

**Amendment No. 16 to HB3531**

**McMillan  
Signature of Sponsor**

**AMEND Senate Bill No. 3424\***

**House Bill No. 3531**

<b>FILED</b>
Date _____
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Comm. Amdt. _____
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by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 50-6-204, shall be amended by adding the following as a new subsection to be appropriately designated:

( )

(1) The commissioner of labor and workforce development, in consultation with the medical care and cost containment committee and the advisory council on workers' compensation, is authorized to establish by rule, in accordance with the provisions of title 4, chapter 5, a comprehensive medical fee schedule and a related system which includes, but is not limited to, procedures for review of charges, enforcement procedures and appeal hearings, to implement the fee schedule. In developing the rules the commissioner shall strive to assure the delivery of quality medical care in workers' compensation cases and access by injured workers to primary and specialist care while controlling prices and system costs. The medical care fee schedule shall be comprehensive in scope and shall address fees of physicians and surgeons, hospitals, prescription drugs, and ancillary services provided by other health care facilities and providers. The commissioner may consider any and all reimbursement systems and methodologies in developing the fee schedule.

(2) The commissioner is authorized to retain experts to assist in the development of the fee schedule and related system in accordance with the contracting rules of the department of finance and administration.

(3) The commissioner shall file a copy of such proposed rules with the medical care and cost containment committee, established by § 50-6-125, and the workers' compensation advisory council, established by Section 50-6-121, by December 1, 2004. The cost containment committee and the advisory council shall comment on the proposed rules within thirty (30) days of receiving the rules and shall promptly provide such comments to the commissioner and the special joint committee of the general assembly on workers' compensation. The special joint committee may recommend appropriate legislative action to the general assembly.

(4) The commissioner shall file the rules proposed to implement the provisions of this section with the clerk of the senate, the clerk of the house of representatives, the house consumer and employee affairs committee and the senate commerce, labor and agriculture committee by February 15, 2005.

(5) The rules required by this subsection shall take effect on July 1, 2005. The commissioner is authorized to use public necessity rules under Section 4-5-209(a)(4) or emergency rules under Section 4-5-208, as appropriate in order to have such rules in effect on July 1, 2005.

(6) The commissioner, in consultation with the medical care and cost containment committee and the advisory council on workers' compensation, shall review the fee schedules adopted pursuant to this section on an annual basis and when appropriate the commissioner shall revise the fee schedules as necessary. It is the intent of the general assembly that this annual review consider, among other factors, the medical consumer price index.

(7) The comprehensive medical fee schedule adopted pursuant to this subsection is not intended to prohibit an employer, trust or pool, or insurer from negotiating lower fees in its own medical fee agreements.

SECTION 2. Tennessee Code Annotated, Section 50-6-204(a)(4)(A), is amended by deleting the words “prevail for similar treatment in the community where the injured employee resides” and substitute in their place the words “are established in the applicable medical fee schedule adopted pursuant to this section”.

SECTION 3. Tennessee Code Annotated, Section 50-6-206(a), is amended by designating the existing language as subdivision (a)(1) and by adding the following as a new subdivision (a)(2):

(2) Notwithstanding any other provision of this chapter to the contrary, the parties shall not be permitted to compromise and settle the issue of future medical benefits to which an employee is entitled pursuant to this chapter except in accordance with the following:

(A) If a workers’ compensation claim is settled by the parties, the parties shall not agree to compromise and settle the issue of future medical benefits for a period of three (3) years from the date on which the settlement is approved. No settlement agreement shall be approved that contains any language inconsistent with this subdivision.

(B) After the expiration of the three (3) year period, if the parties mutually agree to a compromise and settlement on the issue of future medical benefits, the parties shall not be required to request a benefit review conference. Instead, the parties shall submit such an agreement to the proper court for approval, pursuant to § 50-6-206(a) or to the commissioner of labor and workforce development or his designee pursuant to § 50-6-206(c).

(C) Notwithstanding any other provision of this chapter or this subdivision, an employee who is determined to be permanently totally disabled shall not be allowed to compromise and settle his/her rights to future medical benefits.

(D) Nothing in this section shall be construed to prohibit the parties from compromising and settling at any time the issue of future medical benefits on any schedule member injury not subject to § 50-6-241(d)(1)(A).

SECTION 4. Tennessee Code Annotated, Section 50-6-206(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) Notwithstanding any other provision of this section, whenever there is a dispute between the parties as to whether or not a claim is compensable, or a dispute as to the amount of compensation due, the parties may settle such matter without regard to whether the employee is receiving substantially the benefits provided by the workers' compensation law; provided, however such settlement paid to the employee shall not exceed fifty (50) times the minimum weekly benefit rate as of the date of the claimed injury. If the parties settle such matter pursuant to this subdivision, the employee shall be entitled to no future medical benefits and no settlement agreement between the parties shall be approved by either the court or the commissioner, or the commissioner's designee, if the settlement agreement contains an amount of money designated or allocated for future medical benefits. The settlement must be determined by the court or commissioner, or the commissioner's designee, to be in the best interest of the employee.

SECTION 5. Tennessee Code Annotated, Section 50-6-204(a)(4), by adding the following as a new subdivision (F):

The employer shall provide the applicable panel of physicians to the employee in writing on a form prescribed by the division, and the employee

shall document in writing the physician the employee has selected and the employee shall sign and date the prescribed form. The employer shall provide a copy of the completed form to the employee and shall maintain a copy of the completed form in the records of the employer and shall produce a copy of the completed form upon request by the division.

SECTION 6. Tennessee Code Annotated, Section 50-6-205(b)(3), is amended by deleting the subdivision in its entirety and substituting instead the following:

(b)

(3)

(i) In addition to any other penalty provided by law, if an employer, trust or pool, or an employer's insurer fails to pay, or untimely pays, temporary disability benefits within twenty (20) days after the employer has knowledge of any disability that would qualify for benefits under this chapter, a workers' compensation specialist shall have the authority to assess against the employer, trust of pool, or the employer's insurer a civil penalty in addition to the temporary disability benefits which are due to the employee. Said penalty, if assessed, shall be in an amount equal to twenty-five percent (25%) of such temporary disability benefits that were not paid in accordance with the provisions of this subsection. Said penalty may be assessed as to all temporary disability benefits that are determined not paid in compliance with this subsection.

