the process of working with Lynn so that we can  
7 actually make some improvements to the tip form  
8 because it's not as user-friendly. We've talked about  
9 this in past meetings.

10 And we want to make that as user-friendly  
11 as possible because we need it for our investigators  
12 to receive really good tips. And the tips that we're  
13 receiving aren't really allowing us to pursue cases  
14 the way we need to. And we're receiving more  
15 nonconstruction tips from those tips and the tip line,  
16 than we are construction cases. That's another point.  
17 So I just want to let you all know that.

18 And Lynn, do you have anything else in the  
19 way of the website or the tip form?

20 MS. IVANICK: Just that it's really  
21 in a constant state of update necessarily. So even if  
22 it's minute, don't hesitate to let us know of what  
23 needs to be changed.

24 MS. JEFFERSON: Okay. Great. Thank  
25 you.

1                   And now, we'll hear from Mike Shinnick.  
2                   Mike is going to talk with us about education in the  
3                   way of speaking engagements.

4                   MR. SHINNICK: On the 2013 report to  
5                   the legislature, one of the items that we included was  
6                   the fact that we were going to do some joint  
7                   educational work through presentations out in the  
8                   public to highlight the changes in the law and to give  
9                   general information about the Employee  
10                  Misclassification Advisory Task Force. That was  
11                  started in August.

12                 Kim, one of the attorneys from her unit,  
13                 and as well as an investigator may -- we started  
14                 making 30-minute to maybe an hour presentations  
15                 throughout the State. We've actually made three joint  
16                 presentations between Labor and the Department of  
17                 Commerce & Insurance. Actually, two because I wasn't  
18                 present. I had a conflict at the second one. But we  
19                 started out in Clarksville at the Dunn Insurance  
20                 Agency. We had made presentations up at Dunn back two  
21                 or three years ago, and then had made one about a year  
22                 or a year-and-a-half ago. So this is probably our  
23                 third or fourth to make up there. And so that's where  
24                 we started.

25                 We ended up -- the next one we went to was

1 Nashville Area Plumbing and Mechanical Association.  
2 That was on September the 10th. That was the one I  
3 was not able to attend. And then the Ocoee Home  
4 Builders Association was September the 18th. That was  
5 done over in Cleveland. We did that -- was it last  
6 week? I believe, last week. Time is getting away  
7 from me here. But we got together and did that one.  
8 And we've got two more slated, but we are also trying  
9 to get a couple more -- at least, two more locations  
10 covered, as well.

11           The West Tennessee Home Builders  
12 Association meeting will be in Memphis on October the  
13 8th, and the Chattanooga Home Builders Association  
14 will be October the 16th. We had looked to have a  
15 presentation in the Knoxville area and one in Jackson,  
16 at a minimum, and possibly, even the Tri-Cities area.  
17 So those are just the ones that we know that we feel  
18 like we need to do to cover the State, but we may have  
19 some other folks come to us and ask for presentation  
20 in other venues.

21           What do we cover at our presentations?  
22 Well, the gist of what we're trying to present is the  
23 idea of accurately providing payroll numbers by these  
24 construction service providers, accurate number of  
25 employees, accurate job descriptions so that the

1 workers' compensation premiums can be calculated  
2 properly.

3           And the fact that these laws are in place  
4 because there are folks out there that are skirting  
5 the system and making it an uneven playing field, and  
6 that's what we really emphasize in our meetings. We  
7 talk about the penalty provisions of the law, the fact  
8 that we're hiring new investigators throughout the  
9 State, and also, that we're looking to acquire fraud  
10 detection software. I emphasize that the importance  
11 of using coverage verification services and the  
12 exemption registry to avoid surprises.

13           We've had a couple of situations recently  
14 where certificates of insurance have shown up that  
15 were bogus, that are just invalid. And so when that  
16 happens, the contractor who's hiring the subcontractor  
17 that is not providing the workers' comp correctly is  
18 responsible for the premium for that uninsured  
19 subcontractor.

20           We have specific rules. Rule 2H out of  
21 the basic manual that requires the furnishing of valid  
22 certificates. And when those certificates are not  
23 valid, then a premium charge can be made. And then  
24 the fact that we talked a little bit about the tip  
25 line and providing information on the tip line and the

1 tip form that are available to the public.

