



State of Tennessee

PUBLIC CHAPTER NO. 344

SENATE BILL NO. 1214

By Norris, Johnson

Substituted for: House Bill No. 325

By Hawk, Casada, Eldridge, Pody

AN ACT to amend Tennessee Code Annotated, Section 9-8-307; Section 29-20-401 and Title 50, Chapter 6, relative to workers' compensation.

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

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 6; Section 29-20-401; and Section 9-8-307, are amended by deleting the language "second injury fund" wherever it appears and substituting instead the language "subsequent injury and vocational recovery fund".

SECTION 2. Tennessee Code Annotated, Section 50-6-102(12)(B), is amended by deleting the subdivision and substituting instead the following:

(B) "Employee" includes a sole proprietor, a partner, or a member of a limited liability company who devotes full time to the proprietorship, partnership, or limited liability company, respectively, and who elects to be included in the definition of "employee" by filing written notice of the election on a form prescribed by the bureau with the insurer or, if there is no insurer, with the partnership, proprietorship, or limited liability company at least thirty (30) days before the occurrence of any injury or death. Such a proprietor, partner, or member may at any time withdraw the election by giving notice of the withdrawal to the insurer or, if there is no insurer, with the partnership, proprietorship, or limited liability company. Such a partner, proprietor, or limited liability company may at any time revoke the election for the term of the policy by giving notice in the same manner. Notification given pursuant to this subdivision (12)(B) does not become effective until it is filed with the proper entity;

SECTION 3. Tennessee Code Annotated, Section 50-6-104, is amended by deleting the section and substituting instead the following:

(a) Any officer of a corporation may elect to be exempt from the operation of this chapter.

(b) An officer who elects exemption from this chapter shall give written notice to the corporation of the officer's intent not to be covered by this chapter on a form prescribed by the bureau. Notice of the officer's election not to be bound by this chapter must include an affidavit of the officer that the action of the officer in rejecting this chapter was not advised, counseled, nor encouraged by the employer or by anyone acting on the employer's behalf. The election by any employee, who is a corporate officer of the employer, to be exempt from this chapter, does not reduce the number of employees of the employer for the purposes of determining the requirements of coverage of the employer under this chapter.

(c) Every employee who is a corporate officer and who elects not to operate under this chapter, in any action to recover damages for personal injury or death by accident brought against an employer who has elected to operate under this chapter, shall proceed as at common law, and the employer may make use of all common law defenses.

(d) Notification given pursuant to this section does not become effective until it is filed with the proper entity. Any officer who elects exemption and who, after electing exemption then revokes that exemption, shall give written notice of the revocation to the employer and its insurer at least thirty (30) days before the occurrence of any injury or death.

(e) This section does not apply to any officer of a corporation, member of a limited liability company, partner, or sole proprietor who is engaged in the construction industry, as defined by § 50-6-901; instead, part 9 of this chapter applies to such officer, member, partner, or sole proprietor.

SECTION 4. Tennessee Code Annotated, Section 50-6-106(5), is amended by deleting the subdivision and substituting instead the following:

(5) Cases where fewer than five (5) persons are regularly employed, except as provided in § 50-6-902. In cases with fewer than five (5) regularly employed persons, the employer may accept this chapter by purchasing a workers' compensation insurance policy, and may at any time withdraw that acceptance by canceling or not renewing the policy and providing notice to the employees;

SECTION 5. Tennessee Code Annotated, Section 50-6-208, is amended by adding the following as a new subsection:

(j)(1) If, at the time compensation provided by § 50-6-207(3)(A) ends, the employee has not returned to work with any employer because of a work injury or has returned to work and is receiving wages or a salary that is less than one hundred percent (100%) of the wages or salary the employee received from the employee's pre-injury employer on the date of injury, the injured employee may request vocational recovery assistance from the subsequent injury and vocational recovery fund. To be eligible for assistance, the injured employee must:

(A) Have received all compensation permitted under § 50-6-207(3); and

(B) Submit to the bureau on a form approved by the administrator a request for vocational recovery assistance within ninety (90) days of the date of final payment for all periods of compensation to which an injured worker is entitled under § 50-6-207(3).