(ii) Prior to the assessment of any civil penalty, the specialist shall issue a written request to the employer or insurance carrier to provide documentation as to why the civil penalty should not be assessed.

(iii) If the specialist determines the employer or insurer was not in compliance with this subsection, the specialist shall issue a written order that assesses the penalty in a specific dollar amount to be paid directly to the employee. If the employer or insurer fails to comply with the order within fifteen (15) calendar days of that order becoming final, the employer or insurer shall be subject to penalties as set forth in section 50-6-238(d).

(iv) In any civil action filed pursuant to this chapter, the court shall have the authority to assess penalties as provided in this subdivision (b)(3).

SECTION 7. Tennessee Code Annotated, Section 50-6-238(a), is amended by deleting that subsection in its entirety and by substituting instead the following:

(a)

(1) With respect to the determination of whether to order the payment of temporary disability or medical benefits, a workers' compensation specialist shall not be an advocate for either party, but shall decide such issues solely on the basis of the information available to such specialist without favor or presumption for or against either party.

(2) If, in light of available information, a workers' compensation specialist determines that it is appropriate to order the payment of temporary disability benefits to an employee, then a workers' compensation specialist may order the initiation, continuation or reinstatement of such benefits by an employer or the employers' workers' compensation insurer.

(3) If, in light of available information, a workers' compensation specialist determines that it is appropriate to order the employer or insurer to provide medical benefits, the specialist'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 employer to provide the appropriate panel of physicians to the employee, including a panel of appropriate specialists. The workers' compensation specialist shall also have the authority to enforce the provision of the panel of physicians as required under section 50-6-204(a)(4).

(4) Any benefits ordered by a workers' compensation specialist as provided above shall be ordered on a form prescribed by the commissioner of labor and workforce development.

(5) If under all of the relevant circumstances the specialist deems it to be appropriate, the specialist shall order the retroactive payment of benefits.

SECTION 8. Tennessee Code Annotated, Section 50-6-118(a)(3), is amended by deleting the subdivision in its entirety and substituting instead the following:

(3) Bad faith denial of claims;

SECTION 9. Tennessee Code Annotated, Section 50-6-241(a)(1), is amended by deleting the words "on or after August 1, 1992" and substituting instead the words "on or after August 1, 1992 and prior to July 1, 2004".

SECTION 10. Tennessee Code Annotated, Section 50-6-241(b), is amended by deleting the words "on or after August 1, 1992" and substituting instead the words "on or after August 1, 1992 and prior to July 1, 2004".

SECTION 11. Tennessee Code Annotated, Section 50-6-241, is amended by adding the following as new subsection (d):

(d)

(1)

(A) For injuries occurring on or after July 1, 2004, in cases in which an injured employee is eligible to receive any permanent partial disability benefits either for body as a whole or for schedule member injuries, except schedule member injuries specified in § 50-6-207(3)(A)(ii)(a)-(l), (n), (q), and (r), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits that the employee may receive is one and one-half (1 ½ ) times the medical impairment rating determined pursuant to the provisions of Tenn. Code Ann. § 50-6-204(d)(3). In making such determinations, the court 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 claimant's disabled condition.

(B)

(i) If an injured employee receives benefits for body as a whole injuries pursuant to subdivision (d)(1)(A) and the employee is subsequently no longer employed by the pre-injury employer at the wage specified in subdivision (d)(1)(A) within four hundred (400) weeks of the day the employee returned to work for the pre-injury employer, the employee may seek reconsideration of the permanent partial disability benefits.

(ii) If an injured employee receives benefits for schedule member injuries pursuant to subdivision (d)(1)(A), and the employee is subsequently no longer employed by the pre-injury employer at the wage specified in subdivision

(d)(1)(A), the employee may seek reconsideration of the permanent partial disability benefits. The right to seek such reconsideration shall extend for the number of weeks for which the employee was eligible to receive benefits under Tenn. Code Ann. Section 50-6-207, beginning with the day the employee returned to work for the pre-injury employer.

(iii) Notwithstanding the provisions of this subdivision (d)(1)(B), under no circumstances shall an employee be entitled to reconsideration when the loss of employment is due to either:

(a) the employee's voluntary resignation or retirement, provided such resignation or retirement does not result from the work-related disability which is the subject of such reconsideration; or

(b) the employee's misconduct connected with his employment.

(iv) To seek reconsideration pursuant to subdivision (B)(i) or (B)(ii), the employee shall first request a benefit review conference within one (1) year of the date on which the employee ceased to be employed by the pre-injury employer. If the parties are not able to reach an agreement regarding additional permanent partial disability benefits at the benefit review conference, the employee shall be entitled to file a complaint seeking reconsideration in a court of competent jurisdiction within ninety (90) days of the date of the benefit review conference. Any settlement or award of additional permanent partial disability benefits pursuant to reconsideration shall give the employer credit for prior

permanent partial disability benefits paid to the employee. Any new settlement or award regarding additional permanent partial disability benefits remains subject to the maximum established in subdivision (d)(2) and shall be based on the medical impairment rating which was the basis of the previous settlement or award.

(v) Notwithstanding any other provision of law to the contrary, an employee shall not be permitted to waive or forfeit, and the parties shall not be permitted to compromise and settle, the employee's rights to reconsideration pursuant to this section.

