

SENATE BILL 1645

By Norris

AN ACT to amend Tennessee Code Annotated, Section 50-6-102; Section 50-6-104; Section 50-6-118; Section 50-6-125; Section 50-6-204; Section 50-6-207; Section 50-6-242; Section 50-6-412; Section 50-6-501; Section 50-6-902 and Title 50, Chapter 9, Part 1, 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, as amended by Public Chapter 289 (2013), is amended by adding the following as a new appropriately designated subdivision:

() "Specialty practice group" means a group of Tennessee licensed physicians, surgeons, or chiropractors providing medical care services of the same or similar medical specialty as each other and operating out of the same physical location.

SECTION 2. Tennessee Code Annotated, Section 50-6-104, as amended by Public Chapter 289 (2013), is amended by deleting the phrase "or member of a limited liability company" in subdivisions (a), (e), and the first sentence of (f).

SECTION 3. Tennessee Code Annotated, Section 50-6-118(b), is amended by deleting the language "department" in the first sentence of the subsection and substituting instead "division", and is further amended by deleting the last sentence of the subsection and substituting, instead, the following language:

All other penalties collected pursuant to an assessment made under this section shall be paid to the division for use by the division, at the discretion of the administrator, to offset the cost of administering this chapter.

SECTION 4. Tennessee Code Annotated, Section 50-6-125, as amended by Public Chapter 289 (2013), is amended by adding the following as a new subsection:

(e) This section applies to all disputes of medical bill payments for services provided, pursuant this chapter, on or after July 1, 2014.

SECTION 5. Tennessee Code Annotated, Section 50-6-204(a)(3)(C), as amended by Public Chapter 289 (2013), is amended by deleting the language “specified in the initial panel of physicians provided by the employer pursuant to subdivision (a)(3)(A)” and substituting instead “from a panel of two (2) physicians practicing in the same specialty as the physician who recommended the surgery. In cases where the employer has provided a panel of specialists pursuant to subdivision (a)(3)(A)(i) of this section, the employee may choose one (1) of the two (2) remaining specialists to provide a second opinion on the issue of surgery”.

SECTION 6. Tennessee Code Annotated, Section 50-6-207(1)(E), as amended by Public Chapter 289 (2013), is amended by deleting the phrase “other than a mental injury,” from the first sentence of the subdivision, and is further amended by adding the following phrase “or for a mental injury that arose primarily out of a compensable physical injury” to the end of the first sentence between the word “pain” and the period ending the first sentence of the subdivision.

SECTION 7. Tennessee Code Annotated, Section 50-6-242(a), as amended by Public Chapter 289 (2013), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) For those injuries that occur on or after July 1, 2014, in appropriate cases where the employee is eligible for additional benefits under § 50-6-207(3)(B), the employee may receive additional disability benefits not to exceed the maximum number of weeks as set forth in § 50-6-207(2)(B) if, in the opinion of the presiding workers’ compensation judge based on clear and convincing evidence, limiting the employees’ recovery to the benefits provided by § 50-6-207(3)(B) would be inequitable in light of the totality of the circumstances. In such cases, the court or the workers’ compensation judge may award benefits that exceed those for which the employee would be eligible under § 50-6-207(3)(B) if the judge makes specific, documented findings that, as of the

date of the award or settlement, the two (2) following facts concerning the employee are true:

(1) The employee has not returned to work at a wage more than sixty-six and two-thirds percent (66 2/3%) of the employee's pre-injury wage; and

(2) The authorized treating physician has certified, on a form provided by the division, that due to the permanent restrictions on activity the employee has suffered as a result of the injury the employee no longer has the ability to perform their pre-injury occupation. The authorized treating physician's certification pursuant to this subdivision shall have a presumption of correctness that may be overcome by a preponderance of the evidence.

SECTION 8. Tennessee Code Annotated, Section 50-6-242(b), as amended by Public Chapter 289 (2013), is amended by adding the phrase "but prior to July 1, 2014" to the first sentence of the subsection between the language "July 1, 2004" and the comma following the language, and further amended by deleting the reference to "§ 50-6-207(3)(B)" and by substituting, instead, a reference to "§ 50-6-241(d)(1)(B) or (d)(2)" and further amended by deleting the language "workers' compensation judge" and replacing it, instead, with "court or workers' compensation specialist".

