

# Tennessee Workers' Compensation Statutes

## **TN 50-6-101**

### **Short title.**

This chapter shall be known as the “Workers’ Compensation Law.” [Acts 1919, ch. 123, §1; Shan. Supp., §3608a137; Code 1932, §6851; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-901.]

## **TN 50-6-102**

### **Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

- (1) “Administrator” means the chief administrative officer of the division of workers’ compensation of the department of labor and workforce development;
- (2) “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.
- (3) (A) “Average weekly wages” means the earnings of the injured employee in the employment in which the injured employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of the injury divided by fifty-two (52); but if the injured employee lost more than seven (7) days during the period when the injured employee did not work, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks remaining after the time so lost has been deducted;
- (B) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed; provided, that results just and fair to both parties will thereby be obtained;

(C) Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the first fifty-two (52) weeks prior to the injury or death was being earned by a person in the same grade, employed at the same work by the same employer, and if there is no such person so employed, by a person in the same grade employed in the same class of employment in the same district;

(D) Wherever allowances of any character made to any employee in lieu of wages are specified as part of the wage contract, they shall be deemed a part of such employee's earnings;

(4) "Benefit review conference" means a nonadversarial, informal dispute resolution proceeding to mediate and resolve workers' compensation disputes as provided in this chapter;

(5) "Case management" means medical case management or the ongoing coordination of medical care services provided to an injured or disabled employee on all cases where medical care expenses are expected to exceed a threshold;

(6) "Commissioner" means the commissioner of labor and workforce development;

(7) "Construction design professional" means:

(A) Any person possessing a valid registration or license entitling that person to practice the technical profession of architecture, engineering, landscape architecture or land surveying in Tennessee;

(B) Any corporation, partnership, firm or other legal entity authorized by law to engage in the practice of any such technical profession in Tennessee; or

(C) Any person, firm or corporation providing interior space planning or design in Tennessee;

(8) "Department" means the department of labor and workforce development;

(9) "Division" or "division of workers' compensation" means the division of workers' compensation of the department of labor and workforce development;

(10) (A) "Employee" includes every person, including a minor, whether lawfully or unlawfully employed, the president, any vice president, secretary, treasurer or other executive officer of a corporate employer without regard to the nature of the duties of such corporate officials, in the service of an employer, as employer is defined in subdivision (12), under any contract of hire or apprenticeship, written or implied. Any reference herein to an employee who has been injured shall, where the employee is dead, also include the employee's legal representatives, dependents and other persons to whom compensation may be payable under the Workers' Compensation Law;

(B) "Employee" also includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and elects to be included in the definition of "employee" by filing written notice thereof with the division at least thirty (30) days before the occurrence of any injury or death, and may at any time withdraw the acceptance by giving notice of the withdrawal to the division;

(C) The provisions of this subdivision (10) allowing a sole proprietor or a partner to elect to come under the provisions of the Workers' Compensation Law shall not be construed to deny coverage of such sole proprietor or partner under any individual or group accident and sickness policy the sole proprietor or partner may have in effect, in cases where such sole proprietor or partner has elected not to be covered by the provisions of the Workers' Compensation Law, for injuries sustained by such sole proprietor or partner which would have been covered by the provisions of the

Workers' Compensation Law had such election been made, notwithstanding any provision of the accident and sickness policy to the contrary. Nothing in this section shall require coverage of occupational injuries or sicknesses, if such are not covered under the terms of the policy without reference to eligibility for workers' compensation benefits;

(11) In a work relationship, in order to determine whether an individual is an "employee," or whether an individual is a "subcontractor" or an "independent contractor," the following factors shall be considered:

- (A) The right to control the conduct of the work;
- (B) The right of termination;
- (C) The method of payment;
- (D) The freedom to select and hire helpers;
- (E) The furnishings of tools and equipment;
- (F) Self scheduling of working hours; and
- (G) The freedom to offer services to other entities;

(12) "Employer" includes any individual, firm, association or corporation, or the receiver, or trustee of the same, or the legal representative of a deceased employer, using the services of not less than five (5) persons for pay, except as provided in 50-6-113, and, in the case of an employer engaged in the mining and production of coal, one (1) employee for pay. If the employer is insured, it shall include the employer's insurer, unless otherwise herein provided;

(13) "Injury" and "personal injury" mean an injury by accident arising out of and in the course of employment which causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment which cause either disablement or death of the employee and shall include a mental injury arising out of and in the course of employment;

(14) "Maximum total benefit" means the sum of all weekly benefits to which a worker may be entitled; and

(A) For injuries occurring between July 1, 1990 and June 30, 1991, the maximum total benefit shall be one hundred nine thousand two hundred dollars (\$109,200);

(B) For injuries occurring on or after July 1, 1991 and before August 1, 1992, the maximum total benefit shall be one hundred seventeen thousand six hundred dollars (\$117,600); and

(C) For injuries occurring on or after July 1, 1992, the maximum total benefit shall be four hundred (400) weeks times the maximum weekly benefit except in instances of permanent total disability;

(15) (A) "Maximum weekly benefit" means the maximum compensation payable to the worker per week; and

(i) For injuries occurring between July 1, 1990 and June 30, 1991, the maximum weekly benefit shall be two hundred seventy-three dollars (\$273) per week;

(ii) For injuries occurring on or after July 1, 1991 and before August 1, 1992, the maximum weekly benefit shall be two hundred ninety-four dollars (\$294) per week;

(iii) For injuries occurring on or after August 1, 1992 through June 30, 1993, the maximum weekly benefits shall be sixty-six and two-thirds percent (66 2/3%) of the employee's average

weekly wage up to seventy-eight percent (78%) of the state's average weekly wage as determined by the division;

(iv) For injuries occurring on or after July 1, 1993, through June 30, 1994, the maximum weekly benefits shall be sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage up to eighty-two and four-tenths percent (82.4%) of the state's average weekly wage as determined by the department;

(v) For injuries occurring on or after July 1, 1994 through June 30, 1995, the maximum weekly benefit shall be sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage up to eighty-six and eight-tenths percent (86.8%) of the state's average weekly wage as determined by the department;

(vi) For injuries occurring on or after July 1, 1995 through June 30, 1996, the maximum weekly benefit shall be sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage up to ninety-one and two-tenths percent (91.2%) of the state's average weekly wage as determined by the department;

(vii) For injuries occurring on or after July 1, 1996 through June 30, 1997, the maximum weekly benefits shall be sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage up to ninety-five and six-tenths percent (95.6%) of the state's average weekly wage as determined by the department;

(viii) For injuries occurring on or after July 1, 1997, through June 30, 2004, the maximum weekly 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 division;

(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; and

(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; and

(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.

(B) As used in this subdivision (15), the state average weekly wage shall be determined as of the preceding January 1, and shall be adjusted annually using the data from the division and shall be effective on July 1 of each year;

(16) "Mental injury" means a loss of mental faculties or a mental and/or behavioral disorder where the proximate cause is a compensable physical injury resulting in a permanent disability, or an identifiable work-related event resulting in a sudden or unusual mental stimulus. A mental injury shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities.

(17) "Minimum weekly benefit" means the minimum compensation per week payable to the worker; and

- (A) For injuries occurring between July 1, 1985 and June 30, 1986, the minimum weekly benefit shall be twenty dollars (\$20.00) per week;
- (B) For injuries occurring between July 1, 1986 and June 30, 1987, the minimum weekly benefit shall be twenty-five dollars (\$25.00) per week;
- (C) For injuries occurring between July 1, 1987 and June 30, 1988, the minimum weekly benefit shall be thirty dollars (\$30.00) per week;
- (D) For injuries occurring on or after July 1, 1988 and before July 1, 1993, the minimum weekly benefit shall be thirty-five dollars (\$35.00) per week; and
- (E) For injuries occurring on or after July 1, 1993, the minimum weekly wage shall be fifteen percent (15%) of the state's average weekly wage as determined by the division;
- (18) "Utilization review" means evaluation of the necessity, appropriateness, efficiency and quality of medical care services provided to an injured or disabled employee based on medically accepted standards and an objective evaluation of the medical care services provided; provided, that "utilization review" does not include the establishment of approved payment levels or a review of medical charges or fees; and
- (19) "Workers' compensation specialist" or "specialist" means a department employee who provides information and communication services regarding workers' compensation for employees and employers, and who conducts benefit review conferences and performs other duties as provided in this chapter. [Acts 1919, ch. 123, § 2; 1923, ch. 84, §§ 2; Shan. Supp., § 3608a138; Code 1932, § 6852; Acts 1941, ch. 90, § 1; 1947, ch. 139, § 1; C. Supp. 1950, § 6852; Acts 1961, ch. 184, § 1; 1963, ch. 362, § 2; 1971, ch. 300, § 1; 1977, ch. 339, § 1; 1978, ch. 499, § 1; 1978, ch. 687, § 1; impl. am. Acts 1980, ch. 534, §§ 1, 3; Acts 1981, ch. 239, § 1; T.C.A. (orig. ed.), § 50-902; Acts 1985, ch. 393, § 1; 1988, ch. 923, § 1; 1990, ch. 990, § 1; 1991, ch. 225, § 1; 1992, ch. 900, §§ 2, 19, 20, 28; 1997, ch. 330, § 1; 1999, ch. 520, § 41; 2002, ch. 833, §§ 4, 5; 2004, ch. 962, §§ 22, 23, 32.]

### **TN 50-6-103**

#### **Scope of chapter.**

- (a) Every employer and employee subject to the Workers' Compensation Law shall, respectively, pay and accept compensation for personal injury or death by accident arising out of and in the course of employment without regard to fault as a cause of the injury or death; provided, that any employee who is a corporate officer of the employer shall not be bound if such employee has given, prior to any accident resulting in injury or death, notice to exempt himself from the provisions of such law as provided in this part.
- (b) The election by any employee who is a corporate officer of the employer to exempt himself from the provisions of the Workers' Compensation Law shall not reduce the number of employees of such employer for the purposes of determining the requirements of coverage of the employer under such law. [Acts 1919, ch. 123, §3; Shan. Supp.,§3608a139; Code 1932, §6853; Acts 1973, ch. 379, §1; 1975, ch. 198, §1; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.),§50-903.]

### **TN 50-6-104**

#### **Election of corporation officer to be exempt from chapter.**

- (a) Any officer of a corporation may elect to be exempt from the operation of the Workers' Compensation Law. Any officer who elects such exemption and who, after electing such exemption

then revokes that exemption, shall give notice to such effect in accordance with a form to be prescribed by the division of workers' compensation.

(b) Notice given pursuant to subsection (a) shall be given thirty (30) days prior to any accident resulting in injury or death; provided, that if any injury or death occurs less than thirty (30) days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof.

(c) The notice of election not to accept the provisions of the Workers' Compensation Law shall be as follows:

The employee shall give written or printed notice to the employer of the employee's election not to be bound by the provisions of the Workers' Compensation Law and file with the division, a duplicate, with proof of service on the employer attached thereto, together with an affidavit of the employee that the action of the employee in rejecting the provisions of such law was not advised, counseled or encouraged by the employer or by anyone acting for the employer. [Acts 1975, ch. 198, §2; impl. am. Acts 1980, ch. 534, §1; T.C.A., §50-904.]

### **TN 50-6-105**

#### **Relief associations or funds for benefit of employees, spouses and dependents unaffected.**

Nothing in the Workers' Compensation Law shall be construed as amending or repealing any statute or municipal ordinance relating to associations or funds for the relief, pensioning, retirement or other benefit of any employees of such municipal employer, or of the surviving spouses, children or dependents of such employees, or as in any manner interfering with the same as now or hereafter established. [Acts 1919, ch. 123, §5; Shan. Supp., §3608a141; Code 1932, §6855; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-905.]

### **TN 50-6-106**

#### **Employments not covered.**

The Workers' Compensation Law shall not apply to:

(1)(A) Any common carrier doing an interstate business while engaged in interstate commerce, which common carrier and such interstate business are already regulated as to employer's liability or workers' compensation by act of the congress, it being the purpose of this law to regulate all such business which the congress has not regulated in the exercise of its jurisdiction to regulate interstate commerce; provided, that this chapter shall apply to those employees of such common carriers with respect to whom a rule of liability is not provided by act of the congress; provided further, that no common carrier by motor vehicle operating pursuant to a certificate of public convenience and necessity shall be deemed the "employer" of a leased-operator or owner-operator of a motor vehicle or vehicles under a contract to such a common carrier;

(B) Notwithstanding the provisions of subdivision (1)(A), a leased operator and/or a leased owner/operator of a motor vehicle under contract to a common carrier may elect to be covered under any policy of workers' compensation insurance insuring the common carrier upon written agreement of the common carrier, by filing written notice thereof, on a form prescribed by the commissioner of labor and work force development, with the division; provided, that such election shall in no way terminate or affect the independent contractor status of the leased operator and/or leased owner/operator for any other purpose than to permit workers' compensation coverage. Such election of coverage may be terminated by the leased operator, leased owner/operator,

or common carrier by providing written notice of such termination to the division and to all other parties consenting to the prior election. Such termination shall be effective thirty (30) days from the date of such notice to all other parties consenting to the prior election and to the division;

(2) Any person whose employment at the time of injury is casual, that is, one who is not employed in the usual course of trade, business, profession or occupation of the employer;

(3) Domestic servants and employers thereof; nor to farm or agricultural laborers and employers thereof;

(4) In cases where less than five (5) persons are regularly employed, except as provided in §50-6-113 provided, that in such cases the employer may accept the provisions of this chapter by filing written notice thereof with the division at least thirty (30) days before the happening of any accident or death, and may at any time withdraw the acceptance by giving like notice of withdrawal;

(5) The state of Tennessee, counties thereof and municipal corporations; provided, that the state, any county or municipal corporation may accept the provisions of this chapter by filing written notice thereof with the division under the administrator, at least thirty (30) days before the happening of any accident or death, and may at any time withdraw the acceptance by giving like notice of the withdrawal. The state, any county or municipal corporation may accept the provisions of this chapter as to any department or division of the state, county or municipal corporation by filing written notice thereof with the division under the administrator at least thirty (30) days before happening of any accident or death and may, at any time, withdraw acceptance for the division or department by giving like notice of the withdrawal, and such acceptance by the state, county or municipal corporation for any department or division thereof, shall have effect only of making the department or division designated subject to the terms of this chapter; or

(6) Any person performing voluntary service as a ski patrolperson who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof. [Acts 1919, ch. 123, §6; 1923, ch. 84, §§2, 5; Shan. Supp., §3608a142; Code 1932, §6856; Acts 1941, ch. 20, §1; 1941, ch. 90, §2; 1943, ch. 120, §1; C. Supp. 1950, §6856; Acts 1976, ch. 495, §1; 1976, ch. 602, §1; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-906; Acts 1988, ch. 525, §1; 1997, ch. 330, §2; 1999, ch. 520, §41.]

### **TN 50-6-107**

#### **Application to coal mine operators and employees.**

All the provisions of the Workers' Compensation Law shall apply to coal mine operators and to their employees. [Code 1932, §6857; Acts 1972, ch. 699, §1; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.),§50-907.]

### **TN 50-6-108**

#### **Right to compensation exclusive.**

(a) The rights and remedies herein granted to an employee subject to the Workers' Compensation Law on account of personal injury or death by accident, including a minor whether lawfully or unlawfully employed, shall exclude all other rights and remedies of such employee, such employee's personal representative, dependents or next of kin, at common law or otherwise, on account of such injury or death.

(b) This section shall not be construed to preclude third party indemnity actions against an employer who has expressly contracted to indemnify such third party. [Acts 1919, ch. 123, §8;

Shan. Supp., §3608a157; Code 1932, §6859; Acts 1961, ch. 184, §2; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-908; Acts 1985, ch. 326, §1.]

### **TN 50-6-109**

#### **Nonperformance of statutory duty not relieved.**

Nothing in the Workers' Compensation Law shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty. [Acts 1919, ch. 123, §9; Shan. Supp., §3608a158; Code 1932, §6860; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-909.]

### **TN 50-6-110**

#### **Injuries not covered -- Drug and alcohol testing.**

(a) No compensation shall be allowed for an injury or death due to the employee's willful misconduct or intentional self-inflicted injury, or due to intoxication or illegal drugs, or willful failure or refusal to use a safety appliance or perform a duty required by law.

(b) If the employer defends on the ground that the injury arose in any or all of the above stated ways, the burden of proof shall be on the employer to establish such defense.

(c)(1) In cases where the employer has implemented a drug-free workplace pursuant to chapter 9 of this title, if the injured employee has, at the time of the injury, a blood alcohol concentration level equal, as determined by blood or breath testing, to or greater than ten hundredths of one percent (.10%) by weight for non-safety sensitive positions, and four hundredths of one percent (.04%) for safety-sensitive positions, or if the injured employee has a positive confirmation of a drug as defined in §50-9-103, it is presumed that such drug or alcohol was the proximate cause of the injury. This presumption may be rebutted by a preponderance of the evidence that such drug or alcohol was not the proximate cause of injury. Percent by weight of alcohol in the blood must be based upon grams of alcohol per one hundred (100) milliliters of blood. If the results are positive, the testing facility must maintain the specimen for a minimum of three hundred sixty-five (365) days at minus twenty degrees Celsius (-20 ° C.). Blood serum may be used for testing purposes under this chapter; however, if this test is used, the presumptions under this section do not arise unless the blood alcohol level is proved to be medically and scientifically equivalent to or greater than the comparable blood alcohol level that would have been obtained if the test were based on percent by weight of alcohol in the blood. However, if, before the accident, the employer had actual knowledge of and acquiesced in the employee's presence at the workplace while under the influence of such alcohol or drug, the employer retains the burden of proof in asserting any defense under subsections (a) and (b) and this subsection does not apply.

(2) If the injured worker refuses to submit to a drug test, it shall be presumed, in the absence of a preponderance of the evidence to the contrary, that the proximate cause of the injury was the influence of drugs, as defined in §50-9-103.

(3) The commissioner of labor and workforce development shall provide by rule for the authorization and regulation of drug testing policies, procedures and methods. Testing of injured employees pursuant to a drug-free workplace program under chapter 9 of this title shall not commence until such rules are adopted. [Acts 1919, ch. 123, §10; Shan. Supp., §3608a159; Code 1932, §6861; T.C.A. (orig. ed.), §50-910; Acts 1994, ch. 765, §1; 1996, ch. 944, §49; 1999, ch. 520, §41.]

## **TN 50-6-111**

### **Defenses not available to employer failing to secure payment of compensation.**

No employer who fails to secure payment of compensation as required by the Workers' Compensation Law shall, in any suit brought against such employer by an employee covered by such law or by the dependent or dependents of such an employee, to recover damages for personal injury or death arising from accident, be permitted to defend such suit upon any of the following grounds:

- (1) The employee was negligent;
- (2) The injury was caused by the negligence of a fellow servant or fellow employee; or
- (3) The employee had assumed the risk of the injury. [Acts 1919, ch. 123, §11; Shan. Supp., §3608a160; Code 1932, §6862; Acts 1973, ch. 379, §2; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-911.]