(2)

(A) For injuries arising on or after July 1, 2004, in cases in which the pre-injury employer did not return the injured employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits that the employee may receive for body as a whole and schedule member injuries subject to subdivision (d)(1)(A) may not exceed six (6) times the medical impairment rating determined pursuant to the provisions of Tenn. Code Ann. § 50-6-204(d)(3). The maximum permanent partial disability benefits to which the employee is entitled shall be computed utilizing the appropriate maximum number of weeks as set forth in Tenn. Code Ann. §50-6-207 for the type of injury sustained by the employee. In making such determinations, the court 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 claimant's disabled condition.

(B) If the court awards a permanent partial disability percentage that equals or exceeds five (5) times the medical impairment rating, the court shall include specific findings of fact in the order that detail the reasons for awarding the maximum permanent partial disability.

SECTION 12. Tennessee Code Annotated, Section 50-6-242, is amended by designating the existing language as subsection (a), by deleting the word "Notwithstanding", and replacing it with the phrase "For injuries that occur on or after August 1, 1992 and prior to July 1, 2004, notwithstanding", and by adding a new subsection (b) as follows:

For those injuries that occur on or after July 1, 2004 , and notwithstanding any provision of this chapter to the contrary and in appropriate cases where the employee is eligible to receive the maximum permanent partial disability award under Tenn. Code Ann. §§ 50-6-241(d)(1)(B) or (d)(2), the employee may receive disability benefits not to exceed the appropriate maximum number of weeks as set forth in Tenn. Code Ann. § 50-6-207 for the type of injury sustained by the employee. In such cases, the court or the workers' compensation specialist shall make specific documented findings, supported by clear and convincing evidence, that as of the date of the award or settlement, at least three 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.

SECTION 13. Tennessee Code Annotated, Section 50-6-204(d)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(d)

(3)

(A) To provide uniformity and fairness for all parties, in determining the degree of anatomical impairment sustained by the employee, a physician, chiropractor, or medical practitioner who is permitted to give expert testimony in a Tennessee court of law and who has provided medical treatment to an employee or who has examined and/or evaluated an employee seeking workers' compensation benefits shall utilize the applicable edition of the AMA Guides as established in Tenn. Code Ann. § 50-6-102 or in cases not covered by the AMA Guides an impairment rating by any appropriate method used and accepted by the medical community.

(B) No anatomical impairment or impairment rating, whether contained in a medical record, medical report, including a medical report pursuant to Tenn. Code Ann. § 50-6-235(c), deposition or oral expert opinion testimony shall be accepted during a benefit review conference or be admissible into evidence at the trial of a workers' compensation matter unless the impairment is based on the applicable edition of the

AMA Guides or in cases not covered by the AMA Guides an impairment rating by any appropriate method used and accepted by the medical community.

(C) The administrator of the division of workers' compensation shall determine the date on which the most recent edition of the AMA Guides became effective for purposes of this subdivision and the administrator shall maintain the full title of the most recent edition and the date it became effective on the division's website.

SECTION 14. Tennessee Code Annotated, Section 50-6-203, is amended by deleting the section in its entirety and substituting instead the following:

(a) No claim for compensation under the Workers' Compensation Law shall be filed with a court having jurisdiction to hear workers' compensation matters, as provided in Tenn. Code Ann. § 50-6-225, until the parties have exhausted the benefit review conference process provided by the division of workers' compensation. Notwithstanding the provisions of this section, 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 submitting the compromise and settlement to the appropriate court for approval pursuant to Tenn. Code Ann. Section 50-6-206(a) or to the commissioner of labor and workforce development or his designee pursuant to § 50-6-206(c). If the settlement is not approved, the parties shall then exhaust the benefit review conference process.

(b)

(1) In those instances where the employer has not voluntarily paid workers' compensation benefits to or on behalf of the employee, the right to compensation under the Workers' Compensation Law

shall be forever barred, unless the notice required by Tenn. Code Ann. § 50-6-202 is given to the employer and a benefit review conference is requested on a form prescribed by the commissioner and filed with the division within one (1) year after the accident resulting in injury.

(2) In those instances where the employer 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 right to compensation is forever barred unless a form prescribed by the commissioner requesting a benefit review conference is filed with the division within one (1) year from the latter of the date of the last authorized treatment or the time the employer ceased to make payments of compensation to or on behalf of the employee.

(c) For purposes of this section, the issuing date of the last voluntary payment of compensation by the employer, not the date of its receipt, shall constitute the time the employer ceased making payments and an employer or its insurer shall provide such date on request.

(d) 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.

(e)

(1) Unless a claim for death benefits is settled or voluntarily paid, the dependent(s) of a deceased employee

shall request a benefit review conference within one (1) year of the date of death of the employee.

(2) In the event the deceased employee was a native of a foreign country and leaves no known dependent(s) within the United States, it shall be the duty of the commissioner to give written notice forthwith of the death to the duly accredited consular officer of the country of which the beneficiaries are citizens.

(f) In the event the employee fails to appear and participate in the benefit review conference as scheduled by the division, the commissioner shall have the authority to dismiss the employee's claim by sending a copy of the order of dismissal by certified mail with return receipt requested, signed by the employee, to the employee's last known address. The order of dismissal shall become final and the claim shall be forever barred unless the employee contacts the department to schedule a benefit review conference and attends a benefit review conference within sixty (60) days of the date the order of dismissal is signed by the commissioner or the commissioner's designee.

(g)

(1) If the parties are not able to reach a compromise and settlement of all issues at the benefit review conference held pursuant to this section, the parties shall have ninety (90) days, after the date a written agreement or a written report regarding the conference is filed with the commissioner pursuant to Tenn. Code Ann. § 50-6-240, to file a complaint with a court of competent jurisdiction as provided in Tenn. Code Ann. § 50-6-225. The division of workers' compensation

shall maintain an official record of the date on which a written agreement or written report is filed with the commissioner and supply the information to the parties or the appropriate court upon request of either the parties or the court.

(2) Notwithstanding the provisions of this subsection, in no event shall an employee have less than the latter of:

(i) One (1) year from the date of the accident resulting in injury; or

(ii) One (1) year from the latter of the date of the last authorized treatment or the time the employer ceased to make payments of compensation to or on behalf of the employee,

in which to file a complaint with a court of competent jurisdiction as provided in Section 50-6-225.

