

HOUSE BILL 997

By Durham

AN ACT to amend Tennessee Code Annotated, Title 50  
and Title 56, relative to workers' compensation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, is amended by adding the following new chapter:

**50-10-101.** This chapter shall be known and may be cited as the "Tennessee Employee Injury Benefit Alternative."

**50-10-102.** As used in this chapter:

(1) "Association" means the Tennessee insurance guaranty association created by § 56-12-105;

(2) "Benefit plan" means a plan established by a qualified employer under the requirements of § 50-10-104;

(3) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee;

(4) "Covered employee" means an employee whose employment with a qualified employer is principally located within this state;

(5) "Department" means the department of commerce and insurance;

(6) "Employee" has the same meaning as defined in § 50-6-102;

(7) "Employer":

(A) Means any individual, firm, association, or corporation; the receiver or trustee of the individual, firm, association, or corporation; or the legal representative of a deceased employer, using the services of not less than five

(5) persons for pay; and

(B) Excludes:

- (i) A construction services provider as described in § 50-6-902; or
- (ii) Any employment arrangement set out in § 50-6-106(1) – (7);

(8) “Financial statement” means an employer’s financial statements that are audited and prepared according to generally accepted accounting principles, or otherwise signed by a certified public accountant as a complete and accurate representation of the employer’s financial condition, including a balance sheet and income statement;

(9) “Occupational injury” means an injury by accident; a mental injury; occupational disease including diseases of the heart, lung, and hypertension; and cumulative trauma conditions including hearing loss, carpal tunnel syndrome, or any other repetitive motion conditions, which all arise out of and in the course and scope of employment, that causes death, disablement, or the need for medical treatment of the employee; and

(10) “Qualified employer” means an employer that has elected to become exempt from chapter 6 of this title, by satisfying the requirements of this chapter.

**50-10-103.**

(a) An employer may become a qualified employer by satisfying the requirements of this chapter. Any employer who is not a qualified employer shall comply with chapter 6 of this title.

(b)

(1) The commissioner shall collect, review, and maintain the information required under this section and shall monitor compliance with this section.

(2) The commissioner shall require an employer electing to be exempt from chapter 6 of this title, pursuant to this chapter to provide the following information:

(A) The employer’s name, address, and phone number;

(B) The name or title of a representative of the employer who may be contacted regarding this chapter;

(C) The number of persons the employer employs in this state as of a specified date determined by the commissioner;

(D) The employer's claim administration contact information;

(E) A listing of all covered business locations in this state; and

(F) Insurance and other financial information as the commissioner may reasonably require to confirm that the employer has financially secured coverage for or has sufficient funds to cover its employees' occupational injuries.

(3) The commissioner shall maintain a list on the department's public web site of all qualified employers. The list shall include the date each qualified employer became exempt from chapter 6 of this title, pursuant to this chapter and the information set out in subdivisions (b)(2)(A) and (b)(2)(D). Any other information not set out in this subdivision (b)(3), maintained by the commissioner pursuant to this chapter is confidential and not subject to disclosure pursuant to title 10, chapter 7.

(c) Any employer may elect to be exempt from chapter 6 of this title, and become a qualified employer if the employer:

(1) Submits an application requesting to be exempt from chapter 6 of this title, to the commissioner in the manner prescribed by the commissioner. The application shall specify the date that the exemption becomes effective, which shall not be earlier than the date the qualified employer satisfies all of the requirements in this chapter. The commissioner shall review and approve applications that satisfy all of the requirements of this chapter as soon as

possible, but not more than thirty (30) business days after the date the requirements of subdivisions (c)(1)–(5) are met. An employer may withdraw its exemption as of any date upon notice to the commissioner in the manner prescribed by the commissioner;

(2) Pays to the commissioner an annual, nonrefundable fee to pay for the department's responsibilities under this chapter, not to exceed five hundred dollars (\$500) per application; provided, the fee shall be payable on the date of filing the application and upon each renewal;

(3) Agrees to establish a written benefit plan for covered employees as described in § 50-10-104;

(4) Agrees to notify each of its covered employees of qualified employer status as described in § 50-10-105;

(5) Provides the commissioner with satisfactory proof of the employer's ability to financially secure compensation for its covered employees for work-related injuries as described in § 50-10-107; and

(6) Receives written certification from the commissioner that the employer qualifies for receiving an exemption from chapter 6 of this title.