## **TN 50-6-112**

### **Actions against third persons.**

(a) When the injury or death for which compensation is payable under the Workers' Compensation Law was caused under circumstances creating a legal liability against some person other than the employer to pay damages, the injured worker, or such injured worker's dependents, shall have the right to take compensation under such law, and such injured worker, or those to whom such injured worker's right of action survives at law, may pursue such injured worker's or their remedy by proper action in a court of competent jurisdiction against such other person.

(b) In the event of a recovery from such other person by the worker, or those to whom such worker's right of action survives, by judgment, settlement or otherwise, the attorney representing such injured worker, or those to whom such injured worker's right of action survives, and effecting the recovery, shall be entitled to a reasonable fee for the attorney's services, and the attorney shall have a first lien therefor against the recovery; provided, that if the employer has engaged other counsel to represent the employer in effecting recovery against such other person, then a court of competent jurisdiction shall, upon application, apportion the reasonable fee between the attorney for the worker and the attorney for the employer, in proportion to the services rendered.

(c)(1) In event of such recovery against such third person by the worker, or by those to whom such worker's right of action survives, by judgment, settlement or otherwise, and the employer's maximum liability for workers' compensation under this chapter has been fully or partially paid and discharged, the employer shall have a subrogation lien therefor against such recovery, and the employer may intervene in any action to protect and enforce such lien.

(2) In the event the net recovery by the worker, or by those to whom such worker's right of action survives, exceeds the amount paid by the employer, and the employer has not, at the time, paid and discharged the employer's full maximum liability for workers' compensation under this chapter, the employer shall be entitled to a credit on the employer's future liability, as it accrues, to the extent the net recovery collected exceeds the amount paid by the employer.

(3) In the event the worker, or those to whom such worker's right of action survives, effects a recovery, and collection thereof, from such other person, by judgment, settlement or otherwise, without intervention by the employer, the employer shall nevertheless, be entitled to a credit on the employer's future liability for workers' compensation, as it accrues under this chapter, to the extent of the net recovery.

(d)(1) Such action against such other person by the injured worker, or those to whom such injured worker's right of action survives, must be instituted in all cases within one (1) year from the date of injury.

(2) Failure on the part of the injured worker, or those to whom such injured worker's right of action survives, to bring such action within the one (1) year period shall operate as an assignment to the employer of any cause of action in tort which the worker, or those to whom such worker's right of action survives, may have against any other person for such injury or death, and such employer may enforce same in such employer's own name or in the name of the worker, or those to whom such worker's right of action survives, for such the employer's benefit, as such employer's interest may appear, and the employer shall have six (6) months after such assignment within which to commence such suit.

(3) If the cause of action described in subsection (a) arises in a jurisdiction other than Tennessee and such other jurisdiction has a statute of limitations for personal injury and wrongful death greater than the one (1) year statute of limitations provided herein, the court hearing the cause of action shall apply the statute of limitations which provides the injured worker, or those to whom such injured worker's right of action survives, the greatest amount of time in which to institute an action.

(4) Under no circumstances shall the negligent party described in subsection (a) benefit from this subsection (d). [Acts 1919, ch. 123, §14; Shan. Supp., §3608a163; Code 1932, §6865; Acts 1949, ch. 277, §1; C. Supp. 1950, §6865; Acts 1963, ch. 333, §1; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-914; Act 1985, ch. 393, §2.]

### **TN 50-6-113**

#### **Liability of principal, intermediate contractor or subcontractor.**

(a) A principal, or intermediate contractor, or subcontractor shall be liable for compensation to any employee injured while in the employ of any of the subcontractors of the principal, intermediate contractor, or subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer.

(b) Any principal, or intermediate contractor, or subcontractor who pays compensation under the foregoing provisions may recover the amount paid, from any person who, independently of this section, would have been liable to pay compensation to the injured employee, or from any intermediate contractor.

(c) Every claim for compensation under this section shall be in the first instance presented to and instituted against the immediate employer, but such proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal or intermediate contractor; provided, that the collection of full compensation from one (1) employer shall bar recovery by the employee against any others, nor shall the employee collect from all a total compensation in excess of the amount for which any of the contractors is liable.

(d) This section applies only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are otherwise under the principal contractor's control or management.

(e) A subcontractor under contract to a general contractor may elect to be covered under any policy of workers' compensation insurance insuring the contractor upon written agreement of the contractor, by filing written notice thereof, on a form prescribed by the commissioner of labor and

work force development, with the division of workers' compensation. It is the responsibility of the general contractor to file such written notice with the division. Failure of the general contractor to file such written notice shall not operate to relieve or alter the obligation of an insurance company to provide coverage to a subcontractor when such subcontractor can produce evidence of payment of premiums to the insurance company for such coverage. Such election shall in no way terminate or affect the independent contractor status of the subcontractor for any other purpose than to permit workers' compensation coverage. Such election of coverage may be terminated by the subcontractor or general contractor by providing written notice of such termination to the division and to all other parties consenting to the prior election. Such termination shall be effective thirty (30) days from the date of such notice to all other parties consenting to the prior election and to the division.

(f)(1) Except as provided in subdivision (f)(4), any person engaged in the construction industry, including principal contractors, intermediate contractors, or subcontractors, shall be required to carry workers' compensation insurance. This requirement shall apply whether or not the person employs fewer than five (5) employees. Sole proprietors and partners shall not be required to carry workers' compensation insurance on themselves. In addition, the provisions of this subsection shall not apply to persons building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on their own property for their own use and for which the person receives no compensation.

(2) Nothing within this subsection shall be construed to impact any person whose employment at the time of injury is casual as provided in Section 50-6-106.

(3) For purposes of this subsection, a person engaged in the construction industry means any person or entity who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement, or any other construction undertaking.

(4) The provisions of this subsection shall not apply in counties having a population, according to the 1990 federal census or any subsequent federal census, of not less than six thousand seven hundred (6,700) nor more than six thousand nine hundred fifty (6,950) and not less than forty-four thousand five hundred (44,500) nor more than forty five thousand (45,000). [Acts 1919, ch. 123, §15; Shan. Supp., §3608-164; Code 1932, §6866; T.C.A. (orig. ed.), §50-915; Acts 1988, ch. 525, §2; 1992, ch. 793, §1; 1997, ch. 330, §§3, 4; 1998, ch. 1024, §23; 1999, ch520, § 41.]

## **TN 50-6-114**

### **Supremacy of chapter -- Setoffs for payments by disability plan.**

(a) No contract or agreement, written or implied, or rule, regulation or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this chapter except as herein provided.

(b) However, any employer may set off from temporary total, temporary partial, and permanent partial and permanent total disability benefits any payment made to an employee under an employer funded disability plan for the same injury, provided that the disability plan permits such an offset. Such an offset from a disability plan may not result in an employee receiving less than

the employee would otherwise receive under the Workers' Compensation Law. In the event that a collective bargaining agreement is in effect, this provision shall be subject to the agreement of both parties. [Acts 1919, ch. 123, §16; Shan. Supp., §3608a165; Code 1932, §6867; T.C.A. (orig. ed.), §50-916; Acts 1996, ch. 919, §1.]

### **TN 50-6-115**

#### **Extraterritorial application of chapter.**

If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or, in the event of the employee's death, the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, the employee, or in the event of the employee's death resulting from such injury, the employee's dependents, shall be entitled to the benefits provided by this chapter; provided, that at the time of such injury:

- (1) The employment was principally localized within this state;
- (2) The contract of hire was made in this state; or
- (3) If at the time of the injury the injured worker was a Tennessee resident and there existed a substantial connection between this state and the particular employer and employee relationship. [Acts 1919, ch. 123, § 19; Shan. Supp., § 3608a168; Code 1932, § 6870; Acts 1975, ch. 85, § 1; 1976, ch. 389, § 1; T.C.A. (orig. ed.), § 50-917; Acts 2004, ch. 648, § 1.]

### **TN 50-6-116**

#### **Construction of chapter.**

The rule of common law requiring strict construction of statutes in derogation of common law shall not be applicable to the provisions of the Workers' Compensation Law, but the same is declared to be a remedial statute which shall be given an equitable construction by the courts to the end that the objects and purposes of this chapter may be realized and attained. [Acts 1919, ch. 123, §47; Shan. Supp., §3608a197; Code 1932, §6901; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-918.]

### **TN 50-6-117**

#### **Suits by corporation officer against employer.**

Every employee who is a corporation officer and who elects not to operate under the provisions of the Workers' Compensation Law, in any action to recover damages for personal injury or death by accident brought against an employer who has elected to operate under such law, shall proceed as at common law, and the employer in such suit may avail himself of all common-law defenses. [Acts 1975, ch. 198, §3; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-919.]

### **TN 50-6-118**

#### **Penalties.**

(a) The division of workers' compensation shall by rule promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, establish and collect penalties for the following:

- (1) Failure of a covered employer to provide workers' compensation coverage or qualify as a self-insurer;
  - (2) Late filing of accident reports;
  - (3) Bad faith denial of claims;
  - (4) Late filing of notice of denial of claim;
  - (5) [Deleted by 2001 amendment.]
  - (6) Late filing of notice of change in benefit payments;
  - (7) Late filing with the department of notice of filing of lawsuits by employees or employee representatives; and
  - (8) Late filing of judgments by insurance companies or by employers, if self-insured.
- (b) All penalties collected by the department from an employer for failure to provide workers' compensation coverage or failure to qualify as a self-insurer shall be paid into and become a part of the uninsured employers fund. All other penalties collected by the department shall be paid into and become a part of the second injury fund. [Acts 1985, ch. 393, § 18; 1999, ch. 520, § 41; 2000, ch. 972, § 3; 2001, ch. 192, § 8; 2004, ch. 962, § 8.]

#### **TN 50-6-119**

##### **Information awareness programs.**

- (a) In order to provide greater awareness among employers and employees of the rights and obligations of the workers' compensation laws, the division of workers' compensation shall institute an information awareness program. Such program shall:
- (1) Involve a statewide effort to consult with employers on the actions required;
  - (2) Provide that employers with frequent incidents of injuries be targeted for referral to appropriate agencies on accident prevention;
  - (3) Provide education and information aimed at preventing disputes and delays in the processing of claims, through the use of speakers' seminars and conferences;
  - (4) Provide a system to communicate developments in the law to interested groups;
  - (5) Provide injured employees with complete information on their rights to compensation and day-to-day assistance with problems on their claims;
  - (6) Develop general informational literature and audio-visual aids for both employees and employers; and
  - (7) Provide a toll-free number for employers and employees to receive information from and ask questions of the department.
- (b) Any publications for distribution under this section must be published in accordance with the rules, regulations, policies and procedures of the state publications committee. [Acts 1985, ch. 393, §19; 1990, ch. 1024, §29; 1999, ch. 520, §41.]

#### **TN 50-6-120**

##### **Liability of construction design professionals.**

- (a) No construction design professional, or any employee of the foregoing, who is retained to perform professional services on a construction project, shall be liable for the personal injury or death of any non-employee of the construction design professional, working on the construction

project, unless the construction design professional or any employee thereof is guilty of negligence which is a proximate cause of the injury or death of the non-employee.

(b) Nothing in the provisions of this section shall be construed to affect the rights or responsibilities of any person under the Workers' Compensation Law, compiled in this chapter.

(c) Rule 11 of the Tennessee Rules of Civil Procedure shall apply in all actions against construction design professionals. [Acts 1988, ch. 923, §§2 - 4.]

## **TN 50-6-121**

### **Advisory council on workers' compensation.**

(a) (1) There is created an advisory council on workers' compensation. There shall be seven (7) voting members of the council, with three (3) representing employers, three (3) representing employees, and one (1) member, who shall serve as the chair and who shall be the state treasurer or the state treasurer's designee. There shall be seven (7) nonvoting members of the council. All members shall have a demonstrable working knowledge of the workers' compensation system.

(A) The chair shall preside at meetings of the council and, under the general direction of the council, shall supervise the work of the staff of the council. The chair may vote only on matters related to the administration of the council or the council's research. The chair is not permitted to vote on any matter that constitutes the making of a policy recommendation to the governor or to the general assembly.

(B) The speaker of the house of representatives, the speaker of the senate and the governor shall each appoint one (1) employer and one (1) employee representative to the council, who shall be voting members. Representatives, officers and employees from labor organizations or business trade organizations are eligible for appointment. In making the appointments of the employer representatives, the appointing authorities shall strive to ensure a balance of a commercially insured employer, self-insured employer or an employer who operates a small business. At least one (1) employee representative shall be from organized labor and shall be selected from a list of three (3) names provided by the state labor council of the AFL-CIO. Proxy voting is prohibited by voting members of the council; provided, however, that in instances where a voting member will be absent from a vote of the council, the member's appointing authority is authorized to appoint an alternate or designee for such vote or votes.

(C) Voting members shall serve four-year terms and the terms shall be staggered so that the terms of only three (3) voting members shall terminate at the same time. The terms of the voting members who are serving as of June 30, 2003, shall be amended as follows: those members whose terms are scheduled to expire in 2004 shall expire on June 30, 2004, and the successors shall serve a four-year term to begin on July 1, 2004, and to end on June 30, 2008, and those members whose terms are scheduled to expire in 2006 shall expire on June 30, 2006, and the successors shall serve a four-year term to begin on July 1, 2005, and to expire on June 30, 2010. Thereafter, all four-year terms shall begin on July 1 and terminate on June 30, four (4) years thereafter.

(D) The Governor shall also appoint seven (7) nonvoting members of the council as follows: one (1) to represent local governments, one (1) to represent insurance companies, two (2) to represent health care providers and three (3) attorneys. The nonvoting local government representative shall be appointed from a list of three (3) names submitted jointly by the Tennessee Municipal League and the Tennessee County Services Association. The Tennessee Municipal League and the Tennessee County Services Association may alternate recommendations between municipal and

county representatives. The nonvoting insurance company representative shall be appointed from either a list of three (3) names submitted by the Alliance of American Insurers or a list of three (3) names submitted by the American Insurance Association. One nonvoting health care provider representative shall be appointed from a list of three (3) names submitted by the Tennessee Medical Association and one nonvoting healthcare provider representative shall be appointed from a list of three (3) names submitted by the Tennessee Hospital Association. The nonvoting attorney members shall be appointed as follows: one (1) from a list of three (3) names submitted by the Tennessee Trial Lawyers Association, who shall primarily represent injured workers' compensation claimants; one (1) from a list of three (3) names submitted by the Tennessee Defense Lawyers Association, who shall primarily represent employers or workers' compensation insurers; and one (1) from a list of three (3) names submitted by the Tennessee Bar Association.

(E) Beginning with the appointments made in calendar year 2003, the nonvoting members appointed by the governor shall serve the following terms: the local government representative, the health care representative selected from a list submitted by the Tennessee Medical Association, and the attorney selected from the list submitted by the Tennessee Bar Association shall serve from the date of appointment until June 30, 2005; the insurance company representative, the health care representative selected from the list submitted by the Tennessee Hospital Association, the attorney selected from the list submitted by the Tennessee Trial Lawyers Association, and the attorney selected from the list submitted by the Tennessee Defense Lawyers Association shall serve from the date of appointment until June 30, 2007. Thereafter, the nonvoting members shall be appointed to four-year terms that shall begin on July 1 and terminate on June 30, four (4) years thereafter.

(F) The chair and vice-chair of the special joint committee on workers' compensation, the commissioners of labor and workforce development and commerce and insurance or their designees, shall be ex officio, nonvoting members of the council.

(2) Each voting and nonvoting member of the advisory council on workers' compensation shall, upon the expiration of such member's term, be eligible for reappointment and shall serve until a successor is appointed. In the event a member resigns or becomes ineligible for service during such member's term, a successor shall be appointed by the appropriate appointing authority to serve the remainder of the term.

(3) No employer shall discriminate in any manner against an employee who serves on the advisory council because of such service. Employees who serve on the advisory council shall not be denied any benefit from their employer because of such service. Travel expenses of the employee representatives on the council shall be reimbursed pursuant to subsection (b); however, employers may choose to pay the travel expenses of their employees' service on the advisory council according to their own policies.

(b) Members of the council shall not be paid but may be reimbursed for travel expenses. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(c) The council shall meet at least twice each year. It shall annually review workers' compensation in Tennessee and shall issue a report of its findings and conclusions on or before July 1 of each year. The annual report shall be sent to the governor, the speakers of the house and senate, the chair and vice-chair of the special joint committee on workers' compensation, the commissioner of labor and workforce development, the commissioner of commerce and insurance and the clerks

of the house and senate. Notice of the publication of the annual report and all other reports published by the council shall be provided to all members of the general assembly pursuant to § 3-1-114. 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.

(d) In performing its responsibilities, the council's role shall be strictly advisory, but it may:

(1) Make recommendations to the governor, the general assembly, the special joint committee on workers' compensation, the standing committees of each house that review the status of the workers' compensation system, the commissioner of labor and workforce development and the commissioner of commerce and insurance relating to the promulgation or adoption of legislation or rules;

(2) Make recommendations to the commissioner of labor and workforce development and the commissioner of commerce and insurance regarding the method and form of statistical data collections; and

(3) Monitor the performance of the workers' compensation system in the implementation of legislative directives.

(e) The council is authorized to retain staff and professional assistance, such as consultants and actuaries, subject to budgetary approval in the general appropriations act. For administrative purposes, the council shall be attached to the department of labor and workforce development for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit and other related items. The autonomy of the council and its authority are not affected hereby and the commissioner of labor and workforce development shall have no administrative or supervisory control over the council or its employees. Employees of the council shall not have the status of career service employees pursuant to title 8.

(f) The council shall develop evaluations, statistical reports and other information from which the general assembly may evaluate the impact of the legislative changes to the workers' compensation law, including, but not limited to the Reform Acts of 1992 and 1996 and subsequent changes to the workers' compensation system.

(g) Within its annual report to the general assembly, the council shall report on activities and outcomes related to the Workers' Compensation Fraud Act, compiled in title 56, chapter 47. The department of commerce and insurance, department of labor and workforce development, Tennessee bureau of investigation and the district attorneys general conference shall cooperate with the council in the development of information for inclusion in such report.

(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.

(i) 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 standing committee to which the bill is referred may refer the bill to the council. The council's review of bills relating to workers' compensation should include, but not be limited to, bills that propose to amend chapters 3, 6, 7, and 9 of this title, and title 56, chapters 5 and 47. All bills referred to the council shall be reported back to the standing committee to which they were

assigned as quickly as reasonably possible. Notwithstanding the absence of a report from the council, the standing committee is free to consider the bill at any time. The chair making such referral shall immediately notify the prime sponsors of such referral and the council shall not review and comment on the proposed legislation until the prime sponsors have been notified. The comments of the council shall not include recommendations for or against passage of the proposed legislation but shall describe the potential effects of the proposed legislation on the workers' compensation system and its operation and any other information or suggestions which the council may think helpful to the sponsors, the standing committees or the general assembly.

(j) The council shall review the provisions of § 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.

(k) The council shall review the definition of "injury" and "personal injury" as defined in § 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.

(l) The council shall review the issue of replacing the existing system for adjudicating workers' compensation claims with an administrative commission or review board. On or before December 1, 2004, the council shall make recommendations to the governor and the general assembly concerning any proposed changes to the existing system.