(h) In the event a workers' compensation's complaint is filed with a court of competent jurisdiction pursuant to this section by the employer or the employer's agent and the employer or agent files notice of non-suit of the action, either party shall have ninety (90) days from the date of the order of dismissal to institute an action for recovery of benefits under this chapter.

(i) Proceedings to obtain a judgment in the case of the failure of the employer for thirty (30) days to pay any compensation due under any settlement or determination shall be filed within one (1) year after such default.

SECTION 15. Tennessee Code Annotated, Section 50-6-224, is amended by adding the following as subsection five (5):

(5) This section applies only to injuries that arise on or before December 31, 2004, and shall have no applicability to injuries that arise on or after January 1, 2005.

SECTION 16. Tennessee Code Annotated, Section 50-6-225(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a)

(1) Notwithstanding any provisions of this chapter to the contrary, in case of a dispute over or failure to agree upon compensation under the Workers' Compensation Law between the employer and employee or the dependent(s) of the employee, the parties shall first submit the dispute to the benefit review conference process provided by the division of workers' compensation.

(2) In the event the parties are unable to reach an agreement at the benefit review conference as to all issues related to the claim, either party may file a civil action as provided in Tenn. Code Ann. § 50-6-203 in the circuit or chancery court in the county in which the employee resides or in which the alleged injury occurred. In instances where the employee resides outside the state of Tennessee and where the injury occurs outside the state of Tennessee, the complaint shall be filed in any county where the employer maintains an office.

(3) Neither party in a civil action filed pursuant to this section shall have the right to demand a jury.

SECTION 17. Tennessee Code Annotated, Section 50-6-227, is amended by deleting subsection (a) and substituting instead the following:

(a)

(1)

(A) In the event compensation is payable due to the death of an employee under the provisions of the Workers'

Compensation Law and the decedent leaves alien dependent(s) residing outside of the United States, a workers' compensation specialist is authorized to conduct a benefit review conference to attempt to resolve the issues provided a representative(s) of the employer and a duly authorized representative(s) of the consul or other representative of the foreign country wherein the dependent(s) resides are present. In the event a settlement agreement is reached, the commissioner, or commissioner's designee, is authorized to approve the settlement, and the order of the commissioner, or the commissioner's designee, shall be entitled to the same standing as a judgment of a court of record for all purposes. In the event the parties are unable to reach an agreement at the benefit review conference, the employer or employee's representative may file a complaint in the circuit or chancery court that would have jurisdiction of the matter pursuant to Tenn. Code Ann. § 50-6-225 requesting the court to hear and determine the matter.

(B) The commissioner, or commissioner's designee, or the court shall order payment of any compensation due from the employer to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens. Such consular officer or such consular officer's representative shall be fully authorized and empowered by this law to settle all claims for compensation and to receive such compensation for distribution to the persons entitled thereto.

(2) The distribution of such funds in such case shall be made only upon the order of the commissioner, or commissioner's designee,

or the court that heard the matter. If required to do so by the commissioner, or the commissioner's designee, or the court, such consular officer or such consular officer's representative shall execute a good and sufficient bond to be approved by the commissioner, or commissioner's designee, or the court, conditioned upon the faithful accounting of the moneys so received by such consular officer or such consular officer's representative, and before such bond is discharged a verified statement of receipts and disbursements of such moneys shall be made and filed with the commissioner or the court, as appropriate.

SECTION 18. Tennessee Code Annotated, Section 50-6-236, is amended by deleting subsection (h) in its entirety and substituting instead the following:

(h) A benefit review conference shall be requested at any time within the limitation period(s) provided in Tennessee Code Annotated, §§ 50-6-203 or 306. A workers' compensation specialist shall have the authority to continue or reschedule a benefit review conference. A workers' compensation specialist shall also have the authority to cancel or waive a benefit review conference, solely within the discretion of that workers' compensation specialist.

SECTION 19. Tennessee Code Annotated, Section 50-6-236(l), is amended by deleting the second, third, fourth and fifth grammatical sentences in their entirety and substituting instead the following: "The program of continuing education shall include, at a minimum, seven (7) hours of continuing education each fiscal year. The minimum seven (7) hours of education shall be specifically in the area of Tennessee Workers' Compensation Law and shall be in addition to any mediation training provided to the specialists. Three (3) of the seven (7) hours of education shall be approved by the Tennessee commission on continuing legal education and specialization. In addition to the annual seven (7) hour continuing education

requirement, each specialist hired by the department of labor and workforce development shall be provided, within one (1) month of the date of hire, formal training and education which shall include training on the department's workers' compensation system, the Tennessee Workers' Compensation statutes and caselaw, and the rules and regulations of the division of workers' compensation."

SECTION 20. Tennessee Code Annotated, Section 50-6-239, is amended by deleting the section in its entirety and substituting instead the following:

(a) In all cases in which the parties have any issues in dispute, whether the issues are related to medical benefits, temporary disability benefits, or issues related to the final resolution of a matter, the parties shall request the department to hold a benefit review conference.

(b) The parties to a dispute shall attend and participate in a benefit review conference that addresses all issues related to a final resolution of the matter as a condition precedent to filing a complaint with a court of competent jurisdiction.

(c) The division shall have the authority to schedule a date specific for the benefit review conference. The division shall endeavor to work with the parties or their representatives to schedule a date convenient to the parties, and the parties shall cooperate in scheduling the conference. However, in the event the parties cannot agree to a date within forty-five (45) days of the date a benefit review conference is requested or the date on which the employee reaches maximum medical improvement, whichever date is later, the division shall schedule the conference on a specific date and give the parties written notice of the date and the parties shall attend the benefit review conference on the date scheduled by the division. If the Division fails to conduct a benefit review conference within sixty (60) days of receipt of a request for a benefit review conference, the parties may agree to hire a private Rule 31 mediator to conduct the mediation. Any agreement reached

through private Rule 31 mediation must be approved by a court or the department in accordance with section 50-6-206.