SECTION 9. Tennessee Code Annotated, Section 50-6-412, is amended by deleting the language of the section in its entirety and substituting instead the following:

(a) The administrator of the division of workers' compensation or the administrator's designee has the authority to issue a subpoena to require an employer doing business in the state to produce any and all books, documents or other tangible things that may be relevant to or reasonably calculated to lead to the discovery of relevant information necessary to determine whether an employer is subject to this chapter, or has secured payment of compensation pursuant to this chapter, and to

determine the amount of any monetary penalty that is required to be assessed against an employer for failure to secure payment of compensation pursuant to this chapter.

(b)

(1) All monetary penalties assessed pursuant to this section that are based on the average yearly workers' compensation premium shall be calculated by utilizing the appropriate assigned risk plan advisory prospective loss cost and multiplier for the employer as of the date of determination that the employer is subject to this chapter, and has not secured payment of compensation pursuant to this chapter.

(2) If the administrator or administrator's designee determines the period of noncompliance with this chapter, is less than one (1) year, any assessed monetary penalty shall be prorated; however, the monetary penalty shall not be less than an amount equal to one (1) month's premium of the average yearly workers' compensation premium for the employer based on the appropriate assigned risk plan advisory prospective loss cost and multiplier.

(3) If any monetary penalty assessed against an employer is held in abeyance pursuant to this section, the period of abeyance shall be two (2) years. Any abated penalty becomes void upon the expiration of the two-year period; provided, that the employer remained subject to this chapter, during the two-year period and continuously secured payment of compensation as required by law. Any abated penalty becomes voidable, if within the two-year period, the employer provides notice to the administrator that the employer is no longer subject to this chapter and upon concurrence of the administrator that the employer is no longer subject to this chapter, the penalty shall become void. Any abated penalty shall become due and payable immediately if, within the two-year period, the employer

continues to be subject to this chapter and fails to secure payment of compensation as required by law.

(4) The administrator shall advise an employer of the amount of any assessed monetary penalty in writing and shall include the date on which the monetary penalty shall be due and payable.

(c)

(1) When the records of the division of workers' compensation indicate, or when the division's investigation of an employer indicates, that an employer is subject to this chapter, and has failed to secure payment of compensation as required by this chapter, the division shall so notify the employer by certified letter, return receipt requested.

(2) The division shall require the employer to provide, within fifteen (15) days of the receipt of the certified letter, excluding Saturdays, Sundays and holidays, either proof that the employer had secured payment of compensation as required by this chapter or a verifiable sworn affidavit, with supporting documentation, that the employer is exempt from this chapter.

(3) The certified letter shall also advise the employer of the monetary penalties that may be assessed against the employer if it is determined by the administrator or the administrator's designee that the employer has failed to secure payment of compensation as required by this chapter and shall advise the employer of the criminal penalties to which the employer may be subject for the failure.

(d)

(1) If the employer responds to the certified letter within fifteen (15) days of its receipt and the administrator or the administrator's designee determines

that the employer has secured payment of compensation as required by this chapter, or that the employer is not subject to this chapter, no monetary penalty shall be assessed.

(2) If the employer responds to the certified letter within fifteen (15) days of its receipt and the administrator or the administrator's designee determines that the employer is subject to this chapter and that the employer has secured the payment of compensation since the date of receipt of the certified letter, the administrator or the administrator's designee shall issue a decision assessing a monetary penalty to the employer equal to one and one-half (1½) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one-half (1½) times the average yearly workers' compensation premium.

(e)

(1) If the employer fails to respond to the certified letter within fifteen (15) calendar days of its receipt or the employer responds to the certified letter but does not provide a verifiable sworn affidavit of exemption, the administrator or the administrator's designee shall issue a decision assessing two (2) penalties. The administrator or administrator's designee shall send the decision to the employer by certified mail, return receipt requested, to the employer's last known address, according to division's records.

(A) The first monetary penalty shall be equal to one and one-half (1½) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-

901, the greater of one thousand dollars (\$1,000) or one and one half (1½) times the average yearly workers' compensation premium.

(B) The second monetary penalty shall be equal to the average yearly workers' compensation premium for such employer.

(2) The administrator's or administrator's designee's decision shall notify the employer of all monetary penalties that have been assessed against the employer and the criminal penalties to which the employer may be subject.

(3) The administrator's or administrator's designee's decision shall advise the employer that it may request a contested case hearing to show cause why it should not have been assessed penalties for failure to comply with the workers' compensation law or to challenge the amount of the penalties assessed. Such a request must be made to the division in writing within fifteen (15) days of receipt of the administrator's or administrator's designee's decision assessing monetary penalties. If such request is not timely made, the decision becomes final.