2 So we -- this is just kind of a broad  
3 array of misclassification topics that we try to  
4 cover, and you know, we've had some folks that say  
5 they don't want PowerPoint presentations. Others do.  
6 We have a PowerPoint presentation that we've started  
7 with in Clarksville and that we can modify slightly at  
8 these other locations to serve those needs.

9 MS. JEFFERSON: Okay. There was a  
10 question here. Please state your name and your  
11 association.

12 MR. CALLISON: Allen Callison. I'm  
13 with Morgan & Akins.

14 With respect to those fraudulent ACORD  
15 certificates in insurance, in large measure, a lot of  
16 times, the contractor believes they're acting in good  
17 faith when they receive that. I think the  
18 overwhelmingly majority of the time. If they want to  
19 go above and beyond, what steps do we request of them  
20 to investigate? Is it calling the insurance company  
21 to verify? Is it --

22 MR. SHINNICK: Well, it's coverage  
23 verification services. It's an online program at the  
24 Department of Labor & Workforce Development. And you  
25 know, they can go in any time and put any date they

1 want in there and determine whether there was coverage  
2 at that date and time. So if a certificate is bogus,  
3 there's no coverage, they go into coverage  
4 verification services, enter the named insured.

5 There's nothing that shows up, it doesn't  
6 give you any insurance company that's insuring that  
7 entity, then you're in trouble.

8 MR. CALLISON: In those instances  
9 where -- this is what we see: They actually do go  
10 out. They do go get a policy, and they cancel it a  
11 month later. How up to date is the verification?  
12 Very?

13 MS. JEFFERSON: It's very up to date.  
14 I know we talked with one of our representatives about  
15 that same question a little bit earlier. Bonnie  
16 Hudgens is the person. Let me look into that because  
17 I don't want to tell you the time period, and I find  
18 out later that it's not correct. What I'll do -- do  
19 you have a card? Because if so, then I will give you  
20 a call. I'd like to talk with Bonnie, find that out  
21 for sure, and then let you know.

22 But just to let you know that that -- we  
23 were concerned before, whether or not we could just  
24 look at coverage for the current year or whether or  
25 not we could go back in time. And I know Mike tested

1 that out, and we do know that you can go back in time  
2 to look, you know, at past. And also, we have another  
3 resource. The Department has access to NCCI. I'm not  
4 sure if you're familiar with that. The National  
5 Council on Compensation Insurance.

6 And we can take a look at that database to  
7 determine if the employer has current coverage and  
8 look for past policies and so on and so forth. We  
9 have a research team. And in fact, Carol Duncan,  
10 she's there. So she's one of our researchers on the  
11 front end, as well as we have Jeannie Talton and Sue  
12 Gordon. And that's what they do on a regular basis.  
13 So if you need any help with that, we'll be happy to  
14 assist.

15 MR. SHINNICK: Another question from  
16 Matt.

17 MS. JEFFERSON: Yes, Matt?

18 MR. CAPECE: Yeah. If I might,  
19 what's the response from the folks you give the  
20 presentations to? Is there trepidation? Is there,  
21 gee, I'm glad you're looking into this? What is the  
22 response? Or is it all of the above?

23 MR. SHINNICK: Well, I would say it's  
24 somewhat of a mixed bag. I think, for the most part,  
25 people are appreciative that we're there. We get some

1 criticism of insurance companies because they -- or  
2 the agencies because they're not following through on  
3 the certificates of insurance.

4           When the certificates are -- or when the  
5 policies are cancelled, sometimes they don't get  
6 notified, and they're -- they didn't like that. That  
7 was particularly the case over in Cleveland, and I  
8 think the same subject came up in Clarksville. So  
9 they want the insurance company held a little more  
10 responsible or the agency for handling those  
11 certificates.

12           You know, we try to emphasize the fact  
13 that what we're doing or what the legislature did with  
14 this law is trying to produce an even, balanced  
15 playing field. And so you know, I think the more they  
16 understand that, the more they are supportive of what  
17 we're trying to do.