(d) The commissioner is authorized to promulgate rules concerning all aspects of the administrative process related to benefit review conferences pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 21. Tennessee Code Annotated, Section 50-6-306, is amended by deleting the section in its entirety and substituting instead the following:

(a) The right to compensation for occupational disease or a claim for death benefits as a result of an occupational disease shall be forever barred unless a claim is initiated pursuant to Tennessee Code Annotated § 50-6-203; provided, however the applicable time limitation period(s) 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, if upon the date of the death of the employee the employee's claim has become barred, the claim of the employee's dependent(s) shall likewise be barred, and in such case the claim shall be barred whether or not the employer gives the notice required by § 50-6-224(2).

(b) A claim for benefits or death due to coal worker's pneumoconiosis shall be timely filed if such claim is instituted pursuant to Tenn. Code Ann. § 50-6-203 within three (3) years of the discovery of total disability or the date of such death as the case may be.

SECTION 22. Tennessee Code Annotated, Section 50-6-102(14)(A)(viii), is amended by deleting the phrase "on or after July 1, 1997" and substituting instead the phrase "on or after July 1, 1997, through June 30, 2004".

SECTION 23. Tennessee Code Annotated, Section 50-6-102(14)(A), is amended by adding the following as appropriately designated subdivisions:

(ix) For injuries occurring on or after July 1, 2004, the maximum weekly benefit for permanent disability benefits shall be sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage up to one hundred percent (100%) of the state's average weekly wage as determined by the department.

(x)

(a) For injuries occurring on or after July 1, 2004, through June 30, 2005, the maximum weekly benefit for temporary disability benefits shall be sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage up to one hundred five percent (105%) of the state's average weekly wage as determined by the department.

(b) For injuries occurring on or after July 1, 2005, the maximum weekly benefit for temporary disability benefits shall be sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage up to one hundred ten percent (110%) of the state's average weekly wage as determined by the department.

SECTION 24. Tennessee Code Annotated, Section 50-6-204(d)(5), is amended by deleting it in its entirety and substituting instead the following:

(d)

(5) When a dispute as to the degree of medical impairment exists, either party may request an independent medical examiner from the commissioner's registry. If the parties are unable to mutually agree on the selection of an independent medical examiner from the commissioner's registry, it shall be the responsibility of the employer to provide a written request to the commissioner for assignment of an independent medical examiner, with a copy of the notice provided to the other party.

Upon receipt of such written request, the commissioner shall provide the names of three (3) independent medical examiners chosen at random from the registry. The commissioner shall immediately notify the parties by facsimile or email when the list of independent medical examiners has been assigned to a matter, but in any event the notification shall be made within five (5) business days of the date of the request. The employer may strike one (1) name from the list, with such rejection made and communicated to the other party by facsimile or email not later than the third business day after the date on which notification of the list is provided. The employee shall select a physician to perform the independent medical examination from the remaining physicians on the list. All costs and fees for an independent medical examination and report made pursuant to this subsection shall be paid by the employer. The written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subsection shall be presumed to be the accurate impairment rating; provided however, this presumption may be rebutted by clear and convincing evidence to the contrary.

(6) The commissioner of labor and workforce development shall establish by rule, in accordance with the provisions of title 4, chapter 5, an independent medical examiners registry. The commissioner shall establish qualifications for the independent medical examiners, including continuing education and peer review requirements, with the advice of the Tennessee Medical Association and the Workers' Compensation Advisory Council. The rules established shall include, but not be limited to, qualifications and procedures for submission of an application for

inclusion on the registry; procedures for the review and maintenance of the registry and procedures for assignment that ensures that the composition of such panels is random. The rules required by this subsection shall take effect on July 1, 2005. The commissioner is authorized to use public necessity rules under Section 4-5-209(a)(4) or emergency rules under Section 4-5-208, as appropriate in order to have such rules in effect no later than July 1, 2005.

SECTION 25. Tennessee Code Annotated, Section 50-6-208(b)(1) is amended by adding the following language as subpart (D):

The provisions of this subdivision (b)(1) shall apply only to injuries that arise on or before June 30, 2005, and shall have no applicability to injuries that arise on or after July 1, 2005.

and is further amended by adding the following language at the end of § 50-6-208(b)(2)(A):

The provisions of this subpart (b)(2)(A) shall apply only to injuries that arise on or before June 30, 2005, and shall have no applicability to injuries that arise on or after July 1, 2005.

SECTION 26. Tennessee Code Annotated, Section 50-6-121(c), is amended by adding the following language at the end of the subsection:

The annual report shall include a summary of significant court decisions relating to workers' compensation, including an explanation of their impact on existing policy, and a summary of all permanency awards broken down by judicial district.

SECTION 27. Tennessee Code Annotated, Section 50-6-121, is amended by adding the following as new subsections to be appropriately designated:

( )

(1) Whenever any bill is introduced in the general assembly proposing to amend this chapter or to make any change in the workers' compensation law, or to make any change in the law which may have a financial or other substantive impact on the administration of the workers' compensation law, the bill shall be referred to the council and to a standing committee; provided, subject to subdivision (2) of this subsection, that no action shall be taken on the bill by the standing committee until the council reports its recommendation. The council's review of bills relating to workers' compensation should include, but not be limited to, bills that propose to amend title 50, chapters 3, 6, 7, and 9, and title 56, chapters 5 and 47.

(2) All bills referred to the council shall be reported back to the standing committee to which they were assigned no later than four (4) weeks after the later of the dates adopted by the house of representatives or the senate for cutting off the introduction of new bills with appropriate amendments attached. If the council has not reported back concerning a bill within such time, the standing committee is free to consider the bill without such report.

( ) The Council shall study and report on the occupational health and safety of employments in Tennessee and make recommendations for safe employment education and training and promote the development of employer-sponsored health and safety programs.