(m) 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. [Acts 1992, ch. 900, § 4; 1996, ch. 944, §§ 4-7; 1997, ch. 235, §§ 1, 2; 1997, ch. 533, § 49; 1998, ch. 1024, §§ 13, 20; 1999, ch. 520, § 41; 2000, ch. 852, § 3; 2001, ch. 192, §§ 11, 12; 2002, ch. 695, §§ 1, 2, 6; 2003, ch. 359, § 1; 2004, ch. 962, §§ 26, 27, 30, 43, 45.]

## **TN 50-6-122**

### **Case management and utilization review -- Use of HMOs and PPOs -- Legislative intent -- Claims by health care providers -- Collection agencies -- Reports to credit bureau.**

(a)(1) It is the intent of the general assembly that quality medical care services shall be available to injured and disabled employees. It is also the legislative intent to control increasing medical costs in workers' compensation matters by establishing cost control mechanisms to ensure cost-effective delivery of medical care services by employing a program of medical case management and a program to review the utilization and quality of medical care services.

(2) In order to assure that in workers' compensation cases quality medical care is rendered and to control medical care costs, an employer is authorized to use, but is not required to use, health maintenance organizations (HMO) and preferred provider organizations (PPO). An HMO or PPO may contract with medical care providers as permitted by law. Such contracts are authorized to use, but are not limited to the use of, the following managed care methodologies;

(A) Medical bill review;

(B) Establishment of medical practice guidelines;

(C) Case management, subject to the provisions of §50-6-123;

(D) Utilization review, subject to the provisions of §50-6-124; and

(E) Peer review programs.

(3) The provisions of §50-6-204(a)(4), relative to medical care, shall apply to any managed care methodology employed pursuant to this section. For the purposes of §50-6-204(a)(4), physicians and surgeons in the same health maintenance organization or preferred provider organization are considered to be associated in practice together if they share a common employer for purposes of their clinical practice, or are associated together in a group practice.

(b) A health care provider shall not pursue a private claim against a workers' compensation claimant for all or part of the costs of health care services provided to the claimant by the provider unless:

(1) The injury is finally adjudicated not to be compensable under this chapter;

(2) The physician or surgeon, as provided in §50-6-204, who was not authorized by the employer at the time the services were rendered, knew that such physician or surgeon was not an authorized physician or surgeon; or

(3) The employee knew that the physician or surgeon was not an authorized physician or surgeon; provided, that subdivisions (b)(2) and (3) do not apply to emergency care.

(c) A health care provider shall not employ a collection agency or make a report to a credit bureau concerning a private claim against an employer for all or part of the costs of medical care provided to an employee that are not paid by the employer's workers' compensation insurer without having first exhausted all administrative remedies as provided by §50-6-226(a)(4). The medical director may include the insurer in such administrative process. [Acts 1992, ch. 900, §6; 1996, ch. 944, §§8, 10.]

### **TN 50-6-123**

#### **Case management system for coordinating medical care services.**

(a) The commissioner shall establish, pursuant to the commissioner's rule and regulation-making authority, a system of case management for coordinating the medical care services provided to employees claiming benefits under this chapter.

(b) 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:

(1) Developing a treatment plan to provide appropriate medical care services to an injured or disabled employee;

(2) Systematically monitoring the treatment rendered and the medical progress of the injured or disabled employee;

(3) Assessing whether alternate medical care services are appropriate and delivered in a cost-effective manner based on acceptable medical standards;

(4) Ensuring that the injured or disabled employee is following the prescribed medical care plan; and

(5) Formulating a plan for return to work with due regard for the employee's recovery and restrictions and limitations, if any.

(c) The commissioner may contract with an independent organization, not owned by or affiliated with any carrier authorized to write workers' compensation insurance in the state of Tennessee, to assist with the administration of the provisions of this section.

(d) Nothing in this section shall prevent an employer from establishing its own program of case management that meets the guidelines promulgated by the commissioner in rules and regulations.

(e) [Deleted by 2004 amendment.]

(f) Medical care, treatment, therapy or services provided at the employee's residence pursuant to title 50, chapter 6, shall not be considered home health services as defined in § 68-11-201(15) [§ 68-11-201(17)], when provided pursuant to direction of the employee's attending physician in the following specific circumstances only:

(1) By a licensed health care provider who routinely provides services to employees at the place of employment, if the services rendered by such provider at the employee's residence are of the same type rendered by the provider at the place of employment; or

(2) By a licensed physical therapist, occupational therapist or speech therapist practicing independently of a home health agency, when the employee's attending physician determines that it is in the best interest of the employee to be treated by such independent therapist because of the therapist's expertise in workplace injuries. [Acts 1992, ch. 900, § 7; 1996, ch. 944, § 9; 2001, ch. 148, § 1; 2004, ch. 962, §§ 28, 29.]

#### **TN 50-6-124**

##### **Utilization review system -- Pre-admission review -- Penalties for rendering excessive or inappropriate services -- Chiropractic and physical therapy services.**

(a) The commissioner of labor and workforce development shall establish a system of utilization review of selected outpatient and inpatient health care providers to employees claiming benefits under the Workers' Compensation Law by providers qualified pursuant to law or the utilization review accreditation commission.

(b) The commissioner shall also establish a system of pre-admission review of all hospital admissions, except for emergency services. However, utilization review pursuant to subsections (a) and (b) shall begin within one (1) working day of all emergency hospital admissions.

(c) Pursuant to the commissioner's established system of utilization review, the commissioner may contract with an independent utilization review organization, not owned by or affiliated with any carrier authorized to write workers' compensation insurance in the state of Tennessee, to provide utilization review, including peer review.

(d) Nothing in this section shall prevent an employer from electing to provide utilization review; however, if the employee, provider or any other party not contractually bound to the employer's utilization review program disagrees with that employer's utilization review, then that employee, provider or other party shall have recourse to the commissioner's utilization review program, as provided for in this section.

(e) Pursuant to the utilization review conducted by the commissioner, including providing an opportunity for a hearing, any health care provider who is found by the commissioner to have rendered excessive or inappropriate services may be subject to:

(1) A forfeiture of the right to payment for those services that are found to be excessive or inappropriate;

(2) A civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); or

(3) A temporary or permanent suspension of the right to provide medical care services for workers' compensation claims if the health care provider has established a pattern of violations.

(f) The commissioner is directed to review the role of chiropractic and physical therapy services in workers' compensation costs and to determine whether such services should be included in the utilization review system established pursuant to this section. In such review, the commissioner shall consult with the medical care and cost containment committee. The commissioner shall conclude such review by January 1, 1997, and report to the advisory council on workers' compensation and the special joint committee on workers' compensation. If the review determines that chiropractic or physical therapy services merit inclusion in the utilization review system, the commissioner shall include such services by rule in the system. [Acts 1992, ch. 900, §8; 1996, ch. 944, §11; 1999, ch. 520, §41.]

## **TN 50-6-125**

### **Medical care and cost containment committee - Penalties for imposing excessive charges [Amended effective July 1, 2005. See the Compiler's Notes].**

(a) The commissioner shall appoint a medical care and cost containment committee. The committee shall approve regulations pursuant to § 50-6-233(c)(7) before they become effective, assist the commissioner in their implementation, and advise the commissioner at the commissioner's request on issues relating to medical care and cost containment in the workers' compensation system.

(b) (1) The committee shall be composed of fourteen (14) voting members appointed by the commissioner as follows:

(A) Three (3) members shall be physicians licensed to practice medicine and surgery under title 63, chapter 6, and shall be appointed from a list of nominees submitted by the Tennessee Medical Association;

(B) Two (2) members shall represent employers and shall be appointed from a list of nominees submitted by the Tennessee Chamber of Commerce and Industry;

(C) One (1) member shall represent employers and shall be appointed from a list of nominees submitted by the Associated Builders and Contractors, Inc.;

(D) Three (3) members shall represent employees and shall be appointed from a list of nominees submitted by the Tennessee AFL-CIO State Labor Council;

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

(F) One (1) member shall be a pharmacist and shall be appointed from a list submitted by the Tennessee Pharmacists Association; and

(G) One (1) member shall represent the health insurance industry.

(2) The medical director shall serve as a nonvoting ex officio member of the committee.

(3) An organization which submits a list of nominees shall list at least three (3) nominees for each of the committee positions for which it is requested to submit nominations. If the commissioner finds a list of nominees unsatisfactory, the commissioner shall return the list to the submitting organization. The organization shall submit another list within thirty (30) days. This process shall continue until the commissioner appoints a member. If an organization which is required to sub-

mit a list of nominees fails to do so within thirty (30) days of a request for such list by the commissioner, then the commissioner may appoint a member of such commissioner's own choosing.

(4) In making such appointments, the commissioner shall strive to achieve a geographic balance and, in the case of the physician members of the committee, shall assure to the extent possible that the membership of the committee reflects the diversity of specialties involved in the medical treatment and management of workers' compensation claimants.

(c) The members of the committee shall be appointed for terms of four (4) years. In order to provide staggered terms, in making the initial appointments to the committee: the representative of the health insurance industry, one (1) of the physicians, the pharmacist, one (1) representative of employees, and one (1) of the representatives 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. Each member of the committee shall, upon the expiration of such member's term, be eligible for reappointment and shall serve until a successor is appointed and qualified.

(d) Members of the committee shall serve without compensation but, when engaged in the conduct of their official duties as members of the committee, shall be entitled to reimbursement for travel expenses in accordance with uniform regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) [Effective until July 1, 2005] In voting on the approval of regulations pursuant to § 50-6-233(c)(7), the affirmative vote of at least five (5) members of the committee shall be required. For all functions and purposes five (5) members shall constitute a quorum. For all purposes, other than the promulgation of regulations, a majority vote of those present, after a quorum is present, shall be required for the transaction of business.

(f) [Effective until July 1, 2005] Pursuant to the review of charges, as authorized by rules approved by the medical care and cost containment committee, including providing an opportunity for a hearing, any health care provider who is found to have imposed excessive charges may be subject to:

(1) A forfeiture of the right to payment of excessive charges;

(2) A civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); and

(3) A temporary or permanent suspension of the right to provide medical care services for workers' compensation claims if the health care provider has established a pattern of violations. [Acts 1992, ch. 900, § 9; 1999, ch. 520, § 41; 2004, ch. 962, § 33.]

## **TN 50-6-126**

### **Medical director.**

The commissioner of labor and workforce development shall appoint a medical director who shall be the executive secretary and a non-voting ex-officio member of the medical committee. The medical director shall be appointed from a list of three (3) nominees submitted by the Tennessee Medical Association. If the commissioner finds the list of three (3) nominees to be unsatisfactory,

then the commissioner shall return the list to the Tennessee Medical Association and the association shall submit another list of nominees. This process shall be repeated, if necessary, until the commissioner selects a nominee to be medical director. The medical director may be a part-time employee, a full-time employee or a contract employee and shall perform the following functions for which the medical director shall be responsible to the commissioner or medical care and cost containment committee, as appropriate:

- (1) Institute administrative procedures that will enable the director to evaluate medical care to effect optimal treatment in workers' compensation cases;
- (2) Inquire into instances where the medical treatment or the physical rehabilitation provided appears to be deficient or incomplete and recommend corrective action when indicated;
- (3) Advise on the disposition of complaints of a physician's failure to furnish adequate medical care as required by this law or by rules and regulations adopted by the commissioner, the disposition of complaints concerning other aspects of the medical management of a workers' compensation case or the failure to render required reports, and the disposition of complaints of any affected party as to unreasonable interference with the medical management of a workers' compensation case;
- (4) Gather data and maintain records necessary to fulfill the medical director's responsibilities;
- (5) Conduct studies and prepare and issue reports on the medical aspect of workers' compensation cases;
- (6) Expedite the submission and processing of medical reports necessary to the processing of claims;
- (7) Advise health care providers of their rights and responsibilities under this chapter and under any rules or regulations promulgated thereto;
- (8) Advise the medical care and cost containment committee as to the reasonableness of fees for medical services in particular cases; and
- (9) Undertake such other functions as may be delegated to the medical director by the commissioner. [Acts 1992, ch. 900, §10; 1999, ch. 520, §41.]

### **TN 50-6-127**

#### **Public awareness program concerning workers' compensation fraud--Investigations and referrals.**

- (a) The commissioner, in consultation with the commissioner of commerce and insurance and appropriate law enforcement officials, shall implement a public awareness program concerning workers' compensation fraud.
- (b) The division of workers' compensation shall investigate to determine whether any fraudulent conduct relating to workers' compensation is being practiced, and shall refer to an appropriate law enforcement agency any finding of fraud.
- (c) [Deleted by 2003 amendment.]

[Acts 1992, ch. 900, § 21; 1996, ch. 944, § 12; 1999, ch. 520, § 41; 2000, ch. 852, § 14; 2003, ch. 355, § 16.]

## **TN 50-6-128**

### **Penalty for employer causing compensable claim to be paid by insurance or failing to provide necessary medical treatment.**

If any employer knowingly, willfully, and intentionally causes a medical or wage loss claim to be paid under health or sickness and accident insurance, or fails to provide reasonable and necessary medical treatment, including a failure to reimburse when the employer knew that the claim arose out of a compensable work-related injury and should have been submitted under its workers' compensation insurance coverage, then a civil penalty of five hundred dollars (\$500) shall be assessed against such employer, and the employer may not offset any sickness and accident income benefit paid to the employee against its temporary total disability benefit payment liability due to the employee pursuant to the provisions of this chapter. The commissioner of labor and workforce development has the authority to assess and collect such civil penalty. [Acts 1992, ch. 900, § 24; 2000, ch. 734, § 1.]

## **TN 50-6-129**

### **Rules and regulations pertaining to certificates of compliance with county zoning ordinances.**

The commissioner shall promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement the provisions of §§13-7-117 and 13-7-211, pertaining to certificates of compliance with county zoning ordinances. Such rules and regulations shall include forms issued by the department of labor which indicate evidence of compliance with the provisions of §§50-6-405 and 50-6-406. [Acts 1993, ch. 520, §3; 1999, ch. 520, §41.]

## **TN 50-6-130**

### **Special joint committee.**

(a) There is hereby created a special joint committee of the general assembly on workers' compensation issues composed of eight (8) members of the senate appointed by the speaker of the senate and eight (8) members of the house of representatives appointed by the speaker of the house of representatives.

(b) This committee shall monitor implementation of the Workers' Compensation Reform Act of 1992 and subsequent reforms, and shall study such other programs, initiatives or topics related to the workers' compensation system as the members deem appropriate.

(c) The committee shall report to the governor and general assembly at least annually.

(d) (1) The departments of labor and workforce development and commerce and insurance shall provide the committee with such information as it may require.

(2) The comptroller of the treasury and the state treasurer shall provide staff support to the committee.

(e) The special committee shall terminate on June 30, 2007.

(f) (1) Members of the committee shall be entitled to reimbursement for their expenses in attending meetings of the committee or any subcommittee thereof at the same rates and in the same manner as when attending the general assembly.

(2) The committee shall elect from its membership a chair, a vice chair and such other officers as it deems necessary.

(g) The committee shall promptly review and comment on any bill referred to the committee by a standing committee of the general assembly. The absence of comment by the committee shall not prohibit any standing committee from acting on a bill. The committee shall review legislation referred to it for comment with respect to its impact on the following:

- (1) Accidents and workplace safety;
- (2) Adequacy of benefits;
- (3) Stability and adequacy of relevant insurance markets;
- (4) The system of claim and dispute resolution; and
- (5) Such other matters as the committee may deem relevant.

[Acts 1996, ch. 944, § 2; 1997, ch. 533, § 1; 1999, ch. 520, § 4; 2001, ch. 192, § 1.]

### **TN 50-6-131**

#### **Confidentiality of medical records.**

Medical records provided to the division of workers' compensation in the course of its activities relative to benefit review conferences and the review of settlements pursuant to this chapter shall remain confidential and shall not be considered to be public records. [Acts 1996, ch. 944, §25; 1999, ch. 520, §41.]

### **TN 50-6-132**

#### **Report of employers failing to provide coverage.**

No later than December 31 of each year, the division of workers' compensation shall produce a report that includes a listing of the name of each covered employer that failed, during the preceding state fiscal year, to provide workers compensation coverage or qualify as a self-insured employer as required by law. Only those employers whose failure resulted in periods of non-coverage shall be included within the report. Such report shall also include the penalty assessed by the division and the payment status of such penalty. The report shall be provided to the advisory council on workers' compensation, the oversight committee on workers' compensation, and the chair, of the senate commerce, labor and agriculture committee and the house consumer and employee affairs committee. [Acts 1999, ch. 217, §1.]

### **TN 50-6-133**

#### **Continuing education programs on workers compensation.**

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. [Acts 2004, ch. 962, § 31.]

## **TN 50-6-134**

### **Annual review.**

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 Acts 2004, ch. 962 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. [Acts 2004, ch. 962, § 41.]

## **TN 50-6-201**

### **Notice of injury.**

(a) Every injured employee or such injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has no actual notice, written notice of the injury, and the employee shall not be entitled to physician's fees or to any compensation which may have accrued under the provisions of the Workers' Compensation Law from the date of the accident to the giving of such notice, unless it can be shown that the employer had actual knowledge of the accident; and no compensation shall be payable under the provisions of this chapter unless such written notice is given the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give such notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.

(b) In those cases where the injuries occur as the result of gradual or cumulative events or trauma, then the injured employee or such injured employee's representative shall provide notice to the employer of the injury within thirty (30) days after the employee:

(1) Knows or reasonably should know that such employee has suffered a work-related injury that has resulted in permanent physical impairment; or

(2) Is rendered unable to continue to perform such employee's normal work activities as the result of the work-related injury and the employee knows or reasonably should know that the injury was caused by work-related activities. [Acts 1919, ch. 123, § 22; Shan. Supp., § 3608a171; Code 1932, § 6872; impl. am. Acts 1980, ch. 534, § 1; T.C.A. (orig. ed.), § 50-1001; 2001, ch. 219, § 1.]

## **TN 50-6-202**

### **Contents and service of notice.**

(a)(1) The notice required to be given of the occurrence of an accident to the employer shall state in plain and simple language the name and address of the employee, the time, place, and nature and cause of the accident resulting in injury or death, and shall be signed by the claimant or by some person in the claimant's behalf, or by any one (1) or more of the claimant's dependents if the accident resulted in death to the employee.

(2) No defect or inaccuracy in the notice shall be a bar to compensation, unless the employer can show to the satisfaction of the tribunal in which the matter is pending that the employer was prejudiced by the failure to give the proper notice, and then only to the extent of such prejudice.

(b) The notice shall be given personally to the employer or to the employer's agent or agents having charge of the business in working at which the injury was sustained by the employee. [Acts 1919, ch. 123, §23; Shan. Supp., §3608a172; Code 1932, §6873; T.C.A. (orig. ed.), §50-1002.]

### **TN 50-6-203**

#### **Limitation of time, claims and actions [Amended effective January 1, 2005. See the Compiler's Notes].**

(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 § 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 filing a claim and submitting the compromise and settlement to the appropriate court for approval pursuant to § 50-6-206(a) or to the commissioner of labor and workforce development or the commissioner's designee pursuant to § 50-6-206(c). If the settlement is not approved, the parties shall then exhaust the benefit review conference process.