18           But I would say, at this point, that it's  
19 not really strong, one way or the other, as far as,  
20 you know, whether they're pushing -- they're not  
21 really pushing back. I wouldn't say they were, on the  
22 law. Would you, Kim?

23           MS. JEFFERSON: I wouldn't say they  
24 necessarily push back, but we do get a lot of  
25 questions about why we're doing what we're doing. But

1 one thing that the investigators do, and I ask all of  
2 them to do is to contact insurance carriers. Anytime  
3 there's noncompliance, anytime there's employee  
4 misclassification, put the carrier on notice because  
5 they have large investigation units, unlike us, and we  
6 feel that this is something that would interest them.  
7 The mere fact that we've found a possible noncompliant  
8 employer, maybe they would be interested in pursuing  
9 it because maybe, you know, they're losing money.

10 And so maybe that would interest them in  
11 pursuing that particular employer. So all of our  
12 investigators contact the carriers. I know Randy --  
13 several have contacted Randy. I know that we've  
14 called Kevin Hale, and we've contacted Ashley on  
15 several occasions. We want to put them on notice of  
16 what's going on out here in the field.

17 MR. THOMAS: I can speak for the  
18 Travelers. We would rather collect our full due, say,  
19 20,000 instead of the 750.

20 MS. JEFFERSON: Right. Very good.  
21 And Dr. Canak, I think you had a comment.

22 DR. CANAK: I think it's valuable  
23 when you go on location to do these because you get  
24 the exchange that you're talking about. But it might  
25 also, as a compliment, make sense, since we have a

1 website, and we have world-class video production  
2 facilities at MTSU, to do a video recording of the  
3 presentations so that people could just log into our  
4 website and click around. Because we have the  
5 possibility for very low cost of making it much more  
6 available to people.

7 MS. JEFFERSON: Well, we'll have to  
8 talk with our communications office. I mean, sounds  
9 good. But of course --

10 MS. HUDGENS: They might want to do  
11 it themselves.

12 MS. JEFFERSON: They may want to --

13 DR. CANAK: Although, you might have  
14 to join AFTRA and SAG, if you go on video.

15 MS. JEFFERSON: Okay. Sounds good.  
16 We'll talk with them and see. Thank you.

17 All right. Do you have anymore questions  
18 before we move on to the next topic?

19 If not, we're going to move on to District  
20 Attorney and TBI recent case updates.

21 MR. BAILEY: All eyes are on Jim.

22 MR. MILAM: Okay. Jason handed that  
23 one off. No, that's okay.

24 Kim put the -- there's a letter on here.  
25 This page, Kudos Corner, there's a letter there. If

1 you look at that letter, that has a summary of a case  
2 we did in Nashville. It's a little bit embarrassing  
3 that this case started in 2008, and it was disposed of  
4 in 2013. But I'm not going to refer to everything  
5 that's in the letter. I do just want to highlight a  
6 couple things about the case that you wouldn't know  
7 about from reading the letter.

8           This defendant was a -- what I would call  
9 a little guy. He was -- well, actually, at the time  
10 of the trial date, when it came up in court, he had  
11 just gotten out of alcohol rehab. He was pretty much  
12 down on his luck, unemployed and all that. And that's  
13 kind of one thing that led into the probation and the  
14 slow-pay restitution schedule you'll see there. But  
15 when I say he's a little guy, he wasn't a -- he was  
16 not a big contractor, but he had -- we had a couple of  
17 things that sort of helped us out in this case.

18           One, we had a referral to the TBI, and  
19 they had -- their agent was able to interview the  
20 defendant before he'd ever been charged with anything.  
21 And he candidly answered the agent's questions, which  
22 was a big help to us. And in answering those  
23 questions, he didn't really seem to understand that he  
24 was helping us prove our case.

25           But the thing that really swung the case

1 to where he decided he wanted to plead guilty instead  
2 of go to trial was we had the witness from the  
3 subcontractor, who hired him. And that guy, whose  
4 name was Johnny Jones, he came to court prepared.  
5 Even though he did not have the original bid, the  
6 contract where the defendant had bid on the job and  
7 got the job, he had enough recollection about the job  
8 and sort of related correspondence about the job to  
9 show that the defendant, Lombardo, he was aware that  
10 this job required, you know, 15 to 25 employees.