SECTION 28. Tennessee Code Annotated, Section 50-6-123(b), is amended by deleting the language beginning at the start of such subsection through the colon and substituting in its place the following:

Employers may, at their own expense, utilize case management, and if utilized, the employee shall cooperate with the case management, and such case management shall include, but not be limited to:

SECTION 29. Tennessee Code Annotated, Section 50-6-123(e), is amended by deleting the subsection in its entirety.

SECTION 30. Tennessee Code Annotated, Section 50-6-121, is amended by adding the following as appropriately designated subsections:

( ) The council shall review the provisions of Section 50-6-204(a)(4), particularly as they relate to the restrictions contained therein on the injured employee's choice of treating physician, and on or before December 1, 2004, shall make recommendations to the governor and the speakers of the house and senate concerning any proposed changes to that subsection.

( ) The council shall review the definition of "injury" and "personal injury" as defined in Section 50-6-102(12), and on or before December 1, 2004, shall make recommendations to the governor and the speakers of the house and senate concerning any proposed revisions to that definition.

SECTION 31. Tennessee Code Annotated, Title 50, Chapter 6, Part 1, is amended by adding the following language as a new, appropriately designated section:

50-6-\_\_\_\_.

It shall be the duty of the administrative office of the courts, in consultation with the advisory council on workers compensation, to develop and provide appropriate continuing education programs on topics related to workers compensation at each annual meeting. Such continuing education shall include both generalized applications of the provisions of this chapter and the use of the AMA Guides. The program shall also address any specific variances in the application of the provisions of this chapter throughout the state.

SECTION 32. Tennessee Code Annotated, Section 50-6-102, is amended by adding the following language as a new item to be appropriately designated:

( ) "AMA Guides" means the most recent edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association). In the event of a release of a new edition of

the publication in a given year, the new edition shall be deemed to be the most recent edition on January 1 of the year following its release. The edition that is in effect on the date the employee is injured is the edition that shall be applicable to the claim.

SECTION 33. Tennessee Code Annotated, Section 50-6-125 Is amended in subsection (b), subdivision (1), by deleting the language “eight (8)” and substituting instead the language “twelve (12)” and is further amended in subpart (B) by deleting the language “One (1) member” and substituting instead the language “Two (2) members” and by deleting the language “Tennessee Association of Business” and substituting instead the language “Tennessee Chamber of Commerce and Industry” and is further amended in subpart (D) by deleting the language “Two (2)” and substituting instead the language “Three (3)” and is further amended in subpart (E) by deleting such subpart in its entirety and substituting instead the following language:

(E) Three (3) members shall represent hospitals and shall be appointed from a list of nominees submitted by the Tennessee Hospital Association; and

and is further amended by deleting the language following the colon in the second sentence in subsection (c) of § 50-6-125 and substituting instead the following language:

one (1) of the physicians, one (1) representatives of employees, and one (1) of the represenatatives of hospitals shall be appointed to an initial term of four (4) years; one (1) of the physicians, one (1) of the representatives of employers, and one (1) of the representatives of hospitals shall be appointed to an initial term of three (3) years; one (1) of the physicians, one (1) of the representatives of employers, and one (1) of the representatives of employees shall be appointed to an initial term of two (2) years; and one (1) of the representatives of employers, one (1) of the representatives of

employees, and one (1) of the representatives of hospitals shall be appointed to an initial term of one (1) year.

and is further amended by deleting subsection (e) and subsection (f) in their entirety.

SECTION 34. Tennessee Code Annotated, Section 50-6-405(b)(1), is amended by deleting the subsection and subdivision in their entirety and by substituting instead the following:

(b) If the employer elects to proceed under subdivision (a)(2), the commissioner of commerce and insurance shall require the applicant to pay a nonrefundable application fee of five hundred dollars (\$500) or in an amount the commissioner shall promulgate by rule. The commissioner of commerce and insurance shall require the applicant to file and maintain with the Department of Commerce and Insurance the following:

(1) Security, in an amount to be determined by the commissioner of commerce and insurance, but not less than five hundred thousand dollars (\$500,000), in any of the following forms, as specified herein: negotiable securities; a surety bond; a certificate of deposit; or a letter of credit.

(A) The security, or a contract between the self-insured employer, a depository institution and the commissioner of commerce and insurance evidencing the security held in said depository institution for purposes of compliance with this section, shall be held by the commissioner of commerce and insurance and shall be conditioned to run solely and directly for the benefit of the employees of the self-insured employer. Any legal actions to enforce the payment of the security being held for purposes of compliance with this section shall be brought by the commissioner of commerce and insurance for the benefit of the employees of the self-insured employer.

(B) The security held pursuant to this section may be used for the payment of any and all fees or costs required to administer the disbursement of the proceeds to or for the benefit of the employees.

(C) The venue for any suit filed by the commissioner of commerce and insurance under this provision shall be in Davidson County.

(D) All negotiable securities filed under this section shall be the classes of securities listed below and shall be subject to the following requirements:

(i) Obligations issued, assumed or guaranteed by any business entity created or existing under the laws of the United States or any state thereof; provided, that the obligation is or the issuing, assuming or guaranteeing business entities' long term obligations are rated one (1) of the four (4) highest grades by any of the nationally recognized statistical rating organizations recognized by the securities valuation office of the National Association of Insurance Commissioners or one (1), two (2) or three (3) by the securities valuation office of the National Association of Insurance Commissioners.

(ii) Obligations, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States, or by any state thereof, or by any county, city, town, village, municipality or district therein, or by any political subdivision thereof, or by any civil division or public instrumentality of one (1) or more of the foregoing, if, by

statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, from taxes levied, or by such law required to be levied, upon all taxable property or all taxable income within the jurisdiction of such governmental unit or from adequate special revenues pledged or otherwise appropriated or by such law required to be provided for the purpose of such payment, but not including any obligations payable solely out of special assessments on properties benefited by local improvements;

(iii) Before accepting any negotiable security for purposes of this section, the commissioner of commerce and insurance shall determine whether such negotiable security is suitable for such use. The commissioner shall consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with such negotiable security.