(d)

(1) Any covered employee of an employer that satisfies the requirements of this chapter to be exempt from chapter 6 of this title, shall be removed from the Tennessee workers' compensation system and become eligible for injury benefit plan coverage at the time provided in subsection (e).

(2) Related employers may submit a qualified employer application to the commissioner with a single filing fee for a single qualified employer certificate that will name all related employers as qualified employers; provided, that those

employers must be within a controlled group of companies, as determined under 26 U.S.C. § 414(b) and (c), the qualified employer application is complete, satisfies commissioner review on other qualification requirements, and includes:

(A) A listing of all related employers seeking qualified employer status, including the federal employer identification numbers and all Tennessee business locations for each employer;

(B) Insurance and other financial information required by the commissioner for all employers. For purposes of this subdivision (d)(2)(B), financial statements may be submitted on a consolidated basis for all related employers seeking qualified employer status; and

(C) A commitment that all related employers shall be covered by the same insurance policy, if the policy is required, adopt the same injury benefit plan, and use the same claims administrator.

(3) If an employer elects to be exempt from chapter 6 of this title, the election shall be for all business locations within this state and all covered employees within a single legal entity; provided, however, subject to any required insurance company approvals, one (1) or more legal entities within a controlled group of companies may elect to be exempt from chapter 6 of this title, while the remaining companies in that controlled group provide workers' compensation coverage.

(4) If related employers plan to adopt separate injury benefit plans, purchase separate insurance policies, or use different claims administrators, then each set of employers must complete a separate qualified employer application and submit separate filing fees to the commissioner.

(e) Upon written confirmation by the commissioner that the employer has satisfied all the requirements to be certified as a qualified employer, the employer shall become a qualified employer upon the later of:

(1) The date the employer implements the approved benefit plan required under § 50-10-104;

(2) The date the employer provides notification to employees pursuant to § 50-10-105;

(3) The date the employer implements approved financial security under § 50-10-107; or

(4) The effective date specified in the commissioner's certification of qualified employer status.

(f) An employer may annually elect to renew its status as a qualified employer in the manner prescribed by the commissioner.

(g) Upon request, or as required in a rule by the commissioner, a qualified employer shall submit documentation to affirm its continued compliance with this chapter. In addition, a qualified employer shall notify the commissioner of any material change in information required to be submitted to the commissioner under this chapter within fourteen (14) business days after the change.

(h) A qualified employer in compliance with this chapter shall be considered to have complied with any requirements to provide workers' compensation in this state.

(i) Any filing fees collected pursuant to this chapter shall be credited by the treasurer to the department for purposes of administering this chapter and not to the general fund.

**50-10-104.**

(a) An employer electing to become a qualified employer shall adopt a written benefit plan that complies with this section.

(b) The benefit plan shall provide for payment of benefits as determined by the employer, subject to the following minimum benefit limits:

(1) Medical expense coverage for at least one hundred fifty-six (156) weeks and three hundred thousand dollars (\$300,000) per employee;

(2) Temporary total disability benefits beginning on the fourth day of disability, of at least seventy percent (70%) of the employee's average weekly wages up to one hundred ten percent (110%) of the state average weekly wage, for at least one hundred fifty-six (156) weeks; and

(3) Death and scheduled dismemberment benefits up to three hundred thousand dollars (\$300,000) per employee.