11 And Johnny Jones was also someone able to  
12 tell us that he had worked on the job site himself,  
13 and he remembered Lombardo being there and supervising  
14 these people. So if you have, basically, an  
15 eyewitness who says, you know, yes, this defendant  
16 was -- not only did he bid on the job, won the bid,  
17 and provided the employees, but I saw him there,  
18 telling them what to do and making sure they were  
19 there on time and had their proper tools and so on and  
20 so forth. So I think that that was a really big,  
21 important factor for us.

22 And the last thing was that we had an  
23 insurance agent from Murfreesboro who, even though he  
24 was not the same agent who wrote the policy, he was  
25 the owner of the agency that issued the policy. And

1 he was able to give us some very helpful industry  
2 perspective, and also, to identify the application  
3 that the defendant had filled out. And he was able to  
4 just tie it up for us on the insurance side.

5 So the combination of the TBI agent doing  
6 the interview, the insurance agency representative,  
7 and the subcontractor who had hired the defendant to  
8 do the drywall work, those three things are what made  
9 the case. And so we were able to get him to -- and  
10 you think, well, what's the deal here. Well, he pled  
11 guilty to two felonies. And you know, if he had gone  
12 to trial and been convicted by a jury, he probably  
13 would have wound up with about the same sentence. So  
14 it was definitely a good deal for us.

15 And as far as anything else, I know  
16 there's a few things being investigated, but it's  
17 pretty quiet, as far as I know.

18 MS. JEFFERSON: Okay.

19 MR. LOCKE: I would say, just to  
20 reiterate a little bit about what Dan was saying  
21 earlier, the importance of making the decision on the  
22 front end, if you're going to pursue civil enforcement  
23 versus criminal enforcement because that's an  
24 excellent representation there of when an investigator  
25 is going to go out and talk to someone.

1                   If that person had already been levied  
2                   some type of civil penalty and had had a lot of  
3                   interaction on the front end, he probably would have  
4                   been a lot less likely to cooperate or answer  
5                   questions or anything, so to speak, as far as a  
6                   criminal followup and things, so --

7                   MR. BAILEY: I'd just like to say, I  
8                   remember, in 2008, I was General Counsel when your  
9                   office got involved in that case. And as I recall, I  
10                  believe, it was a tip from the carpenters that brought  
11                  it to our attention.

12                  MR. MILAM: Right. Right.

13                  MR. BAILEY: And I just want to thank  
14                  you and the TBI for hanging in there and bringing it  
15                  to a conclusion. I think if we get more of those  
16                  employers on the hook, I think word will spread  
17                  rapidly.

18                  MS. JEFFERSON: And he litigated that  
19                  case, so I think he deserves -- (applause.)

20                  And based on the information that you  
21                  provided today, Jim, I think it would be a good idea  
22                  for us to include that in our annual report. If you  
23                  can summarize that case. I know we previously had  
24                  another case. Was it last year? Things are running  
25                  together for me now. But we had that other case in

1 Shelby County.

2 MR. MILAM: The Nobles case.

3 MS. JEFFERSON: The Nobles case. Was  
4 that last year or the year before?

5 MR. MILAM: 2012.

6 MR. BAILEY: Was it 2012?

7 MR. MILAM: I believe so.

8 MR. BAILEY: Could have been.

9 MS. JEFFERSON: We can probably talk  
10 about that and kind of build on it, if you all want to  
11 do that for purposes of the Employee Misclassification  
12 Task Force report. But I think that if we show -- if  
13 we show results -- and that's what we're supposed to  
14 be doing this year. We're supposed to be actually  
15 showing what we've done. I think that would be a  
16 really good way for us to show the legislature what  
17 we've done so far.

18 So as far as the constitutionality, you  
19 talked about that, Jason, and actually, Dan talked  
20 about that. We're going to have a meeting after this  
21 meeting, just a brief meeting with Martha, Jason, and  
22 Jim, and actually, Adrienne is going to conduct that  
23 meeting. And we're going to take a look at the  
24 referral process because the statute specifically  
25 requires us to refer cases. So we need to really take

1 a look at that to see how we're going to refer cases.