(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 § 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 or dependents 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 or dependents 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 § 50-6-240, to file a complaint with a court of competent jurisdiction as provided in § 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 (g), 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 § 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. [Acts 1919, ch. 123, § 24; Shan. Supp., § 3608a173; Code 1932, § 6874; Acts 1947, ch. 139, § 4; C. Supp. 1950, § 6874; impl. am. Acts 1980, ch. 534, § 1; T.C.A. (orig. ed.), § 50-1003; Acts 1996, ch. 944, § 13; 1998, ch. 1024, §§ 1, 2; 1999, ch. 520, § 41; 2004, ch. 962, § 14.]

## **TN 50-6-204**

**Medical treatment, attendance and hospitalization - Release of medical records - Reports - Disputes - Reimbursement or payment of expenses - Burial expenses - Physical examinations. [Variable effective dates. See the Compiler's Notes].**

(a) (1) The employer or the employer's agent shall furnish free of charge to the employee such medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus, including prescription eyeglasses and eye wear, such nursing services or psychological services as ordered by the attending physician and hospitalization, including such dental work made reasonably necessary by accident as herein defined, as may be reasonably required; provided, that within thirty (30) days after examination or treatment of an employee, a physician shall, upon request, furnish to the employer or to the employer's insurer and to the employee or the employee's attorney a complete medical report at a charge not to exceed ten dollars (\$10.00) for reports twenty (20) pages or less in length and twenty-five cents (25¢) per page

for each page copied after the first twenty (20) pages, as to the claimed injury, its effect upon the employee, the medical treatment prescribed, an estimate of the duration of required hospitalization, if any, and an itemized statement of charges for medical services to date. If an employer or an insurer has not previously requested copies of such records from a physician or hospital, then an attorney for an employer may request such records under this subdivision.

(2) (A) Any hospital in which the employee may have been hospitalized shall, within thirty (30) days of admission, also release its medical records to both the employee and the employer upon the request of either. The set of records for the employee may be released to either the employee or to the employee's attorney and the set of records for the employer may be released to either the employer, the insurer, a claims representative, or an attorney representing the employer or the insurer. Only the records pertaining to the current admission shall be released under this subdivision (a)(2)(A).

(B) If requested in writing by the employer or insurer, or by the employee or the employee's attorney, the physician and hospital shall also furnish subsequent prognosis reports, medical records and statements of charges at intervals of not less than sixty (60) days. No such relevant information developed in connection with treatment or examination for which compensation is sought by the employee shall be considered a privileged communication. The employee's consent shall not be required for the furnishing of such reports or records, and no physician or hospital furnishing such report or record shall incur any liability as a result thereof.

(3) Whenever it appears that the amount of medical benefits to which the employee may be entitled hereunder will exceed the amount of five thousand dollars (\$5,000), the insurer shall file written notice thereof with the division of workers' compensation, which shall, upon receipt of such notice, notify the employer that the claim for medical benefits for the employee will exceed the aforementioned amount.

(4) (A) [Amended effective July 1, 2005. See the Compiler's Notes.] The injured employee shall accept the medical benefits afforded hereunder; provided, that, except as provided in subdivision (a)(4)(B) or in subdivision (a)(4)(D), the employer shall designate a group of three (3) or more reputable physicians or surgeons not associated together in practice, if available in that community, from which the injured employee shall have the privilege of selecting the operating surgeon or the attending physician; and provided further, that the liability of the employer for such services rendered the employee shall be limited to such charges as prevail for similar treatment in the community where the injured employee resides.

(B) [Repealed effective June 30, 2005.] If the injury is a back injury, then the group of three (3) or more physicians or surgeons required to be designated pursuant to subdivision (a)(4)(A) shall be expanded to four (4), one of whom must be a doctor of chiropractic; provided, that no more than twelve (12) visits to such doctor of chiropractic shall be approved per back injury. The provisions of this subdivision (a)(4)(B) shall not apply to state or local government employees and shall not apply to workers' compensation self-insurer pools established pursuant to § 50-6-405(c)(1).

(C) [Deleted by 2001 amendment.]

(D) If the injury or illness requires the treatment of a physician or surgeon who practices orthopedic or neuroscience medicine, then the employer may appoint a panel of physicians or surgeons practicing orthopedic or neuroscience medicine required to be designated pursuant to subdivision (a)(4)(A) consisting of five (5) physicians, with no more than four (4) physicians affiliated in practice.

(E) In circumstances where an employee is offered a treating panel as described in subdivision (a)(4)(D), the injured employee shall be entitled to have a second opinion on the issue of surgery, impairment, and a diagnosis from that same panel of physicians selected by the employer.

(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.

(5) All cases of dispute as to the value of such services shall be determined by the tribunal having jurisdiction of the claim of the injured employee for compensation. Such tribunal may also deny payment of physicians' fees and hospital charges for failure to submit the reports as required herein.

(6) (A) When an injured worker is required by the worker's employer to travel to an authorized medical provider or facility located outside a radius of fifteen (15) miles from such insured worker's residence or workplace, then, upon request, such employee shall be reimbursed for reasonable travel expenses. The injured employee's travel reimbursement shall be calculated based on a per mile reimbursement rate, as defined in subdivision (a)(6)(B), times the total round trip mileage as measured from the employee's residence or workplace to the location of the medical provider's facility. The definition of "community" as contemplated by this subdivision shall apply only for the purposes of this section.

(B) The per mile reimbursement rate for the injured employee shall be not less than the mileage allowance authorized for state employees who have been authorized to use personally owned vehicles in the performance of their duties. This minimum per mile reimbursement rate shall be based on the last published comprehensive travel regulations promulgated by the department of finance and administration.

(b) (1) Where the nature of the injury or occupational disease, as defined in § 50-6-102, is such that it does not disable the employee but reasonably requires medical, surgical, psychological or dental treatment or care, medicine, surgery, dental and psychological treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus shall be furnished by the employer.

(2) In addition to any attorney fees provided for pursuant to the provisions of § 50-6-226, a court may award attorney fees and reasonable costs to include reasonable and necessary court reporter expenses and expert witness fees for depositions and trials incurred when the employer fails to furnish appropriate medical, surgical and dental treatment or care, medicine, medical and surgical supplies, crutches, artificial members and other apparatus to an employee provided for pursuant to a settlement or judgment under this chapter.

(c) In case death results from the injury or occupational disease, as defined in § 50-6-102, the employer shall, in addition to the medical services, etc., referred to above, and the second injury fund assessment referred to in § 50-6-208, pay the burial expenses of the deceased employee, not exceeding seven thousand five hundred dollars (\$7,500). If the deceased employee leaves no dependents entitled to compensation under the provisions of the Workers' Compensation Law, the employer shall pay to such employee's estate the additional benefit provided in § 50-6-209(b)(1)

and (2), and shall also be liable for the medical and hospital services, second injury fund assessment and burial expenses provided for herein.

(d) (1) The injured employee must submit to examination by the employer's physician at all reasonable times if requested to do so by the employer, but the employee shall have the right to have the employee's own physician present at such examination, in which case the employee shall be liable to such physician for such physician's services.

(2) Any medical report submitted to the employer based upon such examination, or a true copy of such report, shall be furnished by the employer to the employee upon request; provided, that the employer may, in the employer's discretion, furnish such report to the attorney for the employee or to a member of the employee's family.

(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 or evaluated an employee seeking workers' compensation benefits shall utilize the applicable edition of the AMA Guides as established in § 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 § 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.

(4) The employer shall pay for the services of the physician making the examination at the instance of the employer.

(5) [Amended effective July 1, 2005. See the Compiler's Notes.] In case of dispute as to the injury, the court may, at the instance of either party, or on its own motion, appoint a neutral physician of good standing and ability to make an examination of the injured person and report such physician's findings to the court, the expense of which examination shall be borne equally by the parties.

(6) Whenever the nature of the injury is such that specialized medical attention is required or indicated and such specialized medical attention is not available in the community in which the injured employee resides, the injured employee can be required to go, at the request of and at the expense of the employer, to the nearest location at which such specialized medical attention is available.

(7) If the injured employee refuses to comply with any reasonable request for examination or to accept the medical or specialized medical services which the employer is required to furnish under the provisions of this law, such injured employee's right to compensation shall be suspended and no compensation shall be due and payable while such injured employee continues such refusal.

(8) For accidents or injuries occurring on or after July 1, 2005, in case of a dispute as to the injury, other than disputes as to the degree of medical impairment, the court may, at the instance of either party or on its own motion, appoint a neutral physician of good standing and ability to make an examination of the injured person and report such physician's findings to the court, the expense of which examination shall be borne equally by the parties.

(e) In all death claims where the cause of death is obscure or is disputed, any interested party may require an autopsy, the cost of which is to be borne by the party demanding the same.

(f) Any physician whose services are furnished or paid for by the employer and who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge acquired by such physician in the course of such treatment or examination as same relates to the injury or disability arising therefrom.

(g) (1) If an emergency, or on account of the employer's failure or refusal to provide the medical care and services required by this law, the injured employee or the injured employee's dependents may provide the same, and the cost thereof not exceeding three hundred dollars (\$300), shall be borne by the employer; provided, that the pecuniary liability of such employer shall be limited to the charges for such service as prevail in the community where the services are rendered.

(2) All cases of dispute as to the value of such services shall be determined by the tribunal having jurisdiction of the matter of compensation to the employee.

(h) All psychological or psychiatric services available under subdivisions (a)(1) and (b)(1) shall be rendered only by psychologists or psychiatrists and shall be limited to those ordered upon the referral of physicians authorized under subdivision (a)(4).

(i) (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 the Uniform Administrative Procedures Act, compiled in 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 § 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 § 4-5-209(a)(4) or emergency rules under § 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 (i) is not intended to prohibit an employer, trust or pool, or insurer from negotiating lower fees in its own medical fee agreements. [Acts 1919, ch. 123, § 25; Shan. Supp., § 3608a174; Code 1932, § 6875; Acts 1941, ch. 90, § 3; 1943, ch. 117, § 1; 1949, ch. 227, § 2; C. Supp. 1950, § 6875; Acts 1953, ch. 111, § 1; 1957, ch. 234, § 1; 1959, ch. 62, § 1; 1959, ch. 172, § 1; 1963, ch. 362, § 3; 1967, ch. 313, § 3; 1971, ch. 134, § 3; 1973, ch. 379, § 4; 1977, ch. 417, § 1; 1978, ch. 521, § 1; impl. am. Acts 1980, ch. 534, § 1; Acts 1980, ch. 650, § 1; T.C.A. (orig. ed.), § 50-1004; Acts 1983, ch. 194, § 1; 1983, ch. 215, § 1; 1983, ch. 276, § 1; 1984, ch. 782, § 1; 1985, ch. 393, § 3; 1986, ch. 792, § 1; 1986, ch. 809, § 1; 1988, ch. 525, § 3; 1989, ch. 210, § 1; 1989, ch. 446, § 1; 1991, ch. 255, § 1; 1996, ch. 790, § 1; 1997, ch. 198, § 1; 1997, ch. 259, § 1; 1997, ch. 533, § 2; 1998, ch. 1024, §§ 21, 22; 1999, ch. 225, § 1; 1999, ch. 294, §§ 2-5; 1999, ch. 520, § 41; 2000, ch. 990, §§ 1, 3; 2001, ch. 192, §§ 9, 10; 2001, ch. 246, § 1; 2003, ch. 359, § 2; 2004, ch. 433, § 1; 2004, ch. 962, §§ 1, 2, 5, 13, 24, 46.]

## **TN 50-6-205**

### **Period of compensation--Maximum amount--Notice of payment, change or nonpayment--Records--Notice of controversy.**

(a) No compensation shall be allowed for the first seven (7) days of disability resulting from the injury, excluding the day of injury, except the benefits provided for in § 50-6-204, but if disability extends beyond that period, compensation shall commence with the eighth day after the injury. In the event, however, that the disability from the injury exists for a period as much as fourteen (14) days, then compensation shall be allowed beginning with the first day after the injury.

(b) (1) The total amount of compensation payable under this part shall not exceed the maximum total benefit provided in § 50-6-102(a)(7) [now § 50-6-102(13)] in any case, exclusive of travel reimbursement, medical, hospital and funeral benefits.

(2) Compensation shall be paid promptly. The first payment shall be due and payable within fifteen (15) days after the employer has knowledge of any disability or death, and thereafter compensation shall be paid to the employee or the employee's dependents semimonthly. Evidence of the initiation or denial of such compensation is inadmissible in a subsequent proceeding concerning the issue of the compensability of injury.

(3) (A) 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 or pool, or the employer's insurer a civil penalty in addition to the temporary disability benefits which are due to the employee. The 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 (b). Furthermore, the penalty may be assessed as to all temporary disability benefits that are determined to not be paid in compliance with this subsection (b).

(B) 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.

(C) If the specialist determines the employer or insurer was not in compliance with this subsection (b), 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 § 50-6-238(d).

(D) 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).

(c) (1) Upon making the first payment of benefits, and upon stopping or changing such benefits for any cause other than final settlement, or upon denying a claim after proper investigation, the employer's insurance carrier or the employer, if self-insured, shall immediately notify the administrator, on a form prescribed by the administrator, that the payment of income benefits has begun or has been stopped or changed.

(2) Failure to file such notice shall be a misdemeanor and shall, upon conviction, be punishable by a fine of not more than fifty dollars (\$50.00).

(d) (1) If payments have been made without an award, and the employer subsequently elects to controvert such employer's liability, notice of controversy shall be filed with the administrator within fifteen (15) days of the due date of the first omitted payment.

(2) In such cases, the prior payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments.

(3) Likewise, the acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the employee be considered a binding determination of such employee's rights. [Acts 1919, ch. 123, § 26; 1923, ch. 84, § 3; Shan. Supp., § 3608a175; Code 1932, § 6876; Acts 1941, ch. 90, § 4; C. Supp. 1950, § 6876; Acts 1955, ch. 182, § 1; 1963, ch. 362, § 1; 1967, ch. 313, § 2; 1969, ch. 196, § 2; 1971, ch. 134, § 2; 1972, ch. 699, § 2; 1973, ch. 379, § 5; 1974, ch. 617, § 1; 1975, ch. 86, § 1; 1977, ch. 354, § 1; 1978, ch. 532, § 1; 1979, ch. 365, § 1; 1980, ch. 607, § 1; 1981, ch. 333, § 1; 1982, ch. 880, § 1; T.C.A. (orig. ed.), § 50-1005; Acts 1983, ch. 215, § 2; 1985, ch. 393, §§ 4, 20; 1996, ch. 790, § 2; 1997, ch. 533, § 3; 1999, ch. 520, § 41; 2004, ch. 962, § 6.]

## **TN 50-6-206**

### **Settlements.**

(a) (1) The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements, before the same are binding on either party, shall be reduced to writing and shall be approved by the judge of the circuit court or chancery court of the county where the claim for compensation is entitled to be made. It shall be the duty of the judge of the circuit court or chancery court to whom any proposed settlement shall be presented for approval under this chapter, to examine the same to determine whether the employee is receiving, substantially, the benefits provided by the Workers' Compensation Law. To this end, such judge may call and examine witnesses. Upon such settlement being approved, judgment shall be rendered thereon by the court and duly entered by the clerk. The cost of the proceeding shall be borne by the employer. Certified copies of all papers, orders, judgments and decrees filed or entered by the court upon the approval of such settlement, together with a copy of the settlement agreement, shall be forwarded to the division of workers' compensation by the employer within ten (10) days after the entry of the judgment. If it appears that any settlement approved by the court does not secure to the employee in a substantial manner the benefits of the Workers' Compensation Law, the same may, in the discretion of the trial judge, be set aside at any time within thirty (30) days after the receipt of such papers by the division, upon the application of the employee or the administrator of the division in the employee's behalf, whether court has adjourned in the meantime or not, notwithstanding § 50-6-230 to the contrary. In all cases where such 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 department under the supervision of the attorney general and reporter shall represent the administrator in such proceeding, and the court, by its decree shall determine the right of the claimant to receive compensation from such fund, and the clerk of such court shall furnish to the administrator a certified copy of such decree, the cost of which shall be added to the costs of such proceedings and shall be paid as other costs are adjudged in the case.

(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 (a)(2).

(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 subsection (a) or to the commissioner of labor and workforce development or the commissioner's designee pursuant to subsection (c).

(C) Notwithstanding any other provision of this chapter or this subdivision (a)(2), an employee who is determined to be permanently totally disabled shall not be allowed to compromise and settle the employee's 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).

(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, that 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.

(c) (1) The commissioner of labor and workforce development or the commissioner's designee may approve a proposed settlement among the parties if:

(A) The settlement agreement has been signed by the parties;

(B) The commissioner or the commissioner's designee has determined that the employee is receiving, substantially, the benefits provided by the Workers' Compensation Law or, in cases subject to subsection (b), the best interest of the employee; and

(C) If the employee was not represented by counsel at a benefit review conference, the settlement agreement shall be reviewed by a specialist within the department who was not associated with the employee's case.

(2) Among the parties, a settlement approved by the commissioner pursuant to this subsection shall be entitled to the same standing as a judgment of a court of record for purposes of § 50-6-230 and all other purposes. A settlement approved by the commissioner may be appealed as a final order pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) (A) For settlements in which the employee is represented by counsel, the parties shall seek the approval of the department as provided in this subsection, unless the parties agree to seek the approval of a court pursuant to subsection (a).

(B) For settlements in which the employee is not represented by counsel, the parties shall seek the approval of a court pursuant to subsection (a), unless the parties agree to seek approval from the department pursuant to this subsection.

(4) The commissioner or the commissioner's designee shall approve or reject settlements submitted to the department within three (3) business days of receiving the settlement. Such review and approval or disapproval shall be provided in the regional offices of the division or such other location agreed to by the parties and the division. If the commissioner or the designee does not approve or reject the settlement within three (3) business days, either party may submit a copy of the signed settlement to any court with jurisdiction to hear the underlying workers' compensation claim. If the injured employee is not represented by counsel, the review shall be conducted in person.

(5) In approving settlements pursuant to this subsection, the commissioner or the commissioner's designee shall consider all pertinent factors, including degree of medical impairment, the employee's age, education, skills and training, local job opportunities and capacity to work at

types of employment available in the claimant's disabled condition. If the injured employee is not represented by counsel, then the commissioner or the commissioner's designee shall thoroughly inform the employee of the scope of benefits available under the workers' compensation law, the employee's rights and the procedures necessary to protect those rights. [Acts 1919, ch. 123, § 27; Shan. Supp., § 3608a176; Code 1932, § 6877; Acts 1945, ch. 149, § 2; 1947, ch. 139, § 5; C. Supp. 1950, § 6877; Acts 1969, ch. 123, § 1; impl. am. Acts 1980, ch. 534, § 1; Acts 1980, ch. 479, § 1; 1981, ch.488, § 4; T.C.A. (orig. ed.), § 50-1006; Acts 1983, ch. 217, §§ 1, 2; 1996, ch. 944, § 14; 1999, ch. 520, § 41; 2002, ch. 695, § 4; 2004, ch. 962, §§ 3, 4, 48.]

