

HOUSE BILL 1559

By McCormick

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 50-6-102(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 elects to be included in the definition of employee by filing written notice of the election with the bureau at least thirty (30) days before the occurrence of any injury or death, and may at any time withdraw the election by giving notice of the withdrawal to the bureau;

SECTION 2. Tennessee Code Annotated, Section 50-6-240, is amended by deleting the section and substituting instead the following:

(a) The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements shall be reduced to writing and shall be approved by a judge of the court of workers' compensation claims before they are binding on either party. It shall be the duty of the judge of the court of workers' compensation claims to whom any proposed settlement is presented for approval under this chapter, to examine the proposed settlement to determine whether the employee is receiving, substantially, the benefits provided by this chapter. To this end, the judge may call and examine witnesses. Upon approving the settlement, a judgment shall be rendered on the settlement by the court of workers' compensation claims and duly entered by the clerk. The cost of the proceeding shall be borne by the employer. In all

cases where the settlement proceedings or any other court proceedings for workers' compensation under this chapter involve a subsequent injury wherein the employee would be entitled to receive or is claiming compensation from the second injury fund provided for in § 50-6-208, the administrator shall be made a party defendant to the proceedings in an action filed by either the employer or the injured employee, and an attorney representing the bureau under the supervision of the attorney general and reporter shall represent the administrator in the proceeding. The court of workers' compensation claims, by its decree, shall determine the right of the employee to receive compensation from the fund.

(b) A workers' compensation judge shall approve or reject settlements submitted to the bureau within three (3) business days after the settlement has been received by the bureau and assigned to a workers' compensation judge for consideration.

(c) In approving settlements, a workers' compensation judge shall consider all pertinent factors and if the injured employee is not represented by counsel, then the workers' compensation judge shall thoroughly inform the employee of the scope of benefits available under this chapter and the employee's rights and the procedures necessary to protect those rights.

(d) Nothing in this section shall be construed to prohibit the parties from compromising and settling the issue of future medical benefits at any time; provided, that the settlement agreement is approved by a judge of the court of workers' compensation claims, and includes a provision confirming that the employee has been informed of the potential consequences of the settlement, if any, with respect to medicare and TennCare benefits and liabilities. Notwithstanding any other provision of this chapter, an employee who is determined to be permanently and totally disabled shall not be allowed to compromise and settle the employee's rights to future medical benefits.

(e) Notwithstanding any other provision of this section, if there is a dispute between the parties as to whether a claim is compensable, or as to the amount of compensation due, the parties may settle the matter without regard to whether the

employee is receiving substantially the benefits provided by this chapter; provided, that the settlement is determined by a workers' compensation judge to be in the best interest of the employee.

(f) No party may settle a claim for permanent disability benefits unless the settlement agreement has been approved by a workers' compensation judge. Any settlement agreement not approved pursuant to this section is void.

SECTION 3. Tennessee Code Annotated, Section 50-6-207(3), is amended by deleting subdivisions (A) and (B) and substituting instead the following:

(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 the employee's impairment rating by four hundred fifty (450) weeks. The award set out in this subdivision (3)(A) shall be referred to as the "original award." 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) 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 the employee's pre-injury employer on the date of injury, the injured employee may file a claim for increased benefits. If appropriate, the injured employee's original award as determined under subdivision (3)(A) shall be increased by multiplying the original award by a factor of one and thirty-five one hundredths (1.35). The award set out in this subdivision (3)(B) shall be referred to as

the "resulting award." In addition, the injured employee's resulting award shall be further increased by multiplying the resulting award by the product of 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 two tenths (1.2), if the employee was more than forty (40) years of age 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 (2) percentage 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;

SECTION 4. Tennessee Code Annotated, Sections 50-6-217, 50-6-218, 50-6-219, and 50-6-239, are amended by deleting the language "workers' compensation appeals board" wherever it appears and substituting instead the language "court of workers' compensation appeals".

SECTION 5. Tennessee Code Annotated, Section 50-6-217(a)(2), is amended by deleting the subdivision and substituting instead the following:

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

(A) Within seven (7) business days after issuance 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 shall be submitted by the clerk of the court of workers' compensation claims to the clerk of the court of workers' compensation appeals. Within seven (7) business days of the receipt of the record on appeal, the court of workers' compensation appeals shall issue a decision affirming, reversing, or modifying and remanding the interlocutory order of the workers' compensation judge. The decision of the court of workers' compensation appeals shall not be subject to further review; and

(B) Within thirty (30) calendar days after 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 shall have fifteen (15) calendar days after the record is filed with the clerk of the court of workers' compensation appeals to file a brief. A brief in response, if any, shall be filed within fifteen (15) calendar days of the filing of the appellant's brief. No later than forty-five (45) calendar days after the expiration of the fifteen-day period for a responsive brief to be filed, the court of workers' compensation appeals shall issue a decision affirming, reversing, modifying the compensation order and/or remanding the case. For purposes of further appellate review, the court of workers' compensation appeals shall certify as final the order of the court of workers'

compensation claims as affirmed, reversed, modified, or remanded. The decision of the court of workers' compensation appeals shall be 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 court of workers' compensation appeals, the order issued by the workers' compensation judge shall not become final, as provided in § 50-6-239(c)(7), until the court of workers' compensation appeals issues a written decision certifying the order as a final order.

SECTION 6. Tennessee Code Annotated, Section 50-6-218(a)(4), is amended by deleting the last sentence of the subdivision and substituting instead the following:

The governor or any active or retired Tennessee judge or chancellor may administer the oath.

SECTION 7. Tennessee Code Annotated, Section 50-6-226(d), is amended by adding the language ", expedited hearing order, compensation hearing order, or" immediately following the word "settlement".

SECTION 8. Tennessee Code Annotated, Section 50-6-229(a), is amended by deleting the language "circuit, chancery or criminal court" after the word "the" in the second sentence and substituting instead the words "court of workers' compensation claims".

SECTION 9. Tennessee Code Annotated, Section 50-6-238(e), is amended by deleting the last sentence of the subsection and substituting instead the following:

The governor, an active or retired Tennessee judge or chancellor, or an active or retired judge of the court of workers' compensation claims or court of workers' compensation appeals may administer the oath.

SECTION 10. Tennessee Code Annotated, Section 50-6-242(a)(1), is amended by deleting the subdivision and substituting instead the following:

(1) This subsection (a) shall apply to injuries that occur on or after July 1, 2014.

SECTION 11. Tennessee Code Annotated, Section 50-6-801(c), is amended by adding the following language to the end of the sentence before the period:

and the cost of administering this part 8 including, but not limited to, lien fees or fees of third party administrators.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.