

HOUSE BILL 1503

By Eldridge

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 2; Title 50, Chapter 6 and Title 50,
Chapter 7.

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

SECTION 1. Tennessee Code Annotated, Section 50-7-207(e), is amended by adding the following as a new subdivision (2) and by redesignating the existing subdivisions accordingly:

(2) Service performed by an individual who provides services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier doing an interstate business while engaged in interstate commerce shall be deemed to be an excluded service for purposes of this section, regardless of whether the common law relationship of master and servant exists, and regardless of whether the individual satisfies the requirements for included service as prescribed in this subsection (e); provided, that this chapter shall apply to those employees of the common carrier who do not provide services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier doing interstate business while engaged in interstate commerce.

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 2, Part 1, is amended by adding the following as a new, appropriately designated section:

50-2-1___. This chapter shall not apply to any individual who provides services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier doing an interstate business while engaged in interstate commerce regardless of whether the common law relationship of master and servant exists; provided, that this chapter shall apply to those employees of the common carrier who do not provide services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier doing interstate business while engaged in interstate commerce.

SECTION 3. Tennessee Code Annotated, Section 50-6-206(a)(2)(A), is amended by deleting the subdivision in its entirety, and by substituting instead the following:

Except as provided in subdivision (a)(2)(C), if a workers' compensation claim is settled by the parties, the parties may agree to compromise and settle the issue of future medical benefits. No settlement agreement shall be approved that contains any language inconsistent with this subdivision (a)(2)(A). Except as provided in subdivision (a)(2)(C), an employee who is determined to be permanently totally disabled shall not be allowed to compromise and settle the employee's right to future medical benefits.

SECTION 4. Tennessee Code Annotated, Section 50-6-206(a)(2)(B), is amended by deleting the subdivision in its entirety, and by substituting instead the following:

If the parties mutually agree to a compromise and settlement on the issue of future medical benefits, the parties shall not be required to request a benefit review conference. Instead, the parties shall submit the agreement to the proper court for approval, pursuant to this subsection (a) or to the commissioner or the commissioner's designee pursuant to subsection (c).

SECTION 5. Tennessee Code Annotated, Section 50-6-206(a)(2)(C), is amended by deleting the subdivision in its entirety, and by substituting instead the following:

Upon application of the parties, the trial court or the department of labor and workforce development specialist approving the settlement shall have the authority to terminate the right to future medical benefits upon a finding that based upon clear and convincing evidence compensability is a contested issue and has been raised in good faith as a potentially valid defense by the employer.

SECTION 6. Tennessee Code Annotated, Section 50-6-204(a), is amended by deleting subdivisions (1) and (2) in their entirety, and by substituting instead the following:

(1)

(A) The employer or the employer's agent shall furnish free of charge to the employee medical care and treatment made reasonably necessary by accident as defined in the chapter, including medical and surgical treatment; medical and surgical supplies; hospitalization; nursing services; psychological services; dental services; crutches; artificial members; and prescription eyeglasses or eyewear.

(B) No medical provider shall charge more than ten dollars (\$10.00) for the first twenty (20) pages or less and twenty-five cents (25¢) per page for each page after the first twenty (20) pages for any medical reports, medical records or documents pertaining to medical treatment or hospitalization of the employee that are furnished pursuant to this subsection (a).

(2)

(A) It is the intent of the general assembly that the administration of the workers' compensation system proceed in a timely manner and that the parties and the department have reasonable access to the employee's medical records

and medical providers that are pertinent to and necessary for the swift resolution of the employee's workers' compensation claim. Notwithstanding any law to the contrary, there shall be no implied covenant of confidentiality, prohibition against ex parte communications or privacy of medical records in the custody of authorized treating physicians with respect to case managers, employers, or insurance companies, or their attorneys, if these persons comply with subdivision (a)(2)(C).

(B) For purposes of subdivision (a)(2)(C), "employer" means the employer, the employer's attorney, the employer's insurance carrier or third party administrator, a case manager as authorized by § 50-6-123, and any utilization review agent as authorized by § 50-6-124 during the employee's treatment for the claimed workers' compensation injury.

