

SENATE BILL 2231

By Southerland

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 6 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, Chapter 6 is amended by designating the following as a new section:

50-6-_____ (a) It is the intent of the general assembly to adopt as public policy for the State of Tennessee specific provisions related to workers' compensation to preserve the tradition of legal immigration while seeking to close the door to illegal workers in the State of Tennessee and to encourage the employers of Tennessee to comply with federal immigration laws in the hiring or continued employment of individuals who are not eligible or authorized to work in the United States.

(b) It is the intent of the general assembly that all provisions of the Workers' Compensation Act shall apply to an individual who is not eligible or authorized to work in the United States but who has been hired to work by an employer subject to the Workers' Compensation Act except where those provisions conflict with this section.

(c) It is the intent of the general assembly to establish a system by which an individual who is not eligible or authorized to work in the United States pursuant to federal immigration laws as of the date the individual sustains an injury as defined in § 50-6-102 may receive only certain workers' compensation benefits; therefore, the employer shall be responsible to provide medical benefits and temporary total disability benefits as provided by the Workers' Compensation Act to an employee who is not legally eligible or authorized to work in the United States.

(d) It is the intent of the general assembly to encourage employers to hire and continue to employ only individuals who may legally work in the United States and to encourage employers to comply with federal immigration laws at all times; therefore, an employer's liability to provide temporary partial disability benefits, permanent partial disability benefits, permanent total disability benefits and/or death benefits to an individual, or to the individual's dependents or estate, may be limited as provided by this section.

(e) (1) An employer who did not knowingly hire an individual who was not legally eligible or legally authorized to work in the United States shall not be required to provide temporary partial disability benefits, permanent partial disability benefits and/or permanent total disability benefits to such individual who sustains an injury as defined in § 50-6-102.

(2) It shall be presumed an employer did not knowingly hire an individual who is not legally eligible or authorized to work in the United States under federal immigration laws if the employer can show, by a preponderance of the evidence, that the employer in good faith complied with the employment eligibility and identity verification requirements of federal law when the employee was hired:

(A) By ensuring the employee completed Section 1 of the Form I-9 at the time the employee started to work;

(B) By reviewing the documents provided by the employee to establish the employee's identity and eligibility to work;

(C) By making a good faith determination that the documents presented by the employee for employment and identity authorization appeared to relate to the employee, appeared to be genuine and that the

documents provided were in the list of acceptable documents on Form I-9; and

(D) By re-verifying the employment eligibility of the employee upon the expiration of the employee's work authorization and by completing Section 3 of Form I-9, if applicable.

(3) The presumption can be rebutted by the employee upon clear and convincing evidence that the employer had actual knowledge of the unauthorized status of the employee at the time of hire or at the time of the injury.

(f) (1) An employer who did not knowingly hire an individual who was not legally eligible or legally authorized to work in the United States shall not be required to provide death benefits to the employee's estate and/or dependents as a result of an injury as defined in § 50-6-102 that results in the death of the employee.

(2) It shall be presumed an employer did not knowingly hire an individual who is not legally eligible or authorized to work in the United States under federal immigration laws if the employer can show, by a preponderance of the evidence, that the employer in good faith complied with the employment eligibility and identity verification requirements of federal law when the employee was hired:

(A) By ensuring the employee completed Section 1 of the Form I-9 at the time the employee started to work;

(B) By reviewing the documents provided by the employee to establish the employee's identity and eligibility to work;

(C) By making a good faith determination that the documents presented by the employee for employment and identity authorization appeared to relate to the employee, appeared to be genuine and that the documents provided were in the list of acceptable documents on Form I-9; and

(D) By re-verifying the employment eligibility of the employee upon the expiration of the employee's work authorization and by completing Section 3 of Form I-9, if applicable.

(3) (A) This presumption can be rebutted upon clear and convincing evidence that the employer had actual knowledge of the unauthorized status of the employee at the time of hire or at the time of the injury and subsequent death.

(B) In the event the presumption is rebutted, and notwithstanding § 50-6-204(c); § 50-6-207(5); § 50-6-209; § 50-6-210; § 50-6-221; and/or § 50-6-303 to the contrary, the death benefits, including any expenses related to burial, for which the employer is liable shall be limited to the following:

(i) In the event the employee was not married at the time of injury/death, a sum up to \$7,500 for burial expenses and a lump sum of \$20,000 for death benefits to be first apportioned and distributed equally to any surviving children under the age of 18 and if there are no surviving children under the age of 18, then the proceeds shall be apportioned and distributed in accord with Tennessee intestate succession laws; or

(ii) In the event the employee was survived by a spouse and/or children under the age of 18, a sum up to \$7,500 for burial expenses and a lump sum of \$40,000 for death benefits to be apportioned and distributed to the surviving spouse and/or children under age 18 in accord with Tennessee intestate succession laws. No other dependent or heir shall be entitled to receive any portion of the death proceeds.

(C) In the event the employee's estate is not subject to probate in the United States, then the burial expenses and/or death benefits shall be paid in the manner prescribed by § 50-6-227 and the proceeds distributed as provided in subdivision (3)(B).

(D) These burial and death benefits shall be exempt from creditors, except the Tennessee department of human services shall have a lien on the lump-sum death benefits payment as provided in § 50-6-223(c).

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.