

Amendment No. 6 to HB0194

**Fitzhugh
Signature of Sponsor**

AMEND Senate Bill No. 200*

House Bill No. 194

by deleting the amendatory language of SECTION 50 of the bill, as amended by amendment #4568, in its entirety and substituting the following:

SECTION 50. Tennessee Code Annotated, Section 50-6-207(3), is amended by deleting the subsection in its entirety and substituting instead the following:

(3) Permanent Partial Disability.

(A) In case of disability partial in character but adjudged to be permanent, at the time the injured employee reaches maximum medical improvement the injured employee shall be paid sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages for the period of compensation, which shall be determined by multiplying one and twenty-five hundredths (1.25) of the employee's impairment rating by four hundred fifty (450) weeks. The injured employee shall receive these benefits, in addition to the benefits provided in subdivisions (1) and (2) and those provided by § 50-6-204, whether the employee has returned to work or not; and

(B) If at the time the period of compensation provided by subdivision (3)(A) of this section ends, the employee has not returned to work with any employer 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 his pre-injury employer on the date of injury, the injured employee may file a claim for increased benefits. The injured employee's award as determined under subdivision (3)(A) shall be increased by multiplying the award by a factor of one

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and five tenths (1.5); in addition, the injured employee's award shall be further increased by multiplying the award by the following factors, if applicable:

(i) Education: One and forty-five one hundredths (1.45), if the employee lacks a high school diploma or general equivalency diploma;

(ii) Age: One and five tenths (1.5) if the employee was more than forty (40) years of age but less than fifty (50) years of age at the time the period of compensation ends, one and seventy-five hundredths (1.75) if the employee was at least fifty (50) but less than sixty (60) years of age at the time the period of compensation ends, and two (2) if the employee was sixty (60) years of age or older at the time the period of compensation ends; and

(iii) Unemployment rate: One and three tenths (1.3), if the unemployment rate, in the Tennessee county where the employee was employed by the employer on the date of the workers' compensation injury, was at least two percentage (2%) points greater than the yearly average unemployment rate in Tennessee according to the yearly average unemployment rate compiled by the department for the year immediately prior to the expiration of the period of compensation.

(C) In lieu of the increased benefits an employee may receive pursuant to subdivision (3)(B), if, due to an injury, an employee does not retain the physical capacity because of assigned permanent restrictions to return to work for the employer that employed the employee at the time of injury at the same or

greater wages or salary, the maximum permanent partial disability benefits that the employee may be entitled to receive may not exceed four (4) times the employee's impairment rating. In making such determinations, the court or workers' compensation claims shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in the claimant's disabled condition.

(D) In calculating increased benefits under subdivisions (3)(B) and (3)(C), each applicable factor used to increase an employee's award shall be calculated separately by multiplying the impairment rating by the factor of increase and the resulting percentages of disability for each factor of increase shall then be added together to obtain the final increased permanent partial disability benefit. However, the maximum permanent partial disability benefits that may be awarded to an employee under subdivision (3)(B) or (3)(C) shall not exceed four (4) times the employee's impairment rating.

(E) In determining the employee's increased award pursuant to subdivision (3)(B) or (3)(C), the employer shall be given credit for payment of the original award of benefits as determined under subdivision(3)(A) against the increased award.

(F) Any employee may file a claim for increased benefits under subdivision (3)(B) or (3)(C) by filing a new petition for benefit determination, on a form prescribed by the administrator, with the division no more than one (1) year after the period of compensation provided in subdivision (3)(A) ends. Any claim for increased benefits under subdivision (3)(B) or (3)(C) shall be forever barred, unless the employee files a new petition for benefit determination with the division within one (1) year after the period of compensation for the subject injury

ends. Under no circumstances shall an employee be entitled to additional benefits when:

(i) The employee's loss of employment is due to the employee's voluntary resignation or retirement: provided, however, that the resignation or retirement does not result from the work-related disability;

(ii) The employee's loss of employment is due to the employee's misconduct connected with the employee's employment; or

(iii) The employee remains employed but received a reduction in salary, wages, or hours that is concurrent with a reduction in salary, wages or reduction in hours that affected at least fifty percent (50%) of all hourly employees operating at or out of the same location.

(G) Nothing in this subsection shall prohibit the employer and employee from settling the issue of additional benefits at any time after the employee reaches maximum medical improvement. Any settlement or award of additional permanent partial disability benefits pursuant to this subdivision shall give the employer credit for prior permanent partial disability benefits paid to the employee.

(H) The amounts of any compensation payable periodically under this chapter may be commuted to one (1) or more lump sum payments. These may be commuted upon agreement of the parties or on motion of any party. If commuted on a motion of a party, lump sum payments shall be subject to the approval of the judge of the court of workers' compensation claims. No agreed stipulation order or any agreement by the employer and employee or any other party to the proceeding shall be a prerequisite to the court's approval or disapproval of the award being paid in one (1) or more lump sum payments. In making the commutation, the lump sum payment shall, in the aggregate, amount

to a sum of all future installments of compensation. No settlement or compromise shall be made except on the terms provided in this chapter. If the parties do not agree to one (1) or more lump sum payments, in determining whether to commute an award, the judge of the court of workers' compensation claims shall consider whether the commutation will be in the best interest of the employee, and the court shall also consider the ability of the employee to wisely manage and control the commuted award, regardless of whether special needs exist. Attorneys' fees may be paid as a partial lump sum from any award when approved and ordered by the trial judge.

(I) Subdivision (3)(B) shall not apply to injuries sustained by an employee who is not eligible or authorized to work in the United States under federal immigration laws.

(J) The total amount of compensation payable shall not exceed the maximum total benefit. The payment of temporary total disability benefits or temporary partial disability benefits shall not be included in calculating the maximum total benefit.

(K) All cases of permanent partial disability shall be apportioned to the body as a whole, which shall have a value of four hundred fifty (450) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury. If an employee has previously sustained an injury compensable under this section and has been awarded benefits for that injury, the injured employee shall be paid compensation for the period of temporary total disability or temporary partial disability and only for the degree of permanent disability that results from the subsequent injury.

AND FURTHER AMEND by deleting the amendatory language of SECTION 90 of the bill, as amended by amendment #4568, in its entirety and by substituting instead the following:

(a) For those injuries that occur on or after January 1, 2015, and notwithstanding any provision of this chapter to the contrary, a workers' compensation judge may award an injured employee permanent partial disability not to exceed a maximum total benefit of four hundred fifty (450) weeks, in appropriate cases where the employee is eligible to receive the increased benefits provided in § 50-6-207(3)(B) or (C). Benefits awarded under this section are in lieu of increased benefits under § 50-6-207(B) and (C). In claims where benefits are awarded under this section, the workers' compensation judge shall make specific documented findings, supported by clear and convincing evidence, that as of the date of the award or settlement, at least three (3) of the following facts concerning the employee are true:

- (1) The employee lacks a high school diploma or general equivalency diploma or the employee cannot read or write on a grade eight (8) level;
- (2) The employee is fifty-five (55) years of age or older;
- (3) The employee has no reasonably transferable job skills from prior vocational background and training; and
- (4) The employee has no reasonable employment opportunities available locally considering the employee's permanent medical condition.