(2) Vocational recovery assistance may include, but is not limited to, vocational assessment, employment training, job analysis, vocational testing, general education development (GED) classes and testing, and education through a public Tennessee community college, university, or college of applied technology, including books and materials required for courses. All assistance is subject to the maximum limitation set out in subdivision (j)(5).

(3) The administrator may evaluate a request for vocational recovery assistance based upon the facts and circumstances relevant to the request and make a determination whether to grant any such request.

(4) The administrator may distribute as vocational recovery assistance any revenues in the subsequent injury and vocational recovery fund that are in excess of:

(A) The estimated required reserves for known claims and incurred but not reported subsequent injury claims, as determined in the most recent actuarial analysis;

(B) The liability to be incurred from the date of the most recent actuarial analysis to the end of the fiscal year in which assistance is provided; and

(C) The costs associated with legal counsel to defend the fund and administrative costs of the recovery assistance program.

(5) The total amount paid on behalf of any eligible employee for vocational recovery assistance from the subsequent injury and vocational recovery fund pursuant to this subsection (j) must not exceed five thousand dollars (\$5,000) in any one (1) fiscal year, and must not exceed the total sum of twenty thousand dollars (\$20,000) per employee who participates in this program for all years. The total aggregate amount to be paid from the subsequent injury and vocational recovery fund as to all eligible employees is limited to a total of five hundred thousand dollars (\$500,000) in any calendar year.

(6) The administrator may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the purpose of discharging the administrator's duties to carry out the purposes, goals, and intent of

this subsection (j). Such rules may include determining future eligibility of assistance based upon satisfactory completion of coursework in courses taken.

(7) This subsection (j) applies to injuries that occur on or after July 1, 2018, but does not apply to injuries that occur after June 30, 2021.

SECTION 6. Tennessee Code Annotated, Section 50-6-208(e), is amended by deleting the subsection and substituting instead the following:

(e) The sums collected by the administrator as provided in this section must be deposited by the administrator in a special fund, which must be termed the "subsequent injury and vocational recovery fund", to be disbursed by the administrator only for the purposes stated in this section, for costs associated with legal counsel to defend the administrator in actions claiming compensation from the subsequent injury and vocational recovery fund pursuant to this section, and for costs associated with providing vocational recovery assistance to eligible employees pursuant to subsection (j). Monies remaining in the fund must not, at any time, be appropriated or diverted to any other purpose. The administrator shall not invest any monies in the subsequent injury and vocational recovery fund in any other manner than is provided by the general laws of the state for investments of funds in the hands of the state treasurer. Disbursements from the fund for permanent total physical disabilities must be made by the administrator only after receipt by the administrator of a certified copy of the court decree awarding compensation as provided in this section. Disbursements must be made only in accordance with the decree. A copy of the decree awarding compensation from the fund must in all cases be filed with the bureau. The administrator has the authority in accordance with subsection (j) to make disbursements for vocational recovery assistance from the fund without any court decree.

SECTION 7. Tennessee Code Annotated, Section 50-6-217(a), is amended by deleting the subsection and substituting instead the following:

(1) The administrator shall establish a workers' compensation appeals board, which must be wholly separate from the court of workers' compensation claims, to review interlocutory and final orders entered by workers' compensation judges upon application of any party to a workers' compensation claim.

(2) Any party aggrieved by an order issued by a workers' compensation judge may appeal the order to the workers' compensation appeals board by filing a timely notice of appeal on a form prescribed by the administrator. Review must be accomplished in the following manner:

(A) Within seven (7) business days after the filing of an interlocutory order, either party may appeal the interlocutory order by filing a notice of appeal with the clerk of the court of workers' compensation claims. Following the expiration of the time established by bureau rules for the parties to file a transcript prepared by a licensed court reporter or a statement of the evidence, along with briefs or position statements specifying the issues presented for review and supporting arguments, the record on appeal must be submitted by the clerk of the court of workers' compensation claims to the clerk of the workers' compensation appeals board. Within twenty (20) business days of the receipt of the record on appeal or oral argument conducted pursuant to bureau rules, whichever is later, the workers' compensation appeals board shall issue a decision affirming, reversing, or modifying the interlocutory order and remanding the case. The decision of the workers' compensation appeals board is not subject to further review; and