(c) The benefit plan may have a combined single limit for all benefits payable due to an occupational injury; provided, that the combined limit is at least seven hundred fifty thousand dollars (\$750,000) per employee and two million dollars (\$2,000,000) per occurrence.

(d) Except as otherwise provided in § 50-10-108(e), payment of benefits to or on behalf of an employee shall not limit the right of the employee or the employee's personal representative, dependents, or next of kin to recover under a cause of action for employer negligence.

(e) Except as otherwise provided in this chapter, no provision of chapter 6 of this title, shall define, restrict, expand, or otherwise apply to a qualified employer's benefit plan, including, but not limited to, provisions of chapter 6 of this title, regarding notice of injury; defining compensable injuries or covered medical expenses; selecting medical providers; medical management; ending or continuing benefits; attempting dispute

resolution; or other claim procedures, funding rules, notices, or penalties. The benefit plan may specify, and insurance carriers shall be permitted to compete on the basis of, these and other conditions and limitations on benefits.

(f)

(1) The benefit plan required by this section may provide for lump-sum payouts in full and final satisfaction of all benefit obligations that are actuarially equivalent to expected future payments as reasonably determined by the claims administrator appointed by the qualified employer. The benefit plan may also provide for settlement agreements between a covered employee and employer that pay more or less than an amount actuarially equivalent to expected future payments; provided, however, any settlement agreement by a covered employee shall be voluntarily entered into:

(A) No earlier than the tenth business day after the date of the initial report of injury; and

(B) After the covered employee has received a medical evaluation from a nonemergency care medical doctor.

(2) Any waiver of rights shall be stated conspicuously on the face of any settlement agreement.

(g) The benefit plan shall pay benefits on a no-fault basis, without regard to whether the covered employee, the qualified employer, or a third party caused the occupational injury; provided, however, the benefit plan may deny benefits for other reasons including the following:

(1) The employee's intentional self-inflicted injury; or

(2) Any injury sustained while the employee was in a state of intoxication or under the influence of drugs, as defined in § 50-10-108(c).



(h) The benefit plan may provide additional types of benefits and higher levels of benefits coverage than required under this section.

(i) No employer shall charge a fee or cost to the employee to cover the employee by the qualified employer's benefit plan; provided, however, normal payroll deductions from disability benefit payments shall not violate this subsection (i).

(j) The benefit plan shall provide eligibility to participate and provide the same forms and levels of benefits to all covered employees of the qualified employer.

(k) The benefit plan and any related insurance coverage may apply to a covered person who is temporarily employed outside of this state.

(l) For an employee who is not principally employed in this state, but is injured in this state:

(1) If the employer carries workers' compensation or coverage pursuant to this chapter in this state, then that coverage applies; or

(2) If the employer does not carry workers' compensation or coverage pursuant to this chapter in this state, then workers' compensation coverage applies.

(m) For purposes of state and federal taxation, all benefit plan payments made under this chapter are made pursuant to a statute in the nature of a workers' compensation law and like benefit payments pursuant to chapter 6 of this title.

**50-10-105.**

(a) A qualified employer shall notify each of its covered employees that the employer is a qualified employer and does not provide workers' compensation coverage pursuant to chapter 6 of this title. The notice required by this section shall be provided in writing or electronically prior to the employer becoming a qualified employer pursuant to § 50-10-103 or at the time an employee is hired.

(b) The qualified employer shall also post the employee notification required by this section at conspicuous locations within the qualified employer's places of business, as reasonably necessary to provide notice to all employees.

