

SENATE BILL 1364

By Tate

AN ACT to amend Tennessee Code Annotated, 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, Section 50-6-204(h), is amended by deleting the subsection and substituting instead the following:

(h)

(1) Except as provided in subdivision (h)(2), all psychological or psychiatric services available under subdivisions (a)(1) and (b)(1) shall be rendered only by psychologists or psychiatrists and shall be limited to those ordered upon the referral of physicians authorized under subdivision (a)(4).

(2) A psychologist licensed pursuant to title 63, chapter 11, may provide an impairment rating for a mental injury claimed by an employee under this section; provided, the psychologist shall provide the impairment rating by any appropriate method used and accepted by the medical or psychological community.

SECTION 2. Tennessee Code Annotated, Section 50-6-412(f)(2), is amended by adding the following language to the end of the subdivision:

For purposes of this section, "securing payment of compensation" means obtaining workers' compensation coverage that meets the statutory requirements of this chapter or meets the statutory requirements for any self-insured provider or self-insured provider group that has been approved by the department of commerce and insurance to self-insure payment of compensation.

SECTION 3. Tennessee Code Annotated, Title 50, Chapter 6, Part 4, is amended by adding the following language as a new section:

(a) For the purposes of this section:

(1) "Commissioner" means the commissioner of labor and workforce development or the commissioner's designee; and

(2) "Construction services provider" has the same meaning as defined in § 50-6-901.

(b) The legislature finds that a construction services provider, or a successor-in-interest or principal of such provider, that fails to comply with the workers' compensation coverage requirements of this chapter poses an immediate danger to public health, safety and welfare.

(c) If, at any time, a construction services provider misclassifies an employee as an independent contractor, or materially understates or conceals the amount of its payroll, the number of workers it employs, the duties of the workers it employs or any other information pertinent to the computation and application of an experience rating modification factor to avoid proper classification for calculation of workers' compensation insurance premiums, the construction services provider shall be deemed to have failed to secure payment of compensation and may be subject to the following:

(1) Issuance of a stop work order; or

(2) Assessment of a penalty by the commissioner of the greater of one thousand dollars (\$1,000), or one and one-half (1½) times the average yearly worker' compensation premium based on the appropriate assigned risk plan advisory prospective loss cost and multiplier, minus the premium dollars paid on the policy that was the object of the violation of this subsection (c).

(d) If the commissioner makes a determination that issuance of a stop-work order, as provided by subdivision (c)(1) is appropriate, the department may issue a stop-work order within seventy-two (72) hours of the determination. The order shall take effect:

(1) When served upon the construction services provider, or the provider's agent, at a worksite, and posted in a conspicuous location at the worksite. The department may utilize local law enforcement during the service of a stop-work order; or

(2) When published in a news publication having general circulation in the area where the worksite is located if the construction services provider, or the provider's agent, cannot be found and served after due diligence and conspicuous notice has been posted at the worksite.

(e)

(1) A stop-work order issued by the department pursuant to subdivision (c)(1) shall remain in effect until the department issues an order releasing the stop-work order upon finding that the construction services provider has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section.

(2) The department may issue an order of conditional release from a stop-work order upon a finding that the construction services provider has complied with the coverage requirements of this chapter and has entered into an agreement with the department to remit periodic payments of any assessed penalty. If an order of conditional release is issued, failure by the construction services provider to meet any term or condition of the penalty payment agreement described in this subdivision (e)(2) shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the assessed penalty becoming immediately due.

(f) Any order releasing a stop-work as provided in subsection (e) shall be issued within seventy-two (72) hours of the department's determination that release or conditional release is appropriate.

(g) A stop-work order shall only be issued against the construction services provider who is in violation of this section. Such stop-work order shall not be issued against any non-offending construction services providers at the same worksite.

(h) A construction services provider who has been issued a stop work order pursuant to subdivision (c)(1), or assessed a monetary penalty pursuant to subdivision (c)(2) or (j)(1), shall have ten (10) days from the date of notice of such stop work order or penalty assessment, excluding Saturdays, Sundays and legal holidays, to appeal the order by sending written notice to the department. The department shall schedule a show-cause hearing within ten (10) days, excluding Saturdays, Sundays and legal holidays, of receipt of the written appeal during which the stop-work order will remain in effect. The commissioner shall have five (5) days after the day of the hearing, excluding Saturdays, Sundays and legal holidays, to rule on the appeal. If the commissioner determines at the show-cause hearing that the construction services provider has not violated this section, the stop-work order will be rescinded. The stop-work order shall notify the construction services provider of its appeal rights under this section pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, regarding any decision made or order issued by the commissioner pursuant to this section.

(i) The construction services provider shall have the burden of proof at the show-cause hearing and shall be required to produce documentary evidence that either the construction services provider is not subject to this chapter or that the construction services provider was in compliance with this chapter at all relevant times.

(j)

(1) The department shall assess a penalty of up to one thousand dollars (\$1,000) per day against a construction services provider for each day that the construction services provider, or provider's agent, conducts business operations that are in violation of a stop-work order.

(2) In addition to penalties assessed in this chapter, the department may refer cases involving business operations that are in a violation of a stop-work order to the Tennessee Bureau of Investigation (TBI) and the office of the district attorney general for investigation or prosecution.

(3) An individual or entity that is not a successor-in-interest or a principal of the offending construction services provider shall not be liable for any monetary penalties assessed pursuant to this section.

(k) This section shall have no effect upon a construction services provider or carrier's duty to provide benefits under this chapter or upon any of the construction services provider or carrier's rights and defenses under this chapter, including exclusive remedy.

SECTION 4. This act shall take effect July 1, 2013, the public welfare requiring it, and shall apply to injuries occurring on or after the effective date of this act.