(B) Within thirty (30) calendar days after the issuance of a compensation order pursuant to § 50-6-239(c)(2), either party may appeal the compensation order by filing a notice of appeal with the clerk of the court of workers' compensation claims. The appealing party has fifteen (15) calendar days after the record is filed with the clerk of the workers' compensation appeals board to file a brief. A brief in response, if any, must be filed within fifteen (15) calendar days of the filing of the appellant's brief. No later than forty-five (45) calendar days after oral argument conducted pursuant to bureau rules or the expiration of the fifteen-day period for a responsive brief to be filed, whichever is later, the workers' compensation appeals board shall issue a decision affirming, reversing, modifying the compensation order; remanding the case; or any combination thereof. For purposes of further appellate review, the workers' compensation appeals board must, if appropriate, certify as final the order of the court of workers' compensation claims as affirmed, reversed, modified, or remanded. The decision of the workers' compensation appeals board is appealable to the Tennessee Supreme Court as provided for in the Tennessee Rules of Appellate Procedure. If a

compensation order is timely appealed to the workers' compensation appeals board, the order issued by the workers' compensation judge must not become final, as provided in § 50-6-239(c)(7), until the workers' compensation appeals board issues a written decision certifying the order as a final order.

SECTION 8. Tennessee Code Annotated, Section 50-6-233(b), is amended by deleting the subsection and redesignating the existing subsections accordingly.

SECTION 9. Tennessee Code Annotated, Section 50-6-244, is amended by deleting any reference to "department" and substituting instead the language "bureau", and is further amended by deleting subsection (b) and substituting instead the following:

(b)(1) A statistical data form must be filed for every workers' compensation matter that is concluded by trial or settlement. Settlement includes a settlement for initial benefits, a settlement for increased benefits, and a settlement for closure of future medical benefits that remained open pursuant to a prior order, even if a statistical data form was filed at the time of submission of the prior order.

(2) The bureau shall seek written comment on substantive changes to the statistical data form from the advisory council on workers' compensation. The administrator shall submit the proposed form to the commerce and labor committee of the senate and the consumer and human resources committee of the house of representatives, together with any written comments of the advisory council on workers' compensation, thirty (30) days prior to submission of a proposed rule to the attorney general and reporter.

(3) If the administrator or the administrator's designee determines that an employer or employer's agent fails to fully complete and timely file the statistical data form within ten (10) business days of the date of a compensation hearing order, the bureau may assess a civil penalty against the offending party of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) per violation.

SECTION 10. Tennessee Code Annotated, Section 50-6-405, is amended by adding the following language as a new subsection:

() Any employer of a construction services provider, as defined in § 50-6-901 shall, upon request by the bureau, provide proof of valid workers' compensation insurance coverage at the employer's place of business and at job sites where the employer is providing construction services. Failure to provide proof of valid workers' compensation insurance coverage within one (1) business day of the request may result in a penalty of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) per violation for any initial violation at the discretion of the administrator or administrator's designee, and not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000) per violation for subsequent violations. The administrator has discretion in determining acceptable proof of coverage, including electronic proof of coverage, taking into account standard insurance industry practices. Insurers shall advise policy holders who are construction services providers regarding the availability of electronic downloads of policy information to facilitate field inspection of proof of workers' compensation coverage.

SECTION 11. Tennessee Code Annotated, Section 50-6-905, is amended by adding the following as a new subsection:

() Any person or representative of an entity who knowingly enters or directs a party to enter false or unauthorized information on a construction services provider's application to the secretary of state may be subject to a fine of not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000) per violation at the discretion of the administrator or administrator's designee.

SECTION 12. This act shall take effect on becoming a law, the public welfare requiring it, and Sections 9, 10, and 11 of this act shall apply to violations that occur on and after the effective date of this act.

SENATE BILL NO. 1214

PASSED: April 27, 2017

Randy McNally
RANDY McNALLY
SPEAKER OF THE SENATE

Beth Harwell
BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 9th day of May 2017

Bill Haslam
BILL HASLAM, GOVERNOR