

CHAPTER NO. 384

SENATE BILL NO. 998

By Haynes

Substituted for: House Bill No. 1529

By McMillan

AN ACT to amend Tennessee Code Annotated, Sections 9-8-307 and 9-8-402, relative to workers' compensation claims filed by Tennessee state employees.

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

SECTION 1. Tennessee Code Annotated, Section 9-8-307(a)(1)(K)(i), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

The commission's payment of these claims shall be in such amount and subject to such limitations as set forth in Title 50, Chapter 6, except the following code sections shall have no application to workers' compensation claims filed against the state: § § 50-6-103, 50-6-104, 50-6-106(5), 50-6-117, 50-6-118, 50-6-128, 50-6-203(a)-(e) and (g)-(h), 50-6-205(b)(2), (b)(3), (c) and (d), 50-6-206(a)(1), 50-6-208, 50-6-211, 50-6-213, 50-6-222, 50-6-224(2), 50-6-225 (a)-(d), (g) and (k), 50-6-227, 50-6-228, 50-6-229(b), 50-6-233, 50-6-236(a), (b), (e) and (h), 50-6-237(c), 50-6-238, 50-6-244, 50-6-306, 50-6-307, and Title 50, Chapter 6, Part 4.

SECTION 2. Tennessee Code Annotated, Section 9-8-307(a)(1)(K)(iii), is amended by deleting the first and second sentences thereof and by substituting instead the following:

The interested parties have the right to settle all matters of compensation between themselves, but all settlements, before the same are binding on either party, shall be reduced to writing and shall be approved by the claims commissioner before whom the claim for compensation is entitled to be heard, or by the commissioner of labor and workforce development or the commissioner's designee pursuant to § 50-6-206(c). Any proposed settlement presented to a claims commissioner for approval pursuant to this subitem shall be examined by the claims commissioner to determine whether the officer or employee is receiving, substantially, the benefits provided by the Workers' Compensation Law, compiled in Title 50, Chapter 6.

SECTION 3. Tennessee Code Annotated, Section 9-8-307(a)(1)(K), is amended by adding the following new sub-item at the end thereof:

(v) Notwithstanding any provision of § 9-8-402(d) or any other law to the contrary, upon motion of the employee, the claims commission may, prior to the benefits review conference or any final hearing on the claim, order the state to initiate, continue or reinstate temporary disability benefits or to provide medical benefits to the employee pending a final decision in the case if the claims commission determines that such an order would be appropriate in light of available information. If the commission determines it appropriate to order the state to provide medical benefits pursuant to this subitem, the commission's authority shall include, but not be limited to, the authority to order specific medical treatment recommended by the treating physician, and the authority to require the state to provide the appropriate panel of physicians to the employee, including a panel of appropriate specialists. With respect to the determination of whether to order the payment of temporary disability or medical benefits, the claims commission shall decide such issues solely on the basis of the information available to the commission without favor or presumption for or against either party.

SECTION 4. Tennessee Code Annotated, Section 9-8-402(b), is amended by deleting the fourth sentence thereof in its entirety.

SECTION 5. Tennessee Code Annotated, Section 9-8-402(b), is further amended by adding the following immediately after the first sentence thereof:

Provided, however, that for workers' compensation purposes, the right to compensation and other benefits under the workers' compensation law shall be barred, unless the notice required by subsection (a) is filed with the division of claims administration within one (1) year after the accident resulting in injury.

SECTION 6. Tennessee Code Annotated, Section 9-8-402, is amended by adding the following new subsection at the end thereof:

(d)(1) Notwithstanding subsection (c) of this section or any other law to the contrary, if the division denies the compensability of a workers' compensation claim, the division shall so notify the claimant and inform the claimant of the reasons therefore and of the claimant's right to request a benefit review conference pursuant to § 50-6-239 within ninety (90) days from the date of the denial notice. If the division fails to honor or deny the compensability of a workers' compensation claim within the (90) ninety-day settlement period, the division shall submit the dispute to the benefit review conference process as provided in § 50-6-239.

(2) Where the division of claims administration has paid workers' compensation benefits, either voluntarily or as a result of an order to do so, within one (1) year following the accident resulting in injury, the claimant must file a request for a benefits review conference pursuant to § 50-6-239 within no later than one (1) year from the latter of the date of the last authorized treatment or the time the division ceased to make payments of compensation to or on behalf of the claimant in order for the claimant to recover any unpaid or further workers' compensation benefits. For purposes of this section, the issuing date of the last voluntary payment of compensation, not the date of its receipt, shall constitute the time the division ceased making payments and the division shall provide such date on request.

(3) In conducting any benefit review conference pursuant to this subsection, the conference shall be held in the county where the employee lives, unless otherwise agreed to between the parties or otherwise directed by the commissioner. A workers' compensation specialist, as defined in § 50-6-102, shall have the authority to continue or reschedule a benefit review conference.

(4) In the event an agreement cannot be reached at the benefit review conference as to all issues related to the claim, the claimant shall have ninety (90) days, after the date a written agreement or a written report regarding the benefit review conference is filed with the commissioner of labor and workforce development as provided in § 50-6-240, to file a claim with the claims commission. A claim for workers' compensation benefits must be instituted in the claims commission within said ninety (90) days.

(5) No claim for workers' compensation shall be filed with the claims commission until the benefit review conference process as provided in § 50-6-239 has been exhausted. Notwithstanding the provisions of this subsection, if the parties have mutually agreed to a compromise and settlement of a claim for workers' compensation, the parties shall not be required to exhaust the benefit review conference process before filing a claim and submitting the compromise and settlement to the claims commission for approval pursuant to § 9-8-307(a)(1)(K), or to the commissioner of labor and workforce development or the commissioner's designee pursuant to § 50-6-206(c). If the settlement is not approved, the parties shall then exhaust the benefit review conference process.

(6) The right to compensation for an occupational disease or a claim for death benefits as a result of an occupational disease must be initiated within the time periods set forth in this section; provided, however, that the applicable time limitation period or periods shall commence as of the date of the beginning of the incapacity for work resulting from an occupational disease or upon the date death results from the occupational disease; provided, however, that if upon the date of the death of the employee the employee's claim has become barred, the claim of the employee's dependent or dependents shall likewise be barred.

(7) In case of physical or mental incapacity, other than minority, of the injured person or such injured person's dependents to perform or cause to be performed any action required within the time specified in this section then the period of limitation in such case shall be extended for one (1) year from the date when such incapacity ceases.

SECTION 7. This act shall take effect on July 1, 2005, the public welfare requiring it and shall apply to accidents or injuries occurring on or after July 1, 2005.

PASSED: May 24, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 9th day of June 2005


PHIL BREDEESEN, GOVERNOR