(4) The employer has the burden of proof at the contested case hearing and shall produce documentary evidence that the penalties should be reduced, that the employer is not subject to this chapter, or that the employer was in compliance with this chapter.

(5) The contested case hearing shall be scheduled to be heard in a timely manner, not to exceed forty-five (45) calendar days from the date of the employer's timely written request for a contested case hearing pursuant to subdivision (e)(3).

(f)

(1) If the administrator or the administrator's designee determines at the contested case hearing that the employer is not subject to this chapter, or that

the employer had secured and continues to secure payment of compensation as required by this chapter, all monetary penalties shall be void.

(2) If the administrator or the administrator's designee determines at the contested case hearing that the employer is subject to this chapter and that the employer has come into compliance with this chapter by securing payment of compensation prior to the date of the contested case hearing, the first monetary penalty equal to one and one-half (1½) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one-half (1½) times the average yearly workers' compensation premium shall be due; however, the second monetary penalty equal to the average yearly workers' compensation premium shall be held in abeyance.

(3) If the administrator or the administrator's designee determines at the contested case hearing that the employer is subject to this chapter and that the employer has failed to secure payment of compensation as required by this chapter, the employer shall be ordered to procure workers' compensation insurance coverage and to provide the division with proof of coverage within five (5) days of the issuance of the order, excluding Saturdays, Sundays and holidays. If the employer obtains workers' compensation insurance coverage and provides the division with proof of coverage as ordered, the first monetary penalty equal to one and one-half (1½) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one-half (1½) times the average yearly workers' compensation

premium shall be due; however, the second monetary penalty equal to the average yearly workers' compensation premium shall be held in abeyance.

(4) If the employer fails to obtain workers' compensation insurance coverage as ordered by the administrator or administrator's designee within the required time period, all monetary penalties, totaling two and one-half (2½) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of two thousand dollars (\$2,000) or two and one-half (2½) times the average yearly workers' compensation premium, shall be immediately due and payable.

(g) The administrator shall notify the secretary of state when any employer engaged in the construction industry:

(1) Fails to secure payment of compensation, as required by this chapter;

and

(2) When any employer who has failed to secure payment of compensation, as required by this chapter, has secured payment of such compensation.

(h)

(1) In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter, by failing to secure payment two (2) or more times within a five-year period, then the administrator shall issue a monetary penalty against the employer that is the greater of three thousand dollars (\$3,000) or three (3) times the average yearly workers' compensation premium for each second or subsequent violation.

(2)

(A) In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter, by failing to secure payment two (2) or more times within a five-year period, such employer shall be permanently prohibited from obtaining an exemption pursuant to part 9 of this chapter and the administrator shall notify the secretary of state of such prohibition.

(B) For purposes of subdivision (h)(2)(A), "such employer" includes any construction services provider, as defined by § 50-6-901, who applies for or has ever received a workers' compensation exemption pursuant to part 9 of this chapter using the same federal employer identification number as the employer who fails to comply with the requirements of this chapter.

(i)

(1) The administrator has the authority to seek an injunction in the chancery court of Davidson County to prohibit an employer from operating its business in any way until the employer has complied with an order by the administrator or the administrator's designee to obtain workers' compensation insurance coverage.

(2) In the event an employer fails to comply with the requirements of this chapter, by failing to secure payment of compensation on a second or subsequent occasion, the administrator shall have the authority to seek an injunction in the chancery court of Davidson County to prohibit the employer from operating its business in any way until the employer provides proof that it has complied with this chapter by securing payment of compensation.

(j) The employer shall have the right to appeal, pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, any decision made by or order issued by the administrator or the administrator's designee pursuant to this section.

SECTION 10. Tennessee Code Annotated, Section 50-6-902(c), is amended by deleting the word "department" wherever it appears in the subsection and substituting instead "division".

SECTION 11. Tennessee Code Annotated, Section 50-9-102, is amended by deleting the phrase "commissioner of labor and workforce development" at the end of the first sentence of the section and substituting instead "administrator of the division of workers' compensation".

SECTION 12. Tennessee Code Annotated, Section 50-9-103(12), is amended by deleting the phrase "commissioner of labor and workforce development" at the end of the subdivision and substituting instead "administrator of the division of workers' compensation".

SECTION 13. Section 9 of this act shall take effect upon becoming a law, the public welfare requiring it. The remaining sections of this act shall take effect on July 1, 2014, the public welfare requiring it.