(E) All bonds filed under this provision of law shall be issued by an insurer authorized to do business in the state of Tennessee and the insurer shall maintain at least an A rating as determined by the A.M. Best Company. Any bond issued by an insurer for purposes of this section shall contain a provision requiring the insurer to give the commissioner of commerce and insurance ninety (90) days written notice of its intention to cancel such bond. The insurer shall not cancel such bond until written notice is given to the commissioner of commerce and insurance and a copy of such notice is given to the employer.

(F) An insurer that cancels a bond issued pursuant to this section before the date specified in the written notice set forth in subsection (E) above shall be liable to the employees of the self-insured employer for any lawful workers' compensation claims that were incurred on or before the date the bond was cancelled in amounts up to the maximum penal sum of the bond.

(G) All certificates of deposit filed under this provision must be held in a depository institution that is located in the state of Tennessee and either federally chartered or state chartered.

(i) If a certificate of deposit is filed with the commissioner of commerce and insurance, an agreement shall be entered into between the commissioner of commerce and insurance, the depository institution and the self-insured employer pledging the certificate of deposit for the benefit of the self-insured's employees. The agreement shall contain a provision executed between the depository institution and the self-insured employer requiring the self-insured employer and the depository institution to give at least ninety (90) days written notice of their intention not to renew the certificate of deposit and a provision that, unless written notice not to renew is given to the commissioner of commerce and insurance by the self-insured employer and depository institution within ninety (90) days, the certificate of deposit shall be automatically renewed. The self-insured employer shall submit to the commissioner of commerce and insurance, on an annual basis, the status of such certificate of deposit, including evidence of its renewal.

(ii) If the self-insured employer and depository institution fail to comply with Tenn. Code Ann. § 50-6-405(b)(1)(F)(i), the certificate of deposit shall be automatically renewed.

(iii) Any interest accruing on the certificate of deposit while held in the depository institution shall be returned to the self-insured employer at the termination of the certificate of deposit, with the prior written approval of the commissioner of commerce and insurance, provided that no claim is due or asserted against the certificate of deposit by the commissioner.

(H) Any letter of credit filed under this provision must be issued or guaranteed by a qualified United States financial institution that is located in the state of Tennessee.

(i) If a self-insured employer elects to secure payment of its workers' compensation claims by way of a letter of credit, an agreement shall be entered into between the commissioner of commerce and insurance, the self-insured employer and the depository institution pledging the letter of credit for the benefit of the self-insured's employees and naming the commissioner of commerce and insurance as beneficiary under such letter of credit.

(ii) Such letter of credit shall be clean, irrevocable and unconditional and shall contain a provision which requires the issuer to automatically renew such letter of credit unless the issuer shall provide at least ninety (90) days' prior written notice to the commissioner of commerce and insurance of an intention to revoke or not renew such

letter of credit. The self-insured employer shall annually submit to the commissioner of commerce and insurance information regarding the status of such letter of credit, including evidence of its renewal.

(iii) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or configuration shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first. As used herein, the term "qualified United States financial institution" shall have the meaning assigned by Tenn. Code Ann. Section 56-2-209(a).

(I) Any security held for purposes of compliance with this section shall be held for a minimum of ten (10) years after the self-insured employer is no longer self-insured and the self-insured employer shall maintain the fair market value of security on deposit at not less than five hundred thousand dollars (\$500,000), unless otherwise approved by the commissioner of commerce and insurance or the commissioner's designee.

(J) Any employer that is no longer self-insured pursuant to this section as of December 31, 2004, shall not be subject to the provisions of Tenn. Code Ann. § 50-6-405(b)(1)(I).

(K) All security, and contracts evidencing the security, filed with the commissioner of commerce and insurance shall be in a form substantively that has been previously approved by the commissioner of commerce and insurance. Any security that fails

to meet any requirement under this section shall not be considered for purposes of determining a self-insurer's compliance with any of the security maintenance requirements of this section;

SECTION 35. Tennessee Code Annotated, Section 50-6-405(b)(2), is amended by deleting the language "Such financial statement" from the third sentence and by substituting instead the following language:

The employer's losses and adequacy of reserves shall be certified biennially by an actuary qualified under rules established by the commissioner of commerce and insurance for the filing of statements by insurance companies. Filings pursuant to this subsection

SECTION 36. Tennessee Code Annotated, Section 50-6-405(b)(2), is further amended by adding the following subdivisions:

(A) The commissioner of commerce and insurance may assess a civil penalty of one hundred dollars (\$100) per day for each day any self-insured employer has failed to comply with any financial record filing requirement. Any such civil penalty assessed under this subdivision shall be cumulative and in addition to any other civil penalty or remedy available to the commissioner. No civil penalty shall be assessed against any political subdivision of the state of Tennessee.

(B) The commissioner of commerce and insurance shall take into account all available information when making the determination as to both the adequacy of all security deposits, letters of credit, negotiable securities or bonds held by the commissioner and whether an employer has the ability to pay all claims that may arise.

SECTION 37. Tennessee Code Annotated, Section 50-6-405(b), is amended by deleting subdivisions 3, 4, 5 and 6 and adding the following new subdivisions:

(3) No employer shall self-insure its workers' compensation liabilities without a certificate of authority issued by the commissioner of commerce and insurance. It shall be unlawful for any employer to self-insure its liabilities for workers' compensation without first obtaining a duly issued certificate of authority from the commissioner of commerce and insurance. Whenever an employer has complied with the provisions of § 50-6-405(a)(2) and § 50-6-405(b)(1) and (2), the commissioner of commerce and insurance, or the commissioner of commerce and insurance's designee, may issue to the employer a certificate of authority allowing the employer to self-insure under this provision. Notice of this authorization shall be sent to the commissioner of labor and workforce development.