## **TN 50-6-207**

### **Schedule of compensation.**

The following is the schedule of compensation to be allowed employees under the provisions of the Workers' Compensation Law:

(1) (A) Temporary Total Disability. For injury producing temporary total disability, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages as defined in this chapter, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, the employee shall receive not less than the minimum weekly benefit; and provided further, that if the employee's average weekly wages are less than the minimum weekly benefit, the employee shall receive the full amount of such employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. Where a fractional week of temporary total disability is involved, the compensation for each day shall be one seventh (1/7) of the amount due for a full week;

(B) (i) An employer may choose to continue to compensate an injured employee at the employee's regular wages or salary during the employee's period of temporary total and temporary partial disability. Such payments shall not result in an employee receiving less than the employee would otherwise receive for temporary disability benefits under the Workers' Compensation Law. However, a court or the department of labor and workforce development has no authority to require an employer to pay any temporary disability benefits required by subdivision (A) in addition to the employee's regular wages or salary.

(ii) When an employee receives payments under subdivision (B)(i) and the employee's claim for compensation under this chapter is determined by a court or settlement to be compensable, the employer shall be given credit for any such payments. The credit shall be no more than the employee would have been otherwise paid under subdivision (A), and any amount paid beyond the amount that would have otherwise been paid under subdivision (A) shall not be credited against any award for permanent disability.

(2) Temporary Partial Disability. In all cases of temporary partial disability, the compensation shall be sixty-six and two-thirds percent (66 2/3%) of the difference between the average weekly wage of the worker at the time of the injury and the wage such worker is able to earn in such worker's partially disabled condition. This compensation shall be paid during the period of such disability, not, however, beyond four hundred (400) weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum, as stated in subdivision (1). In no event shall the compensation be less than the minimum weekly benefit.

(3) Permanent Partial Disability.

(A) In case of disability partial in character but adjudged to be permanent, there shall be paid to the injured employee, in addition to the benefits provided by § 50-6-204, the following:

(i) Sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of such injured employee's average weekly wages for the period of time during which such injured employee suffers temporary total disability on account of the injury, the same being subject to the same limitation as to minimum and maximum as provided in subdivision (1); and

(ii) In addition to the foregoing, such injured employee shall receive sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of such injured employee's average weekly wages in accordance with the schedule hereinafter set out; provided, that the compensation paid the injured employee for the period of temporary total disability and temporary partial disability shall not be deducted from the compensation to be paid under such schedule:

(a) For the loss of a thumb, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the average weekly wages during sixty (60) weeks;

(b) For the loss of a first finger, commonly called index finger, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of average weekly wages during thirty-five (35) weeks;

(c) For the loss of a second finger, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of average weekly wages during thirty (30) weeks;

(d) For the loss of a third finger, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of average weekly wages during twenty (20) weeks;

(e) For the loss of a fourth finger, commonly called little finger, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of average weekly wages during fifteen (15) weeks;

(f) For the loss of the first phalange of the thumb, or of any finger, which shall be considered equal to the loss of one half ( $\frac{1}{2}$ ) of such thumb or finger, compensation shall be paid at the prescribed rate during one half ( $\frac{1}{2}$ ) of the time specified above for such thumb or finger;

(g) The loss of more than one (1) phalange shall be considered as the loss of the entire finger or thumb; provided, that in no case shall the amount received for more than one (1) finger exceed the amount provided in this schedule for the loss of a hand;

(h) For the loss of the great toe, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of average weekly wages during thirty (30) weeks;

(i) For the loss of one (1) of the toes other than the great toe, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the average weekly wages during ten (10) weeks;

(j) The loss of a first phalange of any toe shall be considered to be equal to the loss of one half ( $\frac{1}{2}$ ) of such toe, and compensation shall be paid at the prescribed rate during one half ( $\frac{1}{2}$ ) the time specified above for such toe;

(k) The loss of more than one phalange shall be considered as the loss of the entire toe;

(l) For the loss of a hand, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the average weekly wages during one hundred fifty (150) weeks;

(m) For the loss of an arm, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the average weekly wages during two hundred (200) weeks;

(n) For the loss of a foot, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of average weekly wages for one hundred twenty-five (125) weeks;

- (o) For the loss of a leg, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during two hundred (200) weeks;
  - (p) Compensation for an arm or leg, if amputated above the wrist joint or above the ankle joint shall be for the loss of the arm or leg;
  - (q) For the loss of an eye, sixty-six and two-thirds percent (66 2/3%) of average weekly wages during one hundred (100) weeks;
  - (r) For the complete permanent loss of hearing in both ears, sixty-six and two-thirds percent (66 2/3%) of average weekly wages during one hundred fifty (150) weeks;
  - (s) For the loss of an eye and a leg, sixty-six and two-thirds percent (66 2/3%) of average weekly wages during three hundred fifty (350) weeks;
  - (t) For the loss of an eye and an arm, sixty-six and two-thirds percent (66 2/3%) of average weekly wages during three hundred fifty (350) weeks;
  - (u) For the loss of an eye and a hand, sixty-six and two-thirds percent (66 2/3%) of average weekly wages during three hundred twenty-five (325) weeks;
  - (v) For the loss of an eye and a foot, sixty-six and two-thirds percent (66 2/3%) of average weekly wages during three hundred (300) weeks;
  - (w) For the loss of two (2) arms, other than at the shoulder, sixty-six and two-thirds percent (66 2/3%) of average weekly wages during four hundred (400) weeks;
  - (x) For the loss of two (2) hands, sixty-six and two-thirds percent (66 2/3%) average weekly wages during four hundred (400) weeks;
  - (y) For the loss of two (2) legs, sixty-six and two-thirds percent (66 2/3%) average weekly wages during four hundred (400) weeks;
  - (z) For the loss of two (2) feet, sixty-six and two-thirds percent (66 2/3%) average weekly wages during four hundred (400) weeks;
  - (aa) For the loss of one (1) arm and the other hand, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during four hundred (400) weeks;
  - (bb) For the loss of one (1) hand and (1) foot, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during four hundred (400) weeks;
  - (cc) For the loss of one (1) leg and one (1) hand, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during four hundred (400) weeks;
  - (dd) For the loss of one (1) arm and one (1) foot, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during four hundred (400) weeks; and
  - (ee) For the loss of one (1) arm and one (1) leg, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during four hundred (400) weeks.
  - (ff) [Deleted by 2002 amendment.]
- (B) The total amount of compensation payable in this subdivision (3) shall not exceed the maximum total benefit.
- (C) When an employee sustains concurrent injuries resulting in concurrent disabilities, such employee shall receive compensation only for the injury which produced the longest period of disability, but this section shall not affect liability for the concurrent loss of more than one (1) member, for which members' compensations are provided in the specific schedule and in subdivision (4)(B). In all cases the permanent and total loss of the use of a member shall be considered as

equivalent to the loss of that member, but in such cases the compensation in and by the schedule provided shall be in lieu of all other compensation.

(D) In cases of permanent partial disability due to injury to a member resulting in less than total loss of use of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss or total loss of use of the respective member, which the extent of injury to the member bears to its total loss. If an injured employee refuses employment suitable to such injured employee's capacity, offered to or procured for such injured employee, the injured employee shall not be entitled to any compensation at any time during the continuance of such refusal, unless at any time in the opinion of a court having jurisdiction over the underlying workers' compensation case such refusal is justifiable. All compensation provided in this subdivision (3) for loss to members, or loss of use of members, is subject to the same limitation as to maximum and minimum as are stated in subdivision (1).

(E) For serious disfigurement to the head, face or hands, not resulting from the loss of a member or other injury specifically compensated, so altering the personal appearance of the injured employee as to materially affect such injured employee's employability in the employment in which such injured employee was injured or other employment for which such injured employee is then qualified, sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the average weekly wages for such period as the court may determine, not exceeding two hundred (200) weeks. The benefit herein provided shall not be awarded in any case where the injured employee is compensated under any other provision of the Workers' Compensation Law.

(F) All other cases of permanent partial disability not above enumerated shall be apportioned to the body as a whole, which shall have a value of four hundred (400) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury. Compensation for such permanent partial disability shall be subject to the same limitations as to maximum and minimum as provided in subdivision (1). If an employee has previously sustained an injury compensable under this section for which a court of competent jurisdiction has awarded benefits based on percentage of disability to the body as a whole and suffers a subsequent injury not enumerated above, the injured employee shall be paid compensation for the period of temporary total disability and only for the degree of permanent disability that results from the subsequent injury. The benefits provided by this subdivision (3)(f) shall not be awarded in any case where benefits for a specific loss are otherwise provided in this chapter;

(4) (A) (i) Permanent Total Disability. For permanent total disability as defined in subdivision (4)(B), sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the wages received at the time of the injury, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, the employee shall receive not less than the minimum weekly benefit; provided further, that if the employee's average weekly wages are less than the minimum weekly benefit, the employee shall receive the full amount of the employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. This compensation shall be paid during the period of the permanent total disability until the employee is, by age, eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act; provided, that with respect to disabilities resulting from injuries which occur after 60 years of age, regardless of the age of the employee, permanent total disability benefits are payable for a period of two hundred sixty (260) weeks. Such compensation payments shall be reduced by the amount of any old age

insurance benefit payments attributable to employer contributions which the employee may receive under title II of chapter 7, title 42 of the Social Security Act, 42 U.S.C. § 401 et seq., as amended.

(ii) Notwithstanding other provisions of the law to the contrary and notwithstanding any agreement of the parties to the contrary, permanent total disability payments shall not be commuted to a lump sum, except in accordance with the following:

(a) Benefits may be commuted to a lump sum to pay only the employee's attorney's fees and litigation expenses and to pay pre-injury obligations in arrears;

(b) The commuted portion of an award shall not exceed the value of one hundred (100) weeks of the employee's benefits;

(c) After the total amount of the commuted lump sum is determined, the amount of the weekly disability benefit shall be recalculated to distribute the total remaining permanent total benefits in equal weekly installments beginning with the date of entry of the order and terminating on the date the employee's disability benefits terminate pursuant to subdivision (4)(A)(i).

(iii) Attorneys' fees in contested cases of permanent total disability shall be calculated upon the first four hundred (400) weeks of disability only.

(iv) In case an employee who is permanently and totally disabled becomes an inmate of a public institution, and provided further, that if no person or persons are wholly dependent upon such employee, then the amounts falling due during the lifetime of such employee shall be paid to such employee or to such employee's guardian, if non compos mentis, to be spent for the ward's benefit; such payments to cease upon the death of such employee.

(B) When an injury not otherwise specifically provided for in this chapter, as amended, totally incapacitates the employee from working at an occupation which brings the employee an income, such employee shall be considered "totally disabled," and for such disability compensation shall be paid as provided in subdivision (4)(A); provided, that the total amount of compensation payable hereunder shall not exceed the maximum total benefit, exclusive of medical and hospital benefits;

(C) (i) If an employee is determined, by trial or settlement, to be permanently totally disabled, the employer, insurer or the department of labor and workforce development, in the event the second injury fund is involved, may have the employee examined, at the expense of the requesting entity, from time to time subject to the conditions outlined in this section and may seek reconsideration of the issue of permanent total disability as provided herein;

(ii) The request for the examination of the employee may not be made until twenty-four (24) months have elapsed following the entry of a final order in which it is determined that the employee is permanently totally disabled. Any request for an examination is subject to considerations of reasonableness in regard to notice prior to examination, place of examination and length of examination;

(iii) A request for an examination may not be made more often than once every twenty-four (24) months. The procedure for this examination shall be as follows:

(a) The requesting entity shall first make informal contact with the employee, either by letter or by telephone, to attempt to schedule an appointment with a physician for examination at a mutually agreeable time and place. It is the intent of the general assembly that the requesting entity make a good faith effort to reach a mutual agreement for examination, recognizing the inherently intrusive nature of a request for examination;

(b) If, after a reasonable period of time, not to exceed thirty (30) days, mutual agreement is not reached, the requesting entity shall send the employee written “notice of demand for examination” by certified mail, return receipt requested on a form provided by the department of labor and workforce development. The form shall clearly inform the employee of the following: the date, time and place of the examination; the name of the examining physician; the employee’s obligations; any pertinent time limitations; the employee’s rights; and any consequences of the employee’s failure to submit to the examination. The examination shall be scheduled to take place within thirty (30) days of the date on the notice;

(c) After receipt of the “notice of demand for examination”, the employee shall either submit to the examination at the time and place identified in the notice form, or, within thirty (30) days from the date of the notice, the employee shall schedule an appointment for a different date and time conducted by the same physician, and this examination shall be completed no later than ninety (90) days from the date of the notice;

(d) In the event the employee fails to submit to the examination at the time and place identified in the notice form and fails to schedule, within thirty (30) days from the date of the notice, an alternative examination date, as provided in subdivision (4)(C)(iii)(c), then the employee’s periodic benefits shall be suspended for a period of thirty (30) days;

(e) In the event the employee schedules an alternative date for the examination as provided in subdivision (4)(C)(iii)(c), and fails to submit to the examination within the ninety (90) day period, then the employee’s periodic benefits shall be suspended for a period of thirty (30) days beginning at the end of the ninety (90) day period within which the alternatively scheduled examination was to be completed;

(f) If the employee submits to examination within any period of suspension of benefits, then within fourteen (14) days of such submission, periodic benefits shall be restored and any periodic benefits that were withheld during any period of suspension of benefits shall be remitted to the employee;

(g) Within ten (10) days of the date on which periodic benefits are suspended pursuant to either subdivisions (4)(C)(iii)(d) or (e), the entity suspending the periodic benefits, shall notify the department of labor and workforce development, in writing, that periodic benefits have been suspended and the date on which the periodic benefits were suspended and shall provide the department a copy of the original “notice of demand for examination” sent to the employee; and

(h) After the department receives notice of suspension of benefits pursuant to either subdivisions (4)(C)(iii)(d) or (e) above, the department shall contact the employee and for a period of thirty (30) days assist the employee to schedule an examination to be conducted by the physician named in the notice. After the thirty (30) day assistance period has elapsed, if the employee has not submitted to examination, the department shall authorize the employer, insurer or department to suspend periodic benefits for a period of thirty (30) days. At the conclusion of each thirty (30) day suspension period, periodic benefits shall be restored. After the restoration of periodic benefits, the department shall, in thirty (30) day cycles, continue to assist the employee to schedule the examination, to be followed by thirty (30) day cycles of suspension of benefits until such time as the examination of the employee is completed. If, at any time during any period of suspension of periodic benefits, the employee submits to examination, then within fourteen (14) days of notice of the examination having been conducted, periodic benefits shall be restored and any periodic benefits that were withheld during any period of suspension shall be remitted to the employee;

(iv) Subsequent to an examination as described herein, the employer, insurer or department may request a reconsideration of the issue of whether the employee continues to be permanently totally disabled based on any changes in the employee's circumstances that have occurred since the time of the initial settlement or trial;

(v) Prior to filing any request for reconsideration, the employer, insurer or department shall request a benefit review conference with the department of labor and workforce development. The parties may not waive such benefit review conference. If the parties are unable to reach an agreement at the benefit review conference, the employer, insurer or department may file a request for reconsideration before the court originally adjudging or approving the award of permanent total disability. In the event that a settlement approved by the department of labor and workforce development is to be reconsidered under these provisions then a cause of action should be filed as provided in § 50-6-225;

(vi) In the event a reconsideration request is filed pursuant to this section, the only remedy available to the employer, insurer or department is the modification of or termination of future periodic disability benefits;

(vii) In the event the employer, insurer or department files a request for reconsideration or cause of action hereunder and the court does not terminate the employee's future periodic disability benefits, the employee shall be entitled to an award of reasonable attorney fees, court costs and reasonable and necessary expenses incurred by the employee in responding to the request for reconsideration upon application to and approval by the court. In determining what attorney fees shall be awarded hereunder, the court shall make specific findings in respect to the following criteria:

(a) The time and labor required, the novelty and difficulty of the questions involved in responding to the request for reconsideration, and the skill requisite to perform the legal service properly;

(b) The fee customarily charged in the locality or by the attorney for similar legal services;

(c) The amount involved and the results obtained;

(d) The time limitations imposed by the client or by the circumstances; and

(e) The experience, reputation, and ability of the lawyer or lawyers performing the services;

(D) (i) The employer, insurer or department, in the event the second injury fund is involved, shall notify the department, on a form to be developed by the department of the entry of a final order adjudging an employee to be permanently totally disabled. The form shall be submitted to the department within thirty (30) days of the entry of the order;

(ii) On an annual basis, the department of labor and workforce development shall require an employee who is receiving permanent total disability benefits to certify on forms provided by the department that the employee continues to be permanently totally disabled, that the employee is not currently working at an occupation which brings the employee an income and has not been gainfully employed since the date permanent total disability benefits were awarded, by trial or settlement;

(iii) The department shall send the certification form to the employee by certified mail, return receipt requested and shall include a self-addressed stamped envelope for the return of the completed form; and

(iv) In each annual cycle, if the employee fails to return the form to the department within thirty (30) days of the date of receipt of the form, as evidenced by the date on the return receipt notice,

then the department shall notify the entity who gave notice to the department that the employee was permanently totally disabled pursuant to subdivision (4)(D)(i) above that four (4) weeks of periodic disability benefits shall be withheld from the employee as a penalty for the failure to return the form to the department. If the completed form is returned to the department within one hundred twenty (120) days of the date on the return receipt notice, the department shall notify the appropriate entity and then, within fourteen (14) days of receipt of the notice from the department, that entity shall refund to the employee the entire four (4) weeks of periodic disability benefits previously withheld from the employee.

(5) Deductions in Case of Death. In case a worker sustains an injury due to an accident arising out of and in the course of such worker's employment, and during the period of disability caused thereby death results proximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of death; and

(6) For social security purposes only, as permitted by federal law or regulation, in an award of compensation as a lump sum or a partial lump sum under this chapter for permanent partial or permanent total disability, the court may make a finding of fact that the payment represents a payment to the individual to be distributed over the individual's lifetime based upon life expectancy as determined from mortality tables from Tennessee Code Annotated. [Acts 1919, ch. 123, § 28; 1923, ch. 84, § 1; Shan. Supp., § 3608a177; Acts 1927, ch. 40, § 2; Code 1932, § 6878; Acts 1941, ch. 90, § 5; 1947, ch. 139, § 6; 1949, ch. 277, § 3; C. Supp. 1950, § 6878; Acts 1953, ch. 111, § 2; 1955, ch. 182, §§ 2-5; 1957, ch. 270, §§ 1-3; 1959, ch. 172, §§ 2-6; 1961, ch. 26, § 1; 1961, ch. 125, § 1; 1963, ch. 362, §§ 1, 4; 1965, ch. 158, § 1; 1967, ch. 313, §§ 1, 2, 4, 5; 1969, ch. 196, §§ 1, 2; 1971, ch. 134, §§ 1, 2, 4; 1973, ch. 379, § 6; 1974, ch. 617, §§ 2, 7; 1975, ch. 86, §§ 2, 7; 1977, ch. 354, § 2; impl. am. Acts 1978, ch. 934, §§ 16, 36; Acts 1979, ch. 365, § 2; impl. am. Acts 1980, ch. 534, § 1; Acts 1980, ch. 607, §§ 2-5; 1981, ch. 333, §§ 2-5; 1982, ch. 880, §§ 2-5; T.C.A. (orig. ed.), § 50-1007; Acts 1985, ch. 393, §§ 5-9; 1992, ch. 900, § 17; 1996, ch. 919, § 2; 2000, ch. 852, §§ 4, 20; 2002, ch. 833, §§ 1-3; 2003, ch. 194, § 1; 2004, ch. 443, § 1.]