(c) The notice shall include the name, title, address, and telephone number for the person to contact for injury benefit claims administration, and state:

**Your employer is a Qualified Employer under the Tennessee Employee Injury Benefit Alternative as of [effective date]. Your employer does not carry workers' compensation insurance coverage under the Tennessee Workers' Compensation Law. If injured on the job, your benefits are governed by a written benefit plan sponsored by your employer. Contact your employer if you have questions about your benefits, rights, or responsibilities under the benefit plan.**

**50-10-106.** A qualified employer's injury benefit plan established in compliance with this chapter:

(1) Is not maintained solely to comply with the Workers' Compensation Law, compiled in chapter 6 of this title;

(2) Is an employee welfare benefit plan that is subject to the reporting and disclosure, fiduciary responsibility, administration, enforcement, and other applicable provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA) (29 U.S.C. § 1021–1191c); and

(3) Provides excepted benefits within the meaning of 29 U.S.C. § 1191b(c).

**50-10-107.**

(a) Except as otherwise provided in subsections (d) and (e), an employer electing to be a qualified employer under this chapter shall demonstrate financial ability

to pay claims by complying with the requirements in § 50-6-405 unless otherwise provided in this section.

(b) A qualified employer may self-fund or insure the benefits and liabilities under this chapter with any insurance carrier authorized to do business in this state. Insurance coverage obtained by a qualified employer shall be from an admitted or non-admitted but approved insurer with an AM Best Rating of A- or better. Insurance coverage maintained pursuant to this subsection (b) pertains to covered employees only. Employers with employees principally working in states other than this state shall arrange separate insurance coverage in compliance with the other states' laws.

(c) Any security held for purposes of compliance with this section and § 50-6-405 shall serve to guarantee the payment of claims under chapter 6 of this title, and this chapter.

(d) An employer that insures or obtains coverage to reimburse the employer for payments under the employer's benefit plan with an insurance policy that has a self-insured retention (SIR) no higher than twenty-five thousand dollars (\$25,000) per occurrence shall be deemed to have fully insured the employer's compensation obligation under § 50-6-405(a)(1) and shall not be required to post any security deposit with or provide any financial data to the commissioner.

(e)

(1) An employer that insures or obtains coverage to reimburse the employer for payments made under the employer's benefit plan with an insurance policy that has an SIR above twenty-five thousand dollars (\$25,000) but no more than three million dollars (\$3,000,000) per occurrence may seek qualification under this financial security safe harbor if the employer certifies, on

the qualified employer application under penalty of perjury, that the employer has:

(A) A commissioner-approved and licensed claims servicing company or in-house adjuster approved by the employer's insurance carrier, if any;

(B) A workplace safety program;

(C) A record of being continuously engaged in business in this state for at least five (5) years with no change in majority control within the prior two (2) years;

(D) An average payroll of at least one million dollars (\$1,000,000) in each of the preceding three (3) years;

(E) Shareholders' equity of not less than five hundred thousand dollars (\$500,000); and

(F) No fewer than one hundred (100) employees.

(2)

(A) The financial security safe harbor established pursuant to this subsection (e) requires submission of financial statements and is based on the greatest of:

(i) Five percent (5%) of net worth;

(ii) One-and-three-quarters (1.75) times working capital;

and

(iii) One-and-three-quarters (1.75) times the loss projection for the coming year, based on an adjusted three-year average of loss experience, determined by taking the insured's three-year average incurred losses, valued within ninety (90)

business days prior to the qualified employer application, and adjusting by limiting losses to the proposed SIR, then indexing the average loss amount for any change in projected payroll from the past three (3) years to the coming year, computed by using total estimated payroll for the coming policy term divided by total actual payroll for the three (3) years of loss experience. This value is adopted as the approved SIR.

(B) Notwithstanding § 50-6-405 to the contrary, employers insuring at or below the approved SIR may qualify without posting any security for financial obligations under this chapter. Based upon this financial exposure, employers may insure at a higher SIR by posting an amount of security such that the insured SIR less posted security is equal to or below the approved SIR.

(f) The commissioner has final authority to determine if an employer shall post security, regardless of whether or not the employer meets the requirements of this section. The commissioner may also waive the requirements of this section in an amount that is commensurate with the ability of the employer to pay the benefits required by this chapter.

(g) An employer that does not fulfill the requirements of this section shall not be relieved of the obligation for compensation to a covered employee.