(C) To facilitate the timely resolution of workers' compensation claims and to facilitate the use of the benefit review process established by this chapter, there shall be reasonable access to any employee's medical information only by compliance with the following:

(i) An employee claiming workers' compensation benefits shall provide the employer or the division of workers' compensation with a signed, written medical authorization form for injuries occurring on or after July 1, 2009. The form shall be addressed to a specific medical provider authorized by the employer pursuant to this section; shall permit the release of information through communication, either orally or in writing, as authorized under this subdivision (a)(2)(C); and shall plainly state in capitalized lettering on the face of the document the following language:

THIS MEDICAL AUTHORIZATION FORM ONLY PERMITS THE EMPLOYER OR THE DIVISION OF WORKERS' COMPENSATION TO OBTAIN MEDICAL INFORMATION THROUGH ORAL OR WRITTEN COMMUNICATION, INCLUDING, BUT NOT LIMITED TO, CHARTS, FILES, RECORDS, AND REPORTS IN THE POSSESSION OF A MEDICAL PROVIDER AUTHORIZED BY THE EMPLOYER PURSUANT TO T.C.A. § 50-6-204 AND A MEDICAL PROVIDER THAT IS REIMBURSED BY THE EMPLOYER FOR THE EMPLOYEE'S TREATMENT;

(ii) An employee claiming workers' compensation benefits or any attorney representing the employee shall be entitled to obtain medical information, records, or reports from, or communicate in writing or in person with, any medical provider who has treated or provided medical care to the employee; provided, that the employee executes and provides the medical provider with an appropriate written authorization;

(iii) An employee claiming workers' compensation benefits or any attorney representing the employee shall be entitled to obtain medical information, records, or reports from, or communicate in writing or in person with, any medical provider who has treated or provided medical care to the employee;

(iv) Any medical provider authorized by the employer pursuant to this section and who has treated or provided medical care to an employee claiming workers' compensation benefits shall communicate, orally or in writing, with the employer or any attorney representing the employer, and shall honor any request by the employer for medical information, medical

records, or medical reports pertaining to the claimed workers' compensation injury ;

(v) Oral communication, including, but not limited to, telephone or face-to-face conversations, by the employer or an attorney representing the employer with a medical provider authorized by the employer pursuant to this section is permitted;

(vi) In the event an employee or employer files a request for assistance with the department requesting assistance with a determination as to whether the claim is compensable or with the determination of an issue related to medical benefits or temporary disability benefits, any request by the department for medical information, medical records, medical reports or medical opinions may be oral or in writing; provided, however, that:

(a) Any response by the medical provider to the department's request shall be provided in writing; and

(b) In the event the department receives documents or written responses to any request for information permitted by this subdivision (a)(2)(C)(vi), the department shall notify the employee, employer and any attorney representing the employee or employer within fourteen (14) days of receipt of the document or written response that the persons may review or copy the documents or responses and, if copies of documents are requested, the requesting party shall pay the copying fee authorized by this subsection (a) before copies are provided; and

(vii) In the event the department becomes involved in the appeal of a utilization review issue, the department is authorized to communicate with the medical provider involved in the dispute either orally or in writing to permit the timely resolution of the issue and shall notify the employee, employer or any attorney representing the employee or employer that they may review or copy the documents or responses and if copies of any written documents are requested, the requesting party shall pay the copying fee authorized by this subsection (a) before copies are provided.

(D) No relevant information developed in connection with authorized medical treatment or examination provided pursuant to this section for which compensation is sought by the employee shall be considered a privileged communication and no medical provider shall incur any liability as a result of providing medical information, medical records, or medical reports as described in subdivision (a)(2)(C) provided that the applicable provisions of subdivision (a)(2)(C) are followed by the medical provider.

SECTION 7. Tennessee Code Annotated, Section 50-6-102(12), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(12) "Injury" and "personal injury" means an injury by accident arising out of and in the course of employment that causes either disablement or death of the employee. "Injury" and "personal injury" shall not include diseases in any form, except when it results naturally and unavoidably from the employment. "Injury" and "personal injury" include a mental injury arising out of and in the course of employment. An injury, including a mental injury, is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence. The opinion

of the treating physician should be presumed to be correct regarding the issues of compensability. That opinion shall only be defeated by clear and convincing evidence to the contrary under the law.

SECTION 8. Tennessee Code Annotated, Section 50-6-301, is amended by designating the existing language as subsection (a) and adding the following as a new subsection:

(b) Hearing loss, carpal tunnel syndrome and other repetitive motion injuries are not occupational diseases but are ordinary diseases of life, which are not compensable under this chapter unless the disease exists and arose primarily out of and in the course of employment as provided above with respect to occupational diseases and did not result primarily from a cause outside of the employment, and that one (1) of the following exists:

(1) It follows as an incident of occupational disease as defined in this title;

(2) It is an infectious or contagious disease contracted in the course of one's employment in a hospital, sanitarium, laboratory or nursing home while otherwise engaged in the direct delivery of health care, or in the course of employment as emergency rescue personnel and volunteer emergency rescue personnel;

(3) It is characteristic of the employment and was caused by conditions peculiar to such employment; or

(4) The opinion of the treating physician should be presumed to be correct regarding the issues of compensability. That opinion shall only be defeated by clear and convincing evidence to the contrary under the

law.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.