## **TN 50-6-208**

**Subsequent permanent injury after sustaining previous permanent injury - "Second injury fund" - Disbursement - Pilot project for legal defense of administrator - Settlement authority [Amended effective July 1, 2005, See the Compiler's Notes].**

(a) (1) If an employee has previously sustained a permanent physical disability from any cause or origin and becomes permanently and totally disabled through a subsequent injury, such employee shall be entitled to compensation from the employee's employer or the employer's insurance company only for the disability that would have resulted from the subsequent injury, and such previous injury shall not be considered in estimating the compensation to which such employee may be entitled under this chapter from the employer or the employer's insurance company; provided, that in addition to such compensation for a subsequent injury, and after completion of the payments therefor, then such employee shall be paid the remainder of the compensation that would be due for the permanent total disability out of a special fund to be known as the "second injury fund" therein created.

(2) To receive benefits from the second injury fund, the injured employee must be the employee of an employer who has properly insured such employer's workers' compensation liability or has qualified to operate under the Workers' Compensation Law as a self-insurer, and the employer must establish that the employer had actual knowledge of the permanent and preexisting disability

at the time that the employee was hired or at the time that the employee was retained in employment after the employer acquired such knowledge, but in all cases prior to the subsequent injury.

(3) In determining the percentage of disability for which the second injury fund shall be liable, no previous physical impairment shall be considered unless such impairment was within the knowledge of the employer as prescribed above.

(4) Nothing in this section shall be construed to limit the employer's liability as provided by law for aggravation of preexisting conditions or disabilities in cases where recovery against the second injury fund is not applicable.

(b) (1) (A) In cases where the injured employee has received or will receive a workers' compensation award or awards for permanent disability to the body as a whole, and the combination of such awards equals or exceeds one hundred percent (100%) permanent disability to the body as a whole, the employee shall not be entitled to receive from the employer or its insurance carrier any compensation for permanent disability to the body as a whole that would be in excess of one hundred percent (100%) permanent disability to the body as a whole, after combining awards.

(B) Benefits which may be due the employee for permanent disability to the body as a whole in excess of one hundred percent (100%) permanent disability to the body as a whole, after combining awards, shall be paid by the second injury fund.

(C) It is the intention of the general assembly that once an employee receives an award or awards for permanent disability to the body as a whole, and such awards total one hundred percent (100%) permanent disability, any permanent disability compensation due for subsequent compensable injuries to the body as a whole shall be paid by the second injury fund, instead of by the employer.

(D) [Effective July 1, 2005. See the Compiler's Notes] 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.

(2) (A) [Amended effective July 1, 2005. See the Compiler's Notes.] The burden of proving the existence of previous awards for permanent disability specific to the body as a whole shall be on the party claiming compensation against the second injury fund.

(B) Claims against the fund shall be made by either the injured employee or the employer in the manner prescribed in § 50-6-206.

(C) Nothing in this section shall relieve the employer or its insurance company of liability for other benefits which may be due the injured employee, including temporary benefits, medical expenses and permanent benefits for injuries other than to the body as a whole, irrespective of whether the combination of workers' compensation awards exceeds one hundred percent (100%) permanent disability.

(c) A sum sufficient to provide the benefits of this section shall be allocated from the four percent (4%) premium tax imposed in § 50-6-401(b), subject to a maximum allocation of fifty percent (50%) of the premium tax collected. Such sums shall be deposited in the second injury fund for distribution by the administrator of the division of workers' compensation.

(d) There is thereby appropriated a sum sufficient to the second injury fund for payment of benefits provided in this section, pursuant to the provisions of this section. Such appropriation shall be allocated from and equal to an amount not greater than fifty percent (50%) of the revenues derived from the premium tax levied pursuant to § 50-6-401.

(e) The sums collected by the administrator as provided herein shall be deposited by the administrator in a special fund which shall be termed the second injury fund to be disbursed by the administrator only for the purposes stated in this section and shall not at any time be appropriated or diverted to any other purpose. The administrator shall not invest any moneys in the second injury fund in any other manner than is provided by the general laws of the state for investments of funds in the hands of the state treasurer. Disbursements from the fund shall be made by the administrator only after receipt by the administrator of a certified copy of the court decree awarding such compensation as is provided for herein. Disbursements shall be made only in accordance with the decree. A copy of the decree awarding compensation from the second injury fund shall in all cases be filed with the division.

(f) The commissioner, in consultation with the attorney general and reporter, shall prepare a plan for a pilot project using private legal counsel to defend the administrator in actions claiming compensation from the second injury fund pursuant to § 50-6-206. Such plan shall include types of cases, approximate numbers of cases, proposed method of selection and other relevant matters. Any private legal counsel retained for these purposes shall be retained pursuant to § 8-6-106. Expenses relating to private legal counsel retained pursuant to this subsection shall be paid from the second injury fund.

(g) (1) Before any proposed settlement is considered final in cases involving benefits from the second injury fund under this section, it shall either:

(A) Have the written approval of the commissioner of labor and workforce development, or the commissioner's designee, in accordance with the provisions of subdivision (g)(2); or

(B) Have been approved in accordance with the provisions of § 20-13-103.

(2) The commissioner of labor and workforce development is authorized to settle certain second injury fund claims without the necessity of complying with § 20-13-103, provided that the attorney general and reporter, with the written approval of the governor and the comptroller of the treasury, shall set specific limits and conditions on such settlement authority. [Acts 1919, ch. 123, § 20; Shan. Supp., § 3608a169; Code 1932, § 6871; Acts 1945, ch. 149, § 1; C. Supp. 1950, § 6871; Acts 1961, ch. 26, § 2; 1973, ch. 379, § 10; 1975, ch. 76, § 1; impl. am. Acts 1980, ch. 534, § 2; Acts 1980, ch. 479, § 2; T.C.A. (orig. ed.), § 50-1027; Acts 1983, ch. 217, §§ 3, 4; 1985, ch. 319, § 1; 1985, ch. 393, §§ 10, 22; 1989, ch. 238, § 1; 1996, ch. 944, § 15; 1997, ch. 533, § 4; 1999, ch. 520, § 41; 2001, ch. 366, § 1; 2002, ch. 695, § 3; 2004, ch. 962, § 25.]

## **TN 50-6-209**

### **Maximum compensation.**

(a) In all cases of permanent total disability of an employee covered by the Workers' Compensation Law, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages, as defined, shall be paid, subject to maximum compensation as follows: where there are or are not persons dependent upon each injured employee, the maximum weekly benefit per week.

(b)(1) In all cases of death of an employee covered by the Workers' Compensation Law, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages, defined as stated, shall be paid in cases where such deceased employee leaves dependents, subject to the maximum weekly benefit.

(2) In all cases of death of an employee covered by the Workers' Compensation Law, and where such employee leaves no dependents, as provided in §50-6-210, then the lump sum amount of twenty thousand dollars (\$20,000) shall be paid to the estate of such deceased employee.

(3) The total amount of compensation payable under this subsection shall not exceed the maximum total benefit exclusive of medical, hospital and funeral benefits. [Acts 1923, ch. 84, §1; Shan. Supp., §§3608a178, 3608a179; Acts 1927, ch. 40, §1; mod. Code 1932, §§6879 - 6881; Acts 1941, ch. 90, §§6, 7; 1947, ch. 139, §§7 - 9; 1949, ch. 277, §§4 - 6; C. Supp. 1950, §§6879 - 6881; Acts 1953, ch. 111, §§3 - 5; 1955, ch. 182, §§6 - 8; 1957, ch. 270, §§4 - 6; 1959, ch. 172, §§7 - 9; 1963, ch. 362, §1; 1965, ch. 158, §1; 1967, ch. 313, §§1, 2; 1969, ch. 196, §§1, 2; 1971, ch. 134, §§1, 2; 1973, ch. 379, §§7, 8; 1974, ch. 617, §§3 - 5; 1975, ch. 86, §§3 - 5; 1977, ch. 354, §§3 - 5; 1979, ch. 365, §§3 - 5; impl. am. Acts 1980, ch. 534, §1; Acts 1980, ch. 607, §§6 - 8; 1980, ch. 650, §2; 1981, ch. 333, §§6 - 8; 1982, ch. 880, §§6 - 8; T.C.A. (orig. ed.), §§50-1008, 50-1010, 50-1011; Acts 1985, ch. 393, §12; 1999, ch. 404, §1.]

## **TN 50-6-210**

### **Dependents--Compensation payments.**

(a) **PERSONS WHOLLY DEPENDENT.** For the purposes of the Workers' Compensation Law the following described persons shall be conclusively presumed to be wholly dependent:

(1) A surviving spouse, unless it is shown that the surviving spouse was voluntarily living apart from his or her spouse at the time of injury; and

(2) Children under sixteen (16) years of age.

(b) **PERSONS PRIMA FACIE DEPENDENT.** Children between sixteen (16) and eighteen (18) years of age, or those over eighteen (18) years of age, if physically or mentally incapacitated from earning, shall prima facie be considered dependent.

(c) **ACTUAL DEPENDENTS.** Wife, husband, child, mother, father, grandparent, sister, brother, mother-in-law, father-in-law, who were wholly supported by the deceased employee at the time of death and for a reasonable period of time immediately prior thereto, shall be considered actual dependents, and payment of compensation shall be made in the order named.

(d) **PARTIAL DEPENDENTS.** Any member of a class named in subsection (c) who regularly derived part of such member's support from the wages of the deceased employee at the time of death and for a reasonable period of time immediately prior thereto shall be considered a partial dependent, and payment of compensation shall be made to such dependents in the order named.

(e) **COMPENSATION IN DEATH CASES.** In death cases, compensation payable to dependents shall be computed on the following basis, and shall be paid to the persons entitled thereto, without administration:

(1) **SURVIVING SPOUSE AND NO DEPENDENT CHILD.** If the deceased employee leaves a surviving spouse and no dependent child, there shall be paid to the surviving spouse fifty percent (50%) of the average weekly wages of deceased.

(2) **SURVIVING SPOUSE AND CHILD.** If the deceased employee leaves a surviving spouse and one (1) or more dependent children, there shall be paid to the surviving spouse for the benefit of such surviving spouse and such child or children, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of deceased.

(3) **SURVIVING SPOUSE AND CHILDREN, HOW PAID.** In all cases where compensation is payable to a surviving spouse for the benefit of herself or himself and dependent child or children, the court shall have the power to determine in its discretion what portion of the compensation shall be applied for the benefit of any such child or children, and may order the same paid to a guardian.

(4) REMARRIAGE OF SURVIVING SPOUSE. Upon the remarriage of a surviving spouse, if there is no child of the deceased employee, the compensation shall terminate; but if there is a child or children under eighteen (18) years of age, or over eighteen (18) years of age if physically or mentally incapacitated from earning, from the time of the remarriage the child or children shall have status of orphan or orphans, and draw compensation accordingly, not, however, to exceed sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased.

(5) DEPENDENT ORPHANS. If the deceased employee leaves one (1) dependent orphan, there shall be paid fifty percent (50%) of the average weekly wages of the deceased; if the deceased leaves two (2) or more dependent orphans there shall be paid sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased.

(6) PARENT OR PARENTS. If the deceased employee leaves no surviving spouse or child entitled to any payment hereunder, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid, if only one (1) parent, twenty-five percent (25%) of the average weekly wages of the deceased to such parent, and if both parents, thirty-five percent (35%) of the average weekly wages of the deceased to such parents.

(7) GRANDPARENT, BROTHER, SISTER, MOTHER-IN-LAW OR FATHER-IN-LAW. If the deceased leaves no surviving spouse or dependent child or parent entitled to any payment hereunder, but leaves a grandparent, brother, sister, mother-in-law or father-in-law wholly dependent upon the deceased for support, there shall be paid to such dependent, if but one (1), twenty percent (20%) of the average weekly wages of the deceased, or if more than one (1) twenty-five percent (25%) of the average weekly wages of the deceased, divided between them or among them share and share alike.

(8) COMPENSATION TO DEPENDENTS TO CEASE UPON DEATH OR MARRIAGE. If compensation is being paid under this chapter to any dependent, such compensation shall cease, upon the death or marriage of such dependent, unless otherwise provided herein.

(9) PARTIAL DEPENDENTS TO RECEIVE PROPORTION. Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of the wages regularly contributed by the deceased to such partial dependent at, and for a reasonable time immediately prior to the injury, bore to the total income of the dependent during the same time.

(10) MAXIMUM AND MINIMUM COMPENSATION. The compensation payable in case of death to persons wholly dependent shall be subject to the maximum weekly benefit and minimum weekly benefit; provided, that if at the time of injury the employee receives wages of less than the minimum weekly benefit, the compensation shall be the full amount of such wages a week, but in no event shall the compensation payable under this provision be less than the minimum weekly benefit. The compensation payable to partial dependents shall be subject to the same maximum and minimum specified in the foregoing sentence; provided, that if the income loss of the partial dependents by such death is less than the minimum weekly benefit, then the dependents shall receive the full amount of the income loss. This compensation shall be paid during dependency not to exceed the maximum total benefit, payments to be paid at the intervals when the wage was payable as nearly as may be.

(11) ORPHANS AND OTHER CHILDREN. In computing and paying compensation to orphans or other children, in all cases, only those under eighteen (18) years of age, or those over eighteen (18) years of age who are physically or mentally incapacitated from earning, shall be included, the

former to receive compensation only during the time they are under eighteen (18) years of age, the latter only for the time they are so incapacitated. If the dependent is attending a recognized educational institution, benefits shall be paid until twenty-two (22) years of age.

(12) ACTUAL DEPENDENTS. Actual dependents shall be entitled to take compensation in the order named in subsection (c), until sixty-six and two-thirds percent (66 2/3%) of the monthly wages of the deceased during the time specified in this chapter shall have been exhausted, but the total compensation to be paid to all actual dependents of a deceased employee shall not exceed in the aggregate the maximum weekly benefit.

(13) DEPENDENCY STATUS NOT AFFECTED BY CERTAIN ASSISTANCE PAYMENTS. Sums distributed under the Employment Security Law, chapter 7 of this title; the Old-Age Assistance Law, title 71, chapter 2, part 2; the Aid to Dependent Children Law, title 71, chapter 3, parts 1 and 2; Aid to Blind Law, title 71, chapter 4, part 1; the federal Social Security Act, or any other public assistance distributed by the United States government, the state of Tennessee, or any county or municipality thereof, shall not be considered income within the meaning of this law and shall not affect the status or compensation of any person entitled to benefits as herein provided. [Acts 1919, ch. 123, §30; 1923, ch. 84, §1; Shan. Supp., §3608a181; Acts 1927, ch. 40, §3; Code 1932, §6883; Acts 1941, ch. 90, §8; 1943, ch. 110, §1; 1947, ch. 139, §10; 1949, ch. 277, §7; C. Supp. 1950, §6883; Acts 1953, ch. 111, §6; 1955, ch. 182, §§9 - 16; 1957, ch. 270, §§7, 8; 1959, ch. 172, §§10, 11; 1963, ch. 362, §1; 1965, ch. 158, §1; 1967, ch. 313, §§1, 2; 1969, ch. 196, §§1, 2; 1971, ch. 134, §§1, 2, 4; 1972, ch. 699, §3; 1973, ch. 379, §9; 1974, ch. 617, §§6, 7; 1975, ch. 86, §§6, 7; 1977, ch. 354, §6; 1979, ch. 365, §6; 1979, ch. 370, §1; impl. am. Acts 1980, ch. 534, §1; Acts 1980, ch. 607, §§9, 10, 11; 1981, ch. 333, §§9, 10; 1982, ch. 880, §§9, 10; T.C.A. (orig. ed.), §50-1013; Acts 1985, ch. 393, §13.]

### **TN 50-6-211**

#### **Contribution to payment of compensation by two or more employers--Agreement between employers.**

(a) In case any employee for whose injury or death compensation is payable under the Workers' Compensation Law shall at the time of injury be employed and paid jointly by two (2) or more employers subject to such law, such employers shall contribute to payment of such compensation in a proportion of their several wage liability to such employee.

(b) If one (1) or more, but not all, of such employers should be subject to the Workers' Compensation Law and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject shall be to pay the proportion of the entire compensation which their portion of the wage liability bears to the wages of the employee; provided, that nothing in this section shall prevent any agreement between the different employers between themselves as to the distribution of the ultimate burden of such compensation. [Acts 1919, ch. 123, §29; Shan. Supp., §3608a180; Code 1932, §6882; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1012.]

### **TN 50-6-212**

#### **Hernia.**

(a) In all claims for compensation for hernia or rupture, resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the court that:

- (1) There was an injury resulting in hernia or rupture;
  - (2) The hernia or rupture appeared suddenly;
  - (3) It was accompanied by pain;
  - (4) The hernia or rupture immediately followed the accident; and
  - (5) The hernia or rupture did not exist prior to the accident for which compensation is claimed.
- (b) All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of the employment, shall be treated in a surgical manner by a radical operation. If death results from such operation, the death shall be considered as the result of the injury, and compensation paid in accordance with the provisions of this chapter.
- (c)(1) In case the injured employee refuses to undergo the radical operation for the cure of such hernia or rupture, no compensation will be allowed during the time such refusal continues.
- (2) If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the court finds it unsafe for the employee to undergo such operation, the employee shall be paid compensation in accordance with the provisions of this chapter. [Acts 1941, ch. 90, §10; C. Supp. 1950, §6892.1 (Williams, §6892a); T.C.A. (orig. ed.), §50- 1009.]

### **TN 50-6-213**

#### **Epileptics--Election not to be covered by certain provisions--Revocation.**

- (a) Epileptics may elect not to be subject to this part for injuries resulting because of epilepsy and still remain subject to its provisions for all other injuries.
- (b) Such election shall be made by giving notice to the employer in writing on a form to be furnished by the division of workers' compensation and filing a copy of such notice with the division.
- (c) An election may be revoked by giving written notice to the employer of revocation, and such revocation shall be effective upon filing copy of such notice with the division. [Acts 1977, ch. 223, §1; impl. am. Acts 1980, ch. 534, §1; T.C.A., §50-1029.]

### **TN 50-6-214- 50-6-220.**

[Reserved.]

### **TN 50-6-221**

#### **Receipts for payments.**

- (a) Whenever payment of compensation is made to a surviving spouse for such surviving spouse's use, or for such surviving spouse's use and the use of a child or children, the written receipt thereof by such surviving spouse shall acquit the employer in this and all other jurisdictions of the entire injury and all its damages.
- (b) Whenever payment is made to any person eighteen (18) years of age or over, the written receipt of such person shall acquit the employer in this and all other jurisdictions of the entire injury and all its damages.
- (c)(1) Whenever payment is made to a person under eighteen (18) years of age, or to a dependent child as defined in §50-6- 210(b) over eighteen (18) years of age, the same shall be paid to a duly and regularly appointed guardian or trustee of such child, and the receipt of such guardian or

trustee shall acquit the employer in this and all other jurisdictions of the entire injury and all its damages and shall be in lieu of any claim of the parents of such child or minor for loss of services.

(2) Where the amount of compensation due a person under eighteen (18) years of age does not exceed the sum of two hundred fifty dollars (\$250), the court may, in its discretion, direct the amount of compensation due the minor be paid as provided by §34-1-106. [Acts 1919, ch. 123, §7; Shan. Supp., §3608a156; Code 1932, §6858; Acts 1947, ch. 139, §3; C. Supp. 1950, §6858; T.C.A. (orig. ed.),§50-1014; Acts 1997, ch. 368, §§1-3.]