**50-10-108.**

(a) An employee who is covered by a qualified employer's benefit plan or the employee's personal representative, dependents, or next of kin may bring a cause of action for employer negligence to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment. In the action, the

employee must prove negligence of the employer or of an agent or servant of the employer acting within the general scope of the agent or servant's employment.

(b) When final judgment is rendered against a qualified employer on a cause of action brought pursuant to subsection (a), the civil liability of the employer, inclusive of all persons and entities for which vicarious liability may apply, and regardless of the number of defendants against whom the claim is asserted or the number of separate causes of action on which the claim is based, shall be limited to:

- (1) Economic damages in an amount not to exceed one million dollars (\$1,000,000) per employee and five million dollars (\$5,000,000) per occurrence;
- (2) Noneconomic damages as determined under § 29-39-102; and
- (3) Punitive damages as determined under § 29-39-104.

(c) In an action brought pursuant to subsection (a), it is not a defense that the injury or death was caused by the negligence of another employee. The employer may defend the action on any other ground available under state or federal law, including, but not limited to, on the ground that the injury was caused or occurred:

(1) By an act of the employee bringing suit that was intended to bring about the injury;

(2) While the employee was in a state of intoxication or under the influence of drugs. If the injured employee has a blood alcohol concentration level equal to or greater than eight-hundredths of one percent (0.08%) for nonsafety-sensitive positions, or four-hundredths of one percent (0.04%) for safety-sensitive positions, as determined by post-accident blood or breath testing, or if the injured employee has positive post-accident tests for a drug, then it is presumed that the employee was in a state of intoxication or under the influence of drugs at the time of the injury. If the injured employee refuses to

submit to a post-accident drug or alcohol test, it shall be presumed that the employee was in a state of intoxication or under the influence of drugs at the time of the injury. For this purpose, "drug" means any controlled substance subject to testing pursuant to drug testing regulations adopted by the United States department of transportation;

(3) Solely by the negligence of the employee;

(4) By the employee's failure to follow instructions and rules communicated by the employer and designed to avoid injury;

(5) By the employee's failure to follow available safe alternatives provided by the employer;

(6) Outside the course and scope of employment;

(7) By hazards that are commonly known and appreciated by the employee; or

(8) By a criminal act of a third party that was not foreseeable, with consideration of the proximity, publicity, recency, frequency, and similarity of prior crimes.

(d) A cause of action described in this section may not be waived by an employee before the employee's injury or death. Any agreement by an employee to waive a cause of action or any right described in this section before the employee's injury or death is void and unenforceable.

(e)

(1) A cause of action described in this section may be waived by an employee after the employee's injury if:

(A) The employee voluntarily enters into the waiver with knowledge of the waiver's effect;

(B) The waiver is entered into no earlier than the tenth business day after the date of the initial report of injury;

(C) The employee, before signing the waiver, has received a medical evaluation from a nonemergency care doctor; and

(D) The waiver is in a writing in which the true intent of the parties is specifically stated in the document.

(2) A waiver pursuant to this subsection (e) shall be conspicuous and appear on the face of the agreement. In order to be conspicuous, the waiver provisions shall appear in a type larger than the type contained in the body of the agreement or in contrasting colors.

(f)

(1) All actions brought pursuant to this section shall proceed through the appropriate state courts, and mediation, arbitration, or any other form of alternative dispute resolution or settlement process available at common law shall be available to such actions.

(2) Benefit claims shall be resolved through the procedures set forth in the injury benefit plan and this chapter.

(g) Any benefits paid under a qualified employer's benefit plan shall offset any other award against such qualified employer under this section.

(h) An insurance agent or broker who sells an employer a benefit program compliant with this chapter shall comply with normal professional standards within the insurance industry and shall not be subject to any independent cause of action for the sale.