2 Right now, we're collecting everything  
3 that we come across to provide that to you all in  
4 December. If we need to somehow modify that and do it  
5 differently, then we need to do that. And Shara  
6 Hamlett -- I'm sorry -- she's going to be in that  
7 meeting, as well.

8 So we're going to put all of our heads  
9 together and try to come up with a process because we  
10 want to make sure that the information we send you all  
11 is helpful. We don't want to send information that  
12 you all don't need, but however, we want to make sure  
13 we comply with the statute. So we'll take a look at  
14 that.

15 And the next item on the agenda is the  
16 Tennessee workers' compensation exemption registry,  
17 and Nathan Burton is going to talk about that.

18 MR. BURTON: Thank you, Kim. I will  
19 give you just a brief update and highlight a few  
20 numbers. I don't want to get into the minutia of the  
21 detail.

22 As of yesterday afternoon at the close of  
23 business, we have 28,205 active workers' compensation  
24 exemption registrants on the registry. Of those,  
25 almost 65 percent are sole proprietors. So that seems

1 to be a number that folks seem to be interested in. I  
2 had given Kim, back in August, an estimate on the  
3 number of renewals for the current fiscal year and the  
4 next two fiscal years.

5 Fiscal year '13, '14, the estimate at that  
6 time was 12,394 renewals. That's based on how we are  
7 currently. That's down slightly, but not too  
8 significant amount to be concerned with. The '14, '15  
9 estimate of 9,740 is still almost spot-on. When I did  
10 the estimate this morning, it came in at 9,720. So  
11 that's -- as some folks would say, that's pretty good  
12 for government work.

13 The '15, '16 number is significantly  
14 higher, and we believe that's due to some additional  
15 new registrations. So that number will come out in  
16 about the 9,300 range. I will get you an updated  
17 estimate on that to include in the report. I'll wait  
18 until we get as close to deadline as possible, so I  
19 have the most accurate numbers, based on actual  
20 renewals, and then potential renewals that are left.

21 The other thing that factors into that  
22 renewal number, if an individual has their exemption  
23 revoked, that will change their renewal date because  
24 it will change, then, from when they come back and  
25 submit a new registration. So that happens, actually,

1 everyday. Somebody has a business entity that goes  
2 inactive because they didn't file an annual report.

3 And then once they get that notice, they  
4 also get a notice that their workers' comp exemption  
5 has been revoked. We also make an effort, on the  
6 front end, we send a renewal notice letter 60 days  
7 before the exemption is due to expire to the  
8 registrant to let them know. So they should be  
9 receiving that information.

10 One thing I was sharing with Kim that we  
11 do need to make sure we include in the report this  
12 year, this past legislative session, the legislature  
13 did add an additional exemption category for  
14 individuals who want to be exempt, based on a  
15 religious sect exemption. And there is some specific  
16 information they have to provide to our office in  
17 order to qualify for that exemption. So that takes  
18 effect January 1 of 2014, and we're in the process of  
19 preparing the system and forms to be able to accept  
20 those registrations, as well.

21 I'll be glad to answer any questions you  
22 have.

23 MS. JEFFERSON: Great. Thank you.  
24 Do you all have any questions for Nathan? All right.

25 If you don't have any questions at this

1 time, I'd just like for you to consider other items  
2 for the annual report. Please feel free to send  
3 e-mails to me, if you come up with other topics.  
4 Right now, this is our report, and the persons who  
5 reported today, those are your items in which you'll  
6 need to submit reports for. Okay?

7 As far as on employee misclassification  
8 law, Dan, I think if we just summarize that, maybe put  
9 about two bullets for that. Investigations, we'll  
10 talk about that. We'll talk about administrative  
11 penalties, and we'll provide statistics. We'll have  
12 an update for fraud detection software, new positions.  
13 As far as education, that will be a really big portion  
14 of the report this time, and we'll talk about the  
15 brochure. Speaking engagements, tip form, website.