## **TN 50-6-222**

### **Preference or priority of rights of compensation.**

All rights of compensation granted by this chapter shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor. [Acts 1919, ch. 123, §17; Shan. Supp., §3608a166; Code 1932, §6868; Acts 1972, ch. 699, §4; T.C.A. (orig. ed.), §50-1015.]

## **TN 50-6-223**

### **Exemption and nonassignability of compensation claims--Exceptions to nonassignability.**

(a) No claim for compensation under this chapter shall be assignable, and all compensation and claims therefor shall be exempt from claims of creditors.

(b) Notwithstanding the provisions of subsection (a) to the contrary, the court may assign up to fifty percent (50%) of such compensation made by periodic payments to fulfill a valid present and prospective child support obligation; provided, that such assignment is administered in accordance with §50-2-105. However, no such assignment may be made for arrearages in child support.

(c) Notwithstanding the provisions of subsection (a) to the contrary, the court may assign up to twenty percent (20%) of any lump sum settlement to satisfy a judgment for arrearages in child support. [Acts 1919, ch. 123, §17; Shan. Supp., §3608a167; Code 1932, §6869; T.C.A. (orig. ed.), §50-1016; Acts 1991, ch. 224, §1.]

## **TN 50-6-224**

### **Limitation of actions.**

The time within which the following acts shall be performed under this chapter shall be limited to the following periods, respectively:

(1) Actions or proceedings by an injured employee to determine or recover compensation: one (1) year after the occurrence of the injury, except as provided in § 50-6-203;

(2) Actions or proceedings by dependents to determine or recover compensation: one (1) year after the date of notice in writing given by the employer to the division of workers' compensation, stating such employer's willingness to pay compensation when it is shown that the death is one for which compensation is payable. In case the deceased was a native of a foreign country and leaves no known dependent or dependents within the United States, it shall be the duty of the commissioner to give written notice forthwith of the death to the consul or other representative of such foreign country residing within the state;

(3) Proceedings to obtain judgment in case of default of employer for thirty (30) days to pay any compensation due under any settlement or determination: one (1) year after such default;

(4) 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 act required within the time in this section specified: the period of limitation in any such case shall be extended for one (1) year from the date when such incapacity ceases; and

(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. [Acts 1919, ch. 123, § 31; Shan. Supp., § 3608a182; Acts 1927, ch. 40, § 4; Code 1932, § 6884; Acts 1947, ch. 139, § 11; C. Supp. 1950, § 6884; impl. am. Acts 1980, ch. 534, § 1; T.C.A. (orig. ed.), § 50-1017; 1999, ch. 520, § 41; 2004, ch. 962, § 15.]

## **TN 50-6-225**

### **Submission of claim to court upon failure to agree on compensation - Special workers' compensation appeals panel - Impasse [Variable effective dates. See the Compiler's Notes].**

(a) (1) [Amended effective January 1, 2005. See the Compiler's Notes.] 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 or dependents 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 § 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.

(b) The Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence apply to all civil actions filed pursuant to this section.

(c) Unless required to be filed by an earlier date as a result of discovery requests pursuant to the Tennessee Rules of Civil Procedure, within sixty (60) days after the filing of an answer in an action under this section, the employer shall file with the court a wage statement detailing the employee's wages for the previous fifty-two (52) weeks, unless the employer stipulates that the maximum weekly workers' compensation rate applies in the particular action.

(d) Whenever any civil action is brought pursuant to this section, the judge or chancellor may, if the judge or chancellor so desires, visit the scene of the accident and examine the surroundings.

(e) (1) Any party to the proceedings in the circuit or chancery court may, if dissatisfied or aggrieved by the judgment or decree of that court, appeal to the supreme court, where the cause shall be heard and determined as provided in Tennessee Rules of Appellate Procedure.

(2) Review of findings of fact by the trial court shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.

(3) [Effective until September 1, 2006. See the Compiler's Notes.] The supreme court may, by order, refer workers' compensation cases to a panel known as the "special workers' compensation

appeals panel.” This panel shall consist of three (3) judges designated by the chief justice, at least one (1) of whom shall be a member of the supreme court.

(4) [Effective until September 1, 2006. See the Compiler’s Notes.] Any case which the supreme court by order or rule refers to the special workers’ compensation appeals panel shall be briefed, and oral argument shall be heard pursuant to the Tennessee Rules of Appellate Procedure as if the appeal were being heard by the entire supreme court.

(5) [Effective until September 1, 2006. See the Compiler’s Notes.] The special workers’ compensation appeals panel shall reduce to writing its findings and conclusions in all cases. The decision of the panel shall become the judgment of the supreme court thirty (30) days after it is issued unless:

(A) Any member of the supreme court files with the clerk a written request within the thirty-day period that the case be heard by the entire supreme court, in which event a final judgment will not be entered until the supreme court, after due consideration of the case, enters final judgment; or

(B) Any party to the appeal files a motion requesting review by the entire supreme court within fifteen (15) days after issuance of the decision by the panel, in which event a final judgment will not be entered:

(i) Until the motion is denied; or

(ii) If the motion is granted, until the supreme court enters final judgment after its consideration of the case.

For purposes of this subsection, a decision of the panel shall be deemed to be issued on the day it is mailed to the parties, which date shall be noted on the decision by the clerk. The provisions of § 27-1-122 apply to all motions made pursuant to this subsection.

(6) [Effective until September 1, 2006. See the Compiler’s Notes.] If the entire supreme court, on its own motion or after granting the motion of a party, reviews an opinion of the special workers’ compensation appeals panel, its review will be limited to the record and the briefs on file before the special workers’ compensation appeals panel; provided, that the supreme court may, in its discretion, order the parties to further brief the issues or appear at oral argument.

(7) [Effective until September 1, 2006. See the Compiler’s Notes.] The provisions of subdivisions (e)(3)-(7) shall expire on September 1, 2006.

(f) The trial of all cases under this chapter shall be expedited by:

(1) Giving all such cases priority over all cases on the trial and appellate dockets; and

(2) Allowing any case on appeal in the supreme court to be on motion of either party transferred to the division where the supreme court is then or will next be in session.

(g) (1) If the judgment or decree of a court is appealed pursuant to subsection (e), interest on the judgment or decree shall be computed from the date that the judgment or decree is entered by the trial court at an annual rate of interest five (5) percentage points above the average prime loan rate for the most recent week for which such an average rate has been published by the board of governors of the federal reserve system on the total judgment awarded by the supreme court. For purposes of calculating the accrual of interest pursuant to this subdivision, the average prime loan rate on the day the judgment or decree is entered by the trial court shall be used.

(2) Total judgment awarded is computed by the total number of weeks multiplied by the benefit rate without any reduction.

(3) For purposes of this subsection “judgment” and “decree” includes any discretionary costs awarded pursuant to this chapter.

(4) For purposes of determining the amount of interest that has accrued on a judgment or decree, the commissioner of financial institutions shall maintain a listing of the average prime loan rate as it becomes available each month, and such office shall respond to inquiries concerning what such average prime rate was on a given month and year. If the person making the inquiry so requests, the commissioner shall send such person a letter certifying what the average prime rate was on the month and year requested. The commissioner is authorized to charge a reasonable fee not to exceed ten dollars (\$10.00) for preparing and sending such letter.

(h) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employer or insurer is frivolous, or taken for purposes of delay, a penalty may be assessed by such court, without remand, against the appellant for a liquidated amount.

(i) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employee is frivolous, a penalty may be assessed by such court, without remand, against the appellant for a liquidated amount.

(j) If an employer wrongfully fails to pay an employee’s claim for temporary total disability payments, the employer shall be liable, in the discretion of the court, to pay the employee, in addition to the amount due for temporary total disability payments, a sum not exceeding twenty-five percent (25%) of such temporary total disability claim; provided, that it is made to appear to the court that the refusal to pay such claim was not in good faith and that such failure to pay inflicted additional expense, loss or injury upon the employee; and provided further, that such additional liability shall be measured by the additional expense thus entailed.

(k) If, on request by the specialist, a party fails to produce documents, to cooperate in scheduling a conference or to provide a representative authorized to settle a matter in attendance at a conference, then a specialist may declare an impasse and file the report on unresolved issues with a court. On the motion of either party or on the court’s own motion, a court is authorized, but not required, to hold a hearing on the failure to produce documents requested by the specialist, to cooperate in scheduling or to provide a representative who possessed settlement authority. If the court determines that such failure lacked good cause or resulted from bad faith, then the court may assess the offending party who failed to take such requested action, with attorney’s fees and costs related only to the trial. The commissioner of labor and workforce development is authorized to promulgate rules to effectuate the purposes of this subsection in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(l) If an employee receives a settlement, judgment or decree under this chapter which includes the payment of medical expenses and the employer or workers’ compensation carrier wrongfully fails to reimburse an employee for any medical expenses actually paid by the employee within sixty (60) days of such settlement, judgment or decree, or fails to provide reasonable and necessary medical expenses and treatment, including failure to reimburse for reasonable and necessary medical expenses, in bad faith after receiving reasonable notice of their obligation to provide such medical treatment, the employer or workers’ compensation carrier shall be liable, in the discretion of the court, to pay the employee, in addition to the amount due for medical expenses paid, a sum not exceeding twenty-five percent (25%) of such expenses; provided, that it is made to appear to the court that the refusal to pay such claim was not in good faith and that such failure to pay inflicted additional expense, loss or injury upon the employee.

[Acts 1919, ch. 123, § 32; Shan. Supp. § 3608a1821/2; Code 1932, § 6885; Acts 1941, ch. 90, § 9; C. Supp. 1950, § 6885; Acts 1969, ch. 311, § 1; 1981, ch. 449, § 2; T.C.A. (orig. ed.), § 50-1018; Acts 1985, ch. 393, §§ 14, 15, 23; 1988, ch. 630, §§ 1, 2; 1992, ch. 952, §§ 7, 8; 1996, ch. 944, § 16; 1997, ch. 150, § 1; 1998, ch. 1024, § 14; 1999, ch. 336, §§ 1, 2; 1999, ch. 520, § 41; 2000, ch. 678, § 1; 2000, ch. 739, § 1; 2000, ch. 852, §§ 7, 8; 2001, ch. 117, § 1; 2004, ch. 962, §§ 16, 49.]

## **TN 50-6-226**

### **Fees of attorneys and physicians and hospital charges.**

(a) (1) The fees of attorneys for services to employees under the Workers' Compensation Law shall be subject to the approval of the commissioner or the court before which the matter is pending, as appropriate; provided, that no attorney's fees to be charged employees shall be in excess of twenty percent (20%) of the amount of the recovery or award to be paid by the party employing the attorney. All attorney's fees for attorneys representing employers shall be subject to review for reasonableness of the fee and shall be subject to approval by a court when the fee exceeds ten thousand dollars (\$10,000).

(2) (A) Medical costs that have been voluntarily paid by the employer or its insurer shall not be included in determining the award for purposes of calculating the attorney's fee.

(B) For cases submitted to the department for approval pursuant to § 50-6-206(c) which are resolved prior to trial or pursuant to a benefit review conference, the department shall deem the attorney's fee to be reasonable if such fee does not exceed the lesser of twenty percent (20%) of the award to the injured worker or ten thousand dollars (\$10,000). For fees in excess of ten thousand dollars (\$10,000), any court with jurisdiction to hear a matter pursuant to § 50-6-225 shall review such case solely for the purpose of approving such fees as are reasonable.

(C) In cases that proceed to trial, an employee's attorney shall file an application for approval of a proposed attorney's fee. Where the award of an attorney's fee exceeds ten thousand dollars (\$10,000), the court shall make specific findings as to the factors which justify such a fee as provided in Tennessee Supreme Court Rule 8, RPC 1.5.

(D) The final order or settlement in all workers' compensation cases shall set out the attorney portion of the award in both dollar and percentage terms and the required findings.

(E) Beginning July 1, 1997, on an annual basis, the commissioner shall adjust the ten thousand dollar (\$10,000) threshold used in this section to reflect the percentage change in the state's average weekly wage as determined by the division of employment security from year to year.

(3) In accident cases that result in death of an employee, the plaintiff's attorney's fees shall not exceed reasonable payment for actual time and expenses incurred when the employer makes a voluntary settlement offer in writing to dependents or survivors eligible under § 50-6-210 within thirty (30) days of the employee's death if the employer offers to provide the dependents or survivors with all the benefits provided under the Workers' Compensation Law. The approving authority shall review and approve all such settlements on an expedited basis.

(4) The fees of physicians and charges of hospitals for services to employees under the Workers' Compensation Law shall be subject to the approval of the commissioner or the court before which the matter is pending, as appropriate, as provided in this subdivision. Unless a medical fee or charge is contested, the department shall deem it to be reasonable. If a fee or charge is contested, the department shall permit a party to seek review only of the contested fee or charge in any court

with jurisdiction to hear a matter pursuant to § 50-6-225. A court may review such case solely for the purpose of approving such fees and charges as are reasonable.

(b) The charging or receiving any fee by an attorney in violation of subsection (a) shall be deemed unlawful practice and render the attorney liable to disbarment; and, further, such attorney shall forfeit double the entire amount retained by such attorney, to be recovered as in case of debt by the injured person or the injured person's creditor.

(c) (1) The fees charged to the claimant by the treating physician or a specialist to whom the employee was referred for giving testimony by oral deposition relative to the claim, shall, unless the interests of justice require otherwise, be considered a part of the costs of the case, to be charged against the employer when the employee is the prevailing party.

(2) The trial judge shall have the discretion to determine the reasonableness of the fee charged by any physician pursuant to the provisions of this subsection.

(3) The provisions of this subsection apply only to workers' compensation actions arising on or after July 1, 1988. [Acts 1919, ch. 123, § 33; Shan. Supp., § 3608a183; Code 1932, §§ 6886, 6887; Acts 1957, ch. 121, § 1; 1963, ch. 333, § 2; impl. am. Acts 1980, ch. 534, § 1; T.C.A. (orig. ed.), §§ 50-1019, 50-1020; Acts 1988, ch. 865, §§ 1-3; 1996, ch. 944, § 17; 1999, ch. 520, § 41; 2003, ch. 112, § 4.]

#### **TN 50-6-227**

#### **Alien dependents of deceased employee - Payment to consular officer or representative - Bond - List of dependents [Amended effective January 1, 2005. See the Compiler's Notes].**

(a) (1) (A) [Amended effective January 1, 2005. See the Compiler's Notes.] 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 an alien dependent or dependents 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 or representatives of the employer and a duly authorized representative or representatives of the consul or other representative of the foreign country wherein the dependent or dependents 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 § 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.

(b) Such consular officer or such consular officer's representative shall, before receiving the first payment of such compensation, and at reasonable times thereafter, upon the request of the employer, furnish to the employer a sworn statement containing a list of the dependents with the name, age, residence, extent of dependency and relation to the deceased of each dependent.

[Acts 1919, ch. 123, § 34; Shan. Supp. § 3608a184; Code 1932, § 6888; impl. am. Acts 1980, ch. 534, § 1; T.C.A. (orig. ed.), § 50-1021; Acts 2004, ch. 962, § 17.]

### **TN 50-6-228**

#### **Copies of settlements and releases--Filing.**

Copies of all settlements and releases shall be filed by the employer with the division of workers' compensation, within ten (10) days after such settlements are made, and shall become part of the permanent records of the division. [Acts 1919, ch. 123, §35; Shan. Supp., §3608a185; Acts 1927, ch. 40, §5; Code 1932, §6889; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1022; 1999, ch. 520, §41.]

### **TN 50-6-229**

#### **Commutation to lump sum payment with consent of court.**

(a) The amounts of compensation payable periodically hereunder may be commuted to one (1) or more lump sum payments. These may be commuted upon motion of any party subject to the approval of the circuit, chancery or criminal court. No agreed stipulation or order or any agreement by the employer or employee or any other party to the proceeding shall be a prerequisite to the court's approval or disapproval of the award being paid in one (1) or more lump sum payments. In making such commutation, the lump sum payment shall, in the aggregate, amount to a sum of all future installments of compensation. No settlement or compromise shall be made except on the terms herein provided. In determining whether to commute an award, the trial court shall consider whether the commutation will be in the best interest of the employee, and such court shall also consider the ability of the employee to wisely manage and control the commuted award irrespective of whether there exist special needs. Attorneys' fees may be paid as a partial lump sum from any award when approved and ordered by the trial judge.

(b)(1) Certified copies of the pleadings, orders, judgments and decrees, whereby any lump sum payment settlement has been approved by the court shall be forwarded to the division of workers' compensation by the employer within ten (10) days after the entry of any final judgment in any such proceeding.

(2) The administrator shall have thirty (30) days after the receipt of any such certified copies of such proceedings within which to intervene in the lump sum settlement proceedings to secure a readjustment of the same in accordance with the requirements and provisions of this law, whether court shall have adjourned or not, §50-6-230 to the contrary notwithstanding. [Acts 1919, ch. 123, §36; Shan. Supp., §3608a186; Code 1932, §6890; Acts 1947, ch. 139, §12; C. Supp. 1950, §6890; Acts 1971, ch. 300, §2; 1979, ch. 295, §1; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1023; Acts 1983, ch. 217, §5; 1985, ch. 393, §16; 1990, ch. 843, §1; 1992, ch. 900, §25; 1999, ch. 520, §41.]

## **TN 50-6-230**

### **Awards and agreed settlements--Finality.**

All settlements of compensation by agreement of the parties and all awards of compensation made by the court, where the amount paid or to be paid in settlement or by award does not exceed the compensation for six (6) months' disability, shall be final and not subject to readjustment. [Acts 1919, ch. 123, §37; Shan. Supp., §3608a187; Code 1932, §6891; T.C.A. (orig. ed.), §50-1024.]

## **TN 50-6-231**

### **Lump payments final--Modification of periodic payments for more than six months.**

All amounts paid by employer and received by the employer or the employee's dependents, by lump sum payments, shall be final, but the amount of any award payable periodically for more than six (6) months may be modified as follows:

- (1) At any time by agreement of the parties and approval by the court; or
- (2) If the parties cannot agree, then at any time after six (6) months from the date of the award an application may be made to the courts by either party, on the ground of increase or decrease of incapacity due solely to the injury. In such cases, the same procedure shall be followed as in §50-6-225 in case of a disputed claim for compensation. [Acts 1919, ch. 123, §38; Shan. Supp., §3608a188; Code 1932, §6892; T.C.A. (orig. ed.), §50-1025.]

## **TN 50-6-232**

### **Present value of future installments--Deposit in trust releasing employer--Trustee to make payments.**

- (a) Any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum of all future installments of compensation may (where death or the nature of the injury renders the amount of future payments certain), by leave of court, be paid by the employer to any savings bank or trust company of this state to be approved and designated by the court, and such sum, together with all interest thereon, shall be held in trust for the employee or the dependents of the employee who shall have no further recourse against the employer.
- (b) The payment of such sum by the employer evidenced by the receipts in duplicate of the trustee, one (1) of which shall be filed with the division of Workers' compensation, and the other filed with the clerk of the circuit court, shall operate as a satisfaction of the award as to the employer.
- (c) Payments from the fund shall be made by the trustee in the same amounts and at the same as are herein required of the employer until the fund interest shall be exhausted.
- (d) In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the injured employee or the dependent of the deceased employee, as the case may be. [Acts 1919, ch. 123, §39; impl. am. Acts 1923, ch. 7, §§55, 56; Shan. Supp., §3608a189; Code 1932, §6893; Acts 1971, ch. 300, §3; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1026; Acts 1985, ch. 393, §21.]