**50-10-109.**



(a) Except as otherwise provided by federal law, this chapter, including the assessment of penalties for violations of this chapter, shall be enforced solely by the commissioner.

(b) Upon a finding that a qualified employer is in violation of this chapter, the commissioner may withdraw its certification of the employer's qualified status; provided, however, the employer shall not be prohibited from electing to be exempt from chapter 6 of this title, if the violation is timely cured, as determined by the commissioner.

SECTION 2. Tennessee Code Annotated, Section 50-6-106, is amended by adding the following new subdivision:

(8) An employer that satisfies the requirements of the Tennessee Employee Injury Benefit Alternative, compiled in chapter 10 of this title.

SECTION 3. Tennessee Code Annotated, Title 56, Chapter 12, Part 1, is amended by adding the following new section:

(a) There is established within the Tennessee insurance guaranty association a Tennessee option guaranty fund. This fund shall be for the purpose of the continuation of benefits under title 50, chapter 10, for covered claims that are due and unpaid or interrupted due to the inability of the insurer or employer sponsoring a benefit plan to meet its compensation obligations because its financial resources, security deposit, surety bond, and insurance are either inadequate or not immediately accessible for the payment of benefits. Monies in the fund, including interest, shall not be subject to appropriation and shall be expended to compensate employees for eligible benefits under this section and for all claims for related administrative fees, operating costs, attorney fees, and other costs reasonably incurred by the association in the performance of its duties under this section. A "covered claim" has the meaning given to it pursuant to the qualified employer's injury benefit plan and guaranty fund laws.

(b) The association shall create a separate account for the Tennessee option guaranty fund, and it shall not be commingled with any other account managed by the association.

(c)

(1) Until the Tennessee option guaranty fund contains ten million dollars (\$10,000,000), it shall be funded by:

(A) Assessments against each insurance company providing coverage described under title 50, chapter 10, in an amount equal to two percent (2%) of all gross direct premiums written during each quarter of the calendar year for insurance covering a benefit plan and any other insurable risks under title 50, chapter 10, after deducting from the gross direct premiums any return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings, and other similar returns paid or credited to policyholders; and

(B) Assessments against each qualified employer that does not purchase insurance covering a benefit plan under title 50, chapter 10, in an amount equal to one percent (1%) of the temporary total disability benefits paid out during each quarter of the calendar year by the employer.

(2) The assessment shall be paid to the Tennessee option guaranty fund no later than the thirtieth day of the month following the close of each quarter of the calendar year in which the gross direct premium is collected.

(3) The association, on or before December 31 of each year, shall determine the balance in the Tennessee option guaranty fund, together with the additional amounts necessary to properly administer title 50, chapter 10, for the

ensuing year. Each insurer and employer shall provide the association with the information necessary to determine the amount of the assessment in the manner as the association may prescribe.

(d) Payments shall be made by check payable to the Tennessee guaranty insurance association. If the fee provided for under this section is not paid within thirty (30) business days of the date provided in this section, the insurance carrier or employer shall be assessed a penalty for each thirty (30) business days the amount so assessed has remained unpaid which is equal to ten percent (10%) of the unpaid amounts and which shall be collected at the same time as a part of the fee assessed. Absent a waiver obtained from the association for good cause, the failure of an insurance carrier or employer to pay the assessment when due shall be referred to the commissioner for appropriate administrative action against the insurance carrier or employer's authorization to do business in this state.

(e) Upon a determination by the commissioner that an insurance carrier or employer has become insolvent, the commissioner shall release any security required by § 50-10-107. Claims administration, including processing, investigating, and paying valid claims against an insolvent insurer under this section may be paid by the surety that issued a surety bond or be under a contract between the commissioner and an insurance carrier, appropriate state governmental entity, or an approved service organization. Upon a determination by the commissioner of commerce and insurance that an insurance carrier or employer has become insolvent, the commissioner may also petition the association to release funds from the Tennessee option guaranty fund.