16 James Milam will talk about recent case  
17 updates. Jason will add to that. Jason, if you'll  
18 take a look at that constitutional issue, then I'd  
19 really appreciate that.

20 Yes?

21 DR. CANAK: I just realized I have a  
22 question for Nathan, but I didn't want to interrupt  
23 you.

24 MS. JEFFERSON: Okay. If you'll hold  
25 on one second. Let me finish this up.

1                   And then the workers' compensation  
2 Tennessee exemption registry. Of course, Nathan is  
3 going to update the statistics for that.

4                   And Dr. Canak?

5                   DR. CANAK: Nathan, on these  
6 renewals, this bulge that happened, '13, '14, when  
7 they started, are we going to see, then, that be much  
8 higher in the succeeding the year after, '15, '16,  
9 when they have to renew again?

10                  MR. BURTON: It should show up again  
11 in that '16, '17 year when we get a little bit farther  
12 into it. My system kind of does a rolling projection.  
13 So until I can add a few more months to it, I won't be  
14 able to see it. But yes --

15                  DR. CANAK: But this is a -- it's an  
16 artifact, that that was the balloon year when we  
17 started that?

18                  MR. BURTON: Well, it's really more  
19 of an artifact that the folks that applied in that  
20 initial year have birthdays that fall within that  
21 cycle. Because what we did on renewals was, we said  
22 it's -- once you do the initial exemption, it's a  
23 minimum of two years, plus whatever to get you to your  
24 birth month.

25                  DR. CANAK: Oh, okay. Okay.

1 MR. BURTON: So it ties in with,  
2 hopefully, when they're renewing their -- if they have  
3 a contractor's license, when they're renewing that  
4 license.

5 MR. THOMAS: I don't think anyone  
6 knew that it was tied to their birthday.

7 MR. BURTON: And the reason we did  
8 that is, that time of year when we started accepting  
9 registrations is also our normal busy time for annual  
10 reports in the Secretary of State's office. And  
11 there's only a fixed amount of bandwidth, so we had to  
12 figure out some way to try to spread it out.

13 The other interesting thing that we have  
14 noticed, though, is that a very high number of  
15 applicants are non-licensed contractors. I was  
16 telling Bob Pitts a little bit earlier, even if you  
17 just take this current fiscal year from -- that  
18 started July 1, we've had just over 25,000 initial  
19 registrations. 2,000 of those -- slightly over 2,000  
20 of those are folks with no contractor's license.

21 So it's just been really interesting to me  
22 that I haven't seen a drop in the number of initial  
23 registration. It's continued to be steady pretty much  
24 month in and month out. We're doing, on average,  
25 about 700 of these a month.

1 MS. JEFFERSON: Very good. Do you  
2 have anymore questions, anyone? All right. If you  
3 don't have --

4 DR. CANAK: There's one in the back  
5 along the wall.

6 MR. BROWN: Jim Brown with NFIB.  
7 Does anyone at the table have any idea how big the  
8 universe is? Because those numbers are -- they're  
9 eye-opening. 28,000 is a lot. How big is the  
10 universe of licensed and unlicensed? Do you have any  
11 sense of what that might be, or any data through any  
12 of your research, Professor Bill? Anything?

13 DR. CANAK: Well, I'd have to go back  
14 and look at the original report. But as I recall, we  
15 have, from the American Community Survey and from  
16 other sources, some estimates of the number of people  
17 who are involved in this, who are -- who report as  
18 independent contractors on their federal. But I'd  
19 have to go back and look at it. It's been awhile  
20 since I've looked at --

21 MR. BROWN: Was there any registry  
22 anywhere with the Department of Revenue or any other  
23 places where you can get a ballpark figure, what that  
24 number is?

25 MS. JEFFERSON: We'll take a look at

1 that. We'll have to take a -- without a  
2 representative being here from the Department of  
3 Revenue, then I cant speak on their behalf. But we'll  
4 be happy to take a look at it.