(4) Upon failure by an authorized self-insured employer to furnish the commissioner of commerce and insurance the requirements delineated in §§ 50-6-405(a)(2) and 50-6-405(b)(1) and (2), the commissioner of commerce and insurance may, after giving written notice and an opportunity for a hearing to the affected party or parties within thirty (30) days, suspend or revoke the certificate authorizing the employer to self-insure granted under this section. The commissioner of commerce and insurance may, without prior notice and if it appears in the commissioner's discretion that the continuation of such certificate would be clearly hazardous to the employees of the self-insurer or to the public generally, summarily suspend an authorized self-insurer's certificate before a hearing is commenced and in such an event shall immediately notify the self-insurer, and such notice shall include a statement to the effect that the commissioner's action is subject to review. All hearings conducted under this section shall comply with the "contested case" provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(5) Any hearing under this section shall be requested in writing by the self-insured employer within fifteen (15) days of receiving written notification

from the commissioner of commerce and insurance or the commissioner of commerce and insurance's designee. In any proceeding in which the self-insured employer's certificate of authority is suspended or revoked, the self-insured employer shall pay all costs associated with the proceeding. The commissioner of commerce and insurance may serve a notice, order, petition or complaint in any action arising under this section by certified mail to the self-insured employer at the address of record in the files of the department. Notwithstanding any provisions of law to the contrary, service in the manner set forth herein shall be deemed to constitute actual service on such self-insured employer.

(6) The commissioner of commerce and insurance or the commissioner of commerce and insurance's designee shall immediately notify the commissioner of labor and workforce development of any decision to suspend or revoke a certificate authorizing an employer to self-insure.

(7) The commissioner of commerce and insurance or the commissioner of commerce and insurance's designee has the authority to examine and investigate any self-insured employer whenever the commissioner deems it prudent to do so. The purposes and scope of any such examinations and the commissioner's powers shall be set forth in Title 56, Chapter 1, Part 4, pertaining to examinations of insurance companies.

(8) The commissioner of commerce and insurance may promulgate such rules and regulations, including public necessity rules and regulations may be necessary for the administration of this section and shall conduct all rulemaking in accordance with the Uniform Administrative Procedures Act, as amended, at Title 4, Chapter 5.

SECTION 38. Tennessee Code Annotated, Section 56-1-409, providing for examinations by the commissioner of commerce and insurance for the purpose of ascertaining financial condition or legality of conduct, is amended by adding the following language as a new item of subsection (b):

(5) Any employer that self-insures its workers' compensation liabilities pursuant to Section 50-6-405(b) or a group of employers qualifying as self-insurers pursuant to Section 50-6-405(c).

SECTION 39. Tennessee Code Annotated, Section 56-8-102, is amended by adding the following sentence at the end of subsection (3):

“Person” also means any employer to the extent that such employer self-insures its workers' compensation liabilities pursuant to Section 50-6-405(b) or a group of employers qualifying as self-insurers pursuant to Section 50-6-405(c).

SECTION 40. Tennessee Code Annotated, Section 56-8-104(8), is amended by adding the following as a new subsection (xi):

(xi) Failing to make payment of workers' compensation benefits as such payment is required by the commissioner of the department of labor and workforce development or by Title 50, Chapter 6.

SECTION 41. Tennessee Code Annotated, Title 50, Chapter 6, Part 1, is amended by adding the following as a new, appropriately designated section:

( ) The commissioner of commerce and insurance shall, on or before July 1, 2007, and annually thereafter through 2010, review the impact of the provisions of this act on premiums charged by insurers who provide workers' compensation coverage in this state. The commissioner of commerce and insurance is authorized to require the production of any information, documents, books or records from any person who is subject to regulation by the department that the commissioner deems necessary to implement the provisions of this section.

SECTION 42.

(a) The general assembly recognizes that significant cost savings will result from the implementation of this bill. It is in the best interest of the citizens of Tennessee that such cost savings be passed to the entities that have paid faithfully workers' compensation premiums in

order to ensure the economic well-being of their employees. It is the intent and purpose of the general assembly that workers' compensation premiums be adjusted downward within fifteen (15) months of the effective date of this act to reflect the cost savings resulting from the provisions of this act. If a workers' compensation policy is subject to renewal during such fifteen (15) month period, adjustments to such policy may be made at such time.

- (b) It is the intent of the general assembly that the savings of this act shall routinely be reflected in future filings through the advisory prospective loss cost filing system, pursuant to Tennessee Code Annotated, Section 56-5-306(b) and 50-6-402. Nothing in this section shall be construed as amending or affecting the procedures for filing and approval of rates set forth in Tennessee Code Annotated, Title 56, Chapter 5.

SECTION 43. Tennessee Code Annotated, Section 50-6-121, is amended by adding a new subsection thereto, as follows:

- (h) The advisory council on workers' compensation shall within ten (10) business days of each meeting it conducts provide a summary of the meeting and a report of all actions taken and all actions recommended to be taken to each member of the house consumer and employee affairs committee and the senate commerce, labor and agriculture committee.

SECTION 44. Tennessee Code Annotated, Title 50, Chapter 6, Part 4, is amended by adding the following as a new section thereto:

Section 50-6-420. It is the intent of the general assembly that upon the filing of a claim pursuant to this chapter, the insurer is encouraged to provide semi-annual reports to the employer, at no cost to the employer, regarding the status of such claim.

SECTION 45. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 46. This act shall take effect on July 1, 2004, except for Sections 2, 25, and 33, which shall take effect on July 1, 2005. Sections 3, 4, 5, 6, 13,16, 17, 18, 20, 21 and 24 shall apply to accidents and injuries occurring on or after July 1, 2004. Sections 14 and 15 shall apply to accidents and injuries occurring on or after January 1, 2005. For the purpose of promulgating any rule authorized by this act, this act shall take effect on becoming law, the public welfare requiring it.