(f)

(1) The fund established under this section shall be administered, disbursed, and invested under the direction of the association.

(2) The association shall be a party in interest in all proceedings involving any claims for benefits under title 50, chapter 10, and this section with respect to an insolvent insurer or employer and shall have all rights of subrogation of the insolvent insurer or employer.

(3) In proceedings described in subdivision (f)(2), the association may assume and exercise all rights and defenses of the insolvent insurer or employer, including, but not limited to, the right to:

(A) Appear, defend, and appeal claims;

(B) Receive notice of, investigate, adjust, compromise, settle, and pay claims; and

(C) Investigate, handle, and contest claims.

(4) The association may also:

(A) Retain persons necessary to handle claims and perform other duties of the association;

(B) Sue or be sued;

(C) Negotiate and become a party to such contracts as are necessary to carry out this section; and

(D) Exercise any other powers necessary to perform its duties under this section.

(5) Unless otherwise provided by title 50, chapter 10, or this section, all fines and penalties assessed under title 50, chapter 10, shall be paid to the association for deposit into the fund established in this section.

(6) The association shall have the authority to promulgate rules for administration of the assessment and collection process, including, but not limited to, rules applicable to the fund established in this section.

(g) No monies deposited to the funds shall be subject to any deduction, tax, levy, or any other type of assessment. No other tax, fee, or assessment applicable to a workers' compensation insurance carrier, employer, or third-party claims administrator shall apply to a qualified employer's injury benefit plan, other than premium or surplus lines taxes collected from carriers.

SECTION 4. This act shall be strictly construed. Any conflict between this act and any other law shall be resolved in favor of the operation of this act.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, then:

(1) The invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and, to that end, the provisions of this act are declared to be severable;

(2) An employer that was exempt from Tennessee Code Annotated, Title 50, Chapter 6, pursuant to this act prior to the invalidity shall not be deemed to have failed to secure workers' compensation insurance; and

(3) An employer that was exempt from Tennessee Code Annotated, Title 50, Chapter 6, pursuant to this act prior to the invalidity shall be liable for an injury to an employee:

(A) Only to the extent to which an employer that complied with Tennessee Code Annotated, Title 50, Chapter 6, would be liable to an employee in compensation for injuries that occur after the date the employer secures compliance with Tennessee Code Annotated, Title 50, Chapter 6, which shall be no later than ninety (90) business days from any final decision declaring any provision of this act or the application thereof to any person or circumstance invalid; and

(B) Only to the extent provided in the employer's injury benefit plan and only for liability under Tennessee Code Annotated, Title 50, Chapter 10, which arise out of injuries occurring on or after the date set out in Tennessee Code Annotated, Section 50-10-103(e).

#### SECTION 6.

(a) The commissioner of commerce and insurance may promulgate rules related to the qualified employer application and qualification process as described in Tennessee Code Annotated, Section 50-10-103.

(b) The commissioner may designate an information collection agent, implement an electronic reporting and public information access program, and adopt rules as necessary to implement the information collection requirements of Tennessee Code Annotated, Section 50-10-103, and provide appropriate notice to state government agencies as the Commissioner deems necessary. Such agencies shall cooperate with the commissioner in enforcing Tennessee Code Annotated, Section 50-10-103.

(c) The Tennessee Guaranty Association shall have the authority to promulgate rules for administration of the assessment and collection process set out in Section 3 of this act.

(d) All rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

(e) Except as otherwise expressly provided in subsections (a)–(c), no administrative agency of this state or a court shall promulgate rules or any procedures related to design, documentation, implementation, administration, or funding of a qualified employer's benefit plan.

(f) No regulatory authority shall have the right or duty to approve insurance rates charged for or prescribe policy forms for coverage obtained pursuant to Tennessee Code Annotated, Title 50, Chapter 10.

SECTION 7. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on July 1, 2015, the public welfare requiring it, and shall apply to injuries occurring on or after that date.