5 Is that something you can look into for  
6 us, Dr. Canak?

7 DR. CANAK: Sure.

8 MR. BURTON: Jim, just to give you a  
9 figure, since we've gone live, of the registrations  
10 that we've had -- now, that's the -- the total number  
11 of registrations we've had since go live was 32,784.  
12 Now, almost 5,000 of those have -- are now inactive,  
13 for some reason or another, either voluntarily, or  
14 they were administratively revoked. But 21,703 are  
15 non-licensed. So those are folks that check the box,  
16 saying, I do not have a contractor --

17 MR. BROWN: Three out of four?

18 MR. BURTON: Uh-huh.

19 MR. BROWN: Kevin has an idea. He  
20 has a number that he thinks might be out there, so  
21 maybe we'll share that afterwards, something he's  
22 heard. But it would be good to know where this might  
23 level off, as far as projections on the fund and all  
24 kinds of things.

25 MR. BURTON: Yeah. That's the

1 challenge. I think I had shared with several folks, I  
2 think when we made the initial estimate on how many  
3 would register, none of us had any idea. And so we  
4 though -- we put an estimate together that we thought  
5 was conservative, but reasonable. And looking back on  
6 it, it was nowhere close.

7 MR. BROWN: Thank you for how  
8 thorough your numbers are. Appreciate it.

9 MS. JEFFERSON: And also, the fee was  
10 reduced --

11 MR. BURTON: That's true.

12 MS. JEFFERSON: -- which is a really  
13 big part.

14 MR. HALE: Kevin Hale, Hale  
15 Insurance. Just as an FYI --

16 MS. JEFFERSON: Do you mind taking  
17 the podium? Because this is public comment section.  
18 Could you go to the podium and talk to all of us?

19 MR. HALE: One of the things that are  
20 positive, as far as the exemption registry, is the  
21 fact that the law took effect in March of 2011, where  
22 we're in a hole, as far as construction industry.  
23 Anytime you get a new business, whether it be a  
24 grass-cutting business, landscaping business, somebody  
25 pressure-washing sidewalks, those individuals quickly

1 will know about the exemption registry, and those are  
2 new folks that are coming into the system, or previous  
3 businesses that would never show up on that. So  
4 that's good news, as far as the exemption registry,  
5 Nathan, so I think your numbers are going to continue  
6 to climb, if economy continues to dig out of the hole.

7 MS. JEFFERSON: Any parting words?  
8 Anyone else like to make a comment before we move on  
9 with the agenda? If not, we're about to wrap it up.

10 MR. BAILEY: I would just --  
11 something that Mr. Shinnick brought up in the last  
12 Task Force meeting that I don't want to fall off the  
13 radar screen. I don't know when the appropriate time  
14 would be. Maybe a year after the fraud detection  
15 software has been in place. But I do think another  
16 study by Dr. Canak with updated numbers, you know, as  
17 a follow-up study would be appropriate at some point  
18 in time. And it might be helpful to the legislature,  
19 as well.

20 So I just want to reiterate that, I guess.  
21 And I do think that that is an appropriate use of the  
22 funds, as part of education.

23 MR. SHINNICK: We looked into that,  
24 and we're considering doing it on this report. But we  
25 talked to Dr. Canak about the cost involved and just

1 the additional work that's required, just to get a  
2 number. And we didn't really feel like that really  
3 had any real bearing upon, you know, our report and  
4 that we could do without it, bottom line. And so we  
5 chose not to pursue that on this report, but you know,  
6 I appreciate your comment. And at some point down the  
7 line, somebody may decide they want to do differently.

8 MS. JEFFERSON: Do you all have  
9 anything else you'd like to add? If not, I move for  
10 the adjournment.

11 MR. SHINNICK: I second.

12 MS. JEFFERSON: Thank you all. We  
13 appreciate your time.

14

15 END OF PROCEEDINGS.

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C E R T I F I C A T E

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

I, Sarah M. Motley, LCR, a Notary Public in  
the State of Tennessee, do hereby certify:

That the within is a true and accurate  
transcript of the proceedings taken before the  
Employee Misclassification Advisory Task Force,  
Tennessee Department of Labor & Workforce Development,  
on the 26th day of September, 2013.

I further certify that I am not related to any  
of the parties to this action, by blood or marriage,  
and that I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 14th day of October, 2013.

-----  
Sarah M. Motley, LCR #383  
Court Reporter  
My commission expires: 1/29/2017