## **TN 50-6-233**

### **Enforcement power of commissioner--Referral of vocational rehabilitation cases--Promulgation of rules and regulations to implement chapter.**

(a)(1) There is conferred upon the commissioner the power to enforce the provisions of this chapter which relate to the assurance of payments of the awards thereunder.

(2) The commissioner has the power, subject to the approval of the governor, to employ such clerical assistance as the commissioner may deem necessary and fix the compensation of the person or persons so employed.

(3) The commissioner may make rules and regulations not inconsistent with this law for the purpose of discharging the commissioner's duties under the provisions of this chapter.

(4) The commissioner may provide forms for the use of employers and such other literature as may be necessary and shall furnish to any employee or employer such literature and blank forms as the commissioner may deem requisite to facilitate or promote the efficient administration of this chapter.

(5) In no event shall the division of workers' compensation charge a fee or impose a cost for any necessary or required forms needed to process a workers' compensation claim.

(6) The commissioner shall modify Form #C32 to include a location for a health care provider to indicate temporary total disability and the point at which the employee reached maximum medical improvement.

(b) The commissioner shall cause the division of workers' compensation to refer all feasible cases for vocational rehabilitation to the department of education.

(c) In addition to the rulemaking authority granted in §50-6-118, and subsection (a) of this section, the commissioner of labor and workforce development or the commissioner of commerce and insurance, as appropriate, may promulgate rules and regulations implementing the provisions of this chapter. Such rules and regulations shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner's rules and regulations shall include, but not be limited to, the following:

(1) Rules and regulations establishing minimum qualifications and training for workers' compensation specialists;

(2) Rules and regulations establishing procedures for benefit review conferences including the time within which all conferences must be held and the times within which copies of reports and agreements must be filed with the commissioner. The rules shall prescribe a mechanism whereby written notice of all conferences, copies of agreements, and copies of reports shall be provided to the insurer, the employee, the employer, and any party to a claim. The rules shall provide guidelines relating to claims that do not require a benefit review conference;

(3) Rules and regulations to provide a civil penalty for parties to a claim who fail to attend a properly scheduled and noticed conference;

(4) Rules and regulations to provide a procedure to withhold payment from a health care provider for over-utilization of medical care or services or for ordering inappropriate medical care or services;

(5) Rules and regulations to provide an appeal procedure for a health care provider who has had payment withheld for over-utilization of medical care or services;

(6) Rules and regulations to provide a system of case management to coordinate the medical care services provided to employees claiming benefits under this chapter. Such rules and regulations shall establish a threshold of medical expenses and services or other appropriate point over which all cases will be subject to case management; and

(7) Rules and regulations to ensure health care providers' compliance with §50-6-204(a)(4), and rules and regulations to provide an appeal procedure for a health care provider who has had payment withheld for charging amounts found to be excessive; provided, that no such rule promulgated pursuant to this subdivision shall be filed with the secretary of state after approval by the attorney general and reporter, pursuant to §§4-5- 207 and 4-5-211, unless also approved by the medical care and cost containment committee established by §50-6-125. [Acts 1919, ch. 123, §46; impl. am. Acts 1923, ch. 7, §§2, 50; Shan. Supp., §3608a196; Code 1932, §6900; Acts 1941, ch. 90, §12; C. Supp. 1950, §6900; Acts 1972, ch. 699, §5; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1028; Acts 1983, ch. 215, §3; 1992, ch. 900, §3; 1999, ch. 520, §41.]

#### **TN 50-6-234**

##### **Discontinuance or change in temporary disability benefits by employer--Resumption or increase of benefits.**

(a) In any case where the employer has commenced paying temporary disability benefits to the employee and has then stopped or changed such benefits for any cause other than failure of an employee to submit to employer requests for reasonable medical examinations by the treating physician or final settlement, the employee may petition a court of proper jurisdiction to order that the employer show good cause why such temporary benefits should not be resumed or increased.

(b) Upon a hearing, the court is authorized to award the resumption or increase of such benefits to the employee from the employer.

(c) Such hearing shall be held within twenty (20) days after such petition is filed.

(d) After temporary disability payments have commenced, when the injured employee reaches maximum medical improvement, a permanent impairment rating is given and the compensability of the injury has not been contested by the employer, then payments shall continue until the earlier of the following events: the injured employee accepts or rejects a job offered by the employer at a wage equal to or greater than the employee's pre-injury wage if the employee is able to perform the duties of such position within any restrictions placed on the employee by the physician selected pursuant to §50-6-204; the parties agree to waive the holding of a benefit review conference; or a benefit review conference is held and the report is filed pursuant to §50-6-240. In no case may temporary payments pursuant to this subsection exceed the lesser of sixty (60) days or the value of the employee's permanent partial disability award calculated solely upon the medical impairment; provided, that these limits may be exceeded if agreed to by all parties. The amount of any such payment shall be credited against any permanent award. For purposes of this subsection, the determination of attainment of maximum medical improvement and the employee's medical impairment shall be made by the physician selected in accordance with §50- 6-204. Nothing in this subsection shall require an employer to return any employee to work. [Acts 1990, ch. 656, §1; 1996, ch. 944, §21.]

## **TN 50-6-235**

### **Depositions by physicians -- Written medical report -- Admissibility -- Schedule for charges.**

(a)(1) If a physician refuses to make a reasonable effort to give a deposition in a workers' compensation case within ninety (90) days of receipt of notice, the employee may petition the court for an order requiring the physician to give the deposition. (2) If the physician does not respond to the petition in a timely fashion, the physician may lose the exemption from subpoena to trial established by §24-9- 101.

(b) For the purpose of subsection (a), the requirement that the physician make a reasonable effort to give a deposition may be presumed to be satisfied if the physician offers to make such physician available to give such physician's deposition within ninety (90) days' of notice at two (2) or more reasonable places and at times within normal business hours, but because of scheduling difficulties on the part of any of the other persons who wish to be present at the deposition, the deposition cannot take place at either of the times and places offered by the physician.

(c)(1) Any party may introduce direct testimony from a physician through a written medical report on a form established by the commissioner of labor and workforce development. The commissioner shall establish by rule the form for the report. All parties shall have the right to take the physician's deposition on cross examination concerning its contents. Any written medical report sought to be introduced as evidence shall be signed by the physician making the report bearing an original signature. A reproduced medical report which is not originally signed is not admissible as evidence unless accompanied by an originally signed affidavit from the physician or the submitting attorney verifying the contents of the report. Any written medical report sought to be introduced into evidence shall include within the body of the report or as an attachment a statement of qualifications of the person making the report. The commissioner shall, by regulation, fix the fee to be charged by the physician for the preparation and filing of the report and fix penalties for a failure to file the report after a timely request for it by any interested party.

(2) The written medical report of a treating or examining physician shall be admissible at any stage of a workers' compensation claim in lieu of a deposition upon oral examination, if notice of intent to use the sworn statement is provided to the opposing party or counsel not less than twenty (20) days before the date of intended use. If no objection is filed within ten (10) days of the receipt of such notice, the sworn statement shall be admissible as herein described. In the event that a party does object, then the objecting party shall depose the physician within a reasonable period of time or the objection shall be deemed to be waived.

(d) The medical care and cost containment committee established in §50-6-125 shall establish a schedule by rule for reasonable charges by physicians for preparing and giving depositions in workers' compensation cases. Such schedule may be subject to annual revision. Physicians shall not be permitted to charge more than the amount permitted under the schedule. Such rule shall be subject to the approval of the commissioner of labor and workforce development, including annual revisions. The medical care and cost containment committee shall submit the initial proposed rule to the commissioner on or before October 1, 1996. Prior to acting on the proposed rule, the commissioner shall submit the proposed rule to the special joint committee on workers' compensation of the general assembly for its review and comment. The committee shall have forty-five (45) days to review the proposed rule and transmit any comment it may have to the commissioner.

[Acts 1990, ch. 656, §2; 1992, ch. 900, §22; 1996, ch. 944, §18; 1997, ch. 533, 5; 1999, ch. 520, §41.]

### **TN 50-6-236**

**Workers' compensation specialists [Amended effective January 1, 2005. See the Compiler's Notes].**

(a) The commissioner of labor and workforce development shall establish a workers' compensation specialist program to assist injured or disabled employees, persons claiming death benefits, employers and other persons in protecting their rights and obtaining information available under workers' compensation laws.

(b) A workers' compensation specialist shall meet with or otherwise provide information to or receive information from injured or disabled employees, employers, insurance carriers and health care providers on behalf of injured or disabled employees. The specialist shall conduct informal dispute resolution by holding benefit review conferences throughout the state. The conference shall be held in the county where the employee lives, unless otherwise agreed to between the parties, or otherwise directed by the commissioner.

(c) Any person employed as a specialist by the commissioner is ineligible to further handle cases that require such person's involvement during this employment as a specialist.

(d) A workers' compensation specialist shall examine any proposed settlement reached during the benefit review conference to determine whether the employee is receiving, substantially, the benefits provided by the Workers' Compensation Law.

(e) Each employer shall notify such employer's employees of the workers' compensation specialist service in a manner prescribed by the commissioner. At a minimum, such notice shall include the posting of a notice in one (1) or more conspicuous places. The notice shall include a toll-free number for employees to reach a workers' compensation specialist. The commissioner shall also describe clearly the availability of the workers' compensation specialist on the first report of accident form required by this chapter.

(f) Workers' compensation specialists shall conduct benefit review conferences. The commissioner shall institute and maintain an education and training program for workers' compensation specialists who must be employees of the division. The specialists shall be trained in the principles and procedures of dispute mediation. The commissioner is authorized to consult or enter into contracts with the federal mediation and conciliation service or other appropriate organizations to accomplish this purpose.

(g) In conducting benefit review conferences, the workers' compensation specialist shall:

(1) Mediate disputes between the parties and assist in the adjustment of claims consistent with this chapter and the policies of the commissioner, before and after the benefit review conference;

(2) Thoroughly inform all parties of their rights and responsibilities under this chapter, including the right of any party to be represented by an attorney of such party's choice;

(3) Ensure that all documents and information relating to the employees' wages, medical condition, and any other information pertinent to the resolution of disputed issues are contained in the claim file at the conference, especially in cases in which the employee is not represented by an attorney; and

(4) Determine whether, under any proposed settlement, the employee is receiving, substantially, the benefits provided by the workers' compensation law.

(h) [Amended effective January 1, 2005. See the Compiler's Notes.] A benefit review conference shall be requested at any time within the limitation period or periods provided in §§ 50-6-203 or 50-6-306. 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.

(i) [Effective January 1, 2005. See the Compiler's Notes.] For the purpose of conducting discovery as part of a benefit review conference, workers' compensation specialists shall have the authority, at the request of either party, to refer matters to a specially designated attorney within the department who may issue subpoenas, effect discovery, and issue protective orders in the same manner as an administrative judge or hearing officer pursuant to § 4-5-311.

(j) The workers' compensation specialist may not take testimony but may direct questions to an employee, an employer, or a representative of an insurance carrier to supplement or clarify information in a claim file.

(k) The workers' compensation specialist shall maintain a file concerning these proceedings.

(l) The workers' compensation specialist shall not engage in litigation or determination of workers' compensation claims outside of the workers' compensation specialist's duties as workers' compensation specialist.

(m) The commissioner shall establish a program of continuing education and training for workers' compensation specialists in order to assure that specialists maintain current and appropriate skills and knowledge in performing their duties. 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. Documentation reflecting the type of education and training provided pursuant to this subsection shall be maintained by the administrator of the division of workers' compensation. Documentation of each educational program shall include the date of the program, the name of each specialist attending, a description of the educational program including topics covered, the name of the sponsor or provider of the educational program and the number of hours for each educational program. [Acts 1992, ch. 900, § 11; 1996, ch. 944, §§ 19, 20; 1999, ch. 242, § 1; 1999, ch. 520, § 41; 2004, ch. 962, §§ 18, 19.]

## **TN 50-6-237**

### **Purpose of benefit review conference--Paid representation required to be by licensed attorney.**

(a) A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to:

(1) Explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) Discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues;

(3) Mediate and resolve disputed issues by mutual agreement of the parties in accordance with this chapter and the policies of the commissioner;

(4) Provide an opportunity for, but not to compel, a binding settlement of some or all of the issues present at the time;

(5) Facilitate the resolution of issues without the expense of litigation or attorneys' fees for either party; and

(6) Determine, under any proposed settlement, whether any employee is receiving, substantially, the benefits provided by the Workers' Compensation Law.

(b) Any person charging a fee specifically for the representation of an employee in any early dispute resolution proceeding or benefit review conference under this chapter shall be an attorney licensed to practice law in the state of Tennessee.

(c) When a benefit review conference is held, both the employee and the employer, or the employer's insurer, shall provide that a person with the authority to settle the dispute attends the conference. Failure to provide such a person in attendance without good cause at a conference by an employer or insurer shall subject the employer or insurer to a penalty of not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000).

[Acts 1992, ch. 900, § 12; 2001, ch. 244, § 1.]

## **TN 50-6-238**

### **Award of benefits by workers' compensation specialist--Refunds--Specialist's determination as evidence--Penalty for noncompliance with specialist's order.**

(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 § 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.

(b) If a specialist has ordered the payment of benefits pursuant to this section, and a court finds that the injury was noncompensable, then an employer or the employer's workers' compensation insurer is entitled to a refund of all amounts paid pursuant to a specialist's order from the second injury fund established by § 50-6-208, within thirty (30) days of submission of appropriate evidence of such finding to the division of workers' compensation. If the refund is not made within thirty (30) days, then the employer is entitled to interest at the rate of ten percent (10%) per annum from the date the refund became overdue.

(c) Evidence of the denial of initiation, continuation or reinstatement of compensation ordered pursuant to this section by a workers' compensation specialist is inadmissible in a subsequent proceeding. In a case where an employer or insurer has paid benefits pursuant to an order of a workers' compensation specialist, and the employer or insurer wishes to contest the compensability of the injury, then the court shall hear the issue de novo, and no presumption of correctness is given to any prior determination.

(d) (1) In addition to any other penalty provided by law, if an insurer, self-insured employer or self-insured pool fails to comply with an order issued by a specialist within fifteen (15) calendar days of receipt of the order, the commissioner of labor and workforce development shall assess a penalty in the amount of ten thousand dollars (\$10,000). Notification of the assessed penalty shall be sent to the insurer, self-insured employer or self-insured pool by facsimile, electronic mail or certified mail. Such insurer, self-insured employer or self-insured pool shall have five (5) calendar days to respond and prove that it has complied with the specialist's order. If satisfactory proof of compliance is not received by the twenty-first calendar day after receipt of the order, additional penalties in the amount of one thousand dollars (\$1,000) per day shall begin to accrue on the twenty-first day. The insurer, self-insured employer or self-insured pool shall have the right to appeal the penalty assessed by the commissioner of labor and workforce development for failure to comply with an order issued by a specialist pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) In addition to any other penalty provided by law, if an insurer, self-insured employer or self-insured pool fails to comply with an order issued by a specialist within thirty (30) days of receipt of the order, the commissioner of labor and workforce development shall notify the commissioner of commerce and insurance of such failure to comply. The commissioner of commerce and insurance may consider the continued failure to comply with the order of the specialist as a violation of title 56, chapter 8, which subjects the insurer to the penalty provisions of § 56-8-109, and may consider any failure by a self-insured employer or self-insured pool to comply with the order of the specialist sufficient grounds to revoke the employer's status as a self-insured employer or self-insured pool pursuant to § 50-6-405. [Acts 1992, ch. 900, § 13; 1998, ch. 1024, §§ 24, 25; 1999, ch. 265, §§ 1, 2; 1999, ch. 520, § 41; 2000, ch. 852, §§ 17-19; 2001, ch. 192, § 16; 2004, ch. 962, § 7.]

## **TN 50-6-239**

### **Motion for benefit review conference - Motion for expedited adjudication - Specialists. [Amended effective January 1, 2005. See the Compiler's Notes.]**

(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 § 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.

[Acts 1992, ch. 900, § 14; 1996, ch. 944, § 22; 1999, ch. 520, § 41; 2004, ch. 962, § 20.]

## **TN 50-6-240**

### **Settlement at conference--Written agreement or settlement--Report--Filing.**

(a)(1) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement or in a settlement, the workers' compensation specialist shall reduce the agreement or the settlement to writing. The workers' compensation specialist and each party shall sign the agreement or settlement. A settlement is not effective unless it is approved in accordance with §50-6-206, and a settlement takes effect on the date approved.

(2) The specialist shall note in a report on unresolved issues required by this section the failure of any party to furnish documents to the specialist on request by the specialist, to cooperate in scheduling, or to provide a representative who possessed settlement authority in attendance at the conference.

(b) If the dispute is not entirely resolved at the benefit review conference, the workers' compensation specialist shall prepare a written report that also includes:

(1) A statement of each agreed upon issue; and

(2) A statement of each issue raised but not agreed upon.

(c) The workers' compensation specialist shall file the signed agreement and the report with the commissioner and the court as appropriate. Any party filing an action with a court of competent jurisdiction shall notify the department of the filing at the time of the filing. After receiving such notice, the department shall file within seven (7) days with such court any report on unresolved issues pursuant to this section resulting from a benefit review conference. [Acts 1992, ch. 900, §15; 1996, ch. 944, §23.]

#### **TN 50-6-241**

#### **Maximum permanent partial disability award for causes arising on or after August 1, 1992- -Reconsideration of industrial disability issue.**

(a) (1) For injuries arising on or after August 1, 1992, and prior to July 1, 2004, in cases where an injured employee is eligible to receive any permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), 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 injury, the maximum permanent partial disability award that the employee may receive is two and one-half (2 1/2) times the medical impairment rating determined pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(2) In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, if such loss of employment is within four hundred (400) weeks of the day the employee returned to work. In enlarging a previous award, the court must give the employer credit for prior benefits paid to the employee in permanent partial disability benefits, and any new award remains subject to the maximum established in subsection (b).

(b) Subject to factors provided in subsection (a) of this section, in cases for injuries on or after August 1, 1992, and prior to July 1, 2004 where an injured employee is eligible to receive permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is six (6) times the medical impairment rating determined pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job

opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(c) The multipliers established by subsections (a) and (b) are intended to be maximum limits. If the court awards a multiplier of five (5) or greater, then the court shall make specific findings of fact detailing the reasons for awarding the maximum impairment. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(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 1/2) times the medical impairment rating determined pursuant to the provisions of § 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 § 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, however, that 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 the employee's employment.

(iv) To seek reconsideration pursuant to subdivision (d)(B)(i) or (d)(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

§ 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 § 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.

[Acts 1992, ch. 900, § 16; 2004, ch. 962, §§ 9, 10, 11.]

## **TN 50-6-242**

### **Award of permanent partial disability benefits for permanent medical impairment in certain cases.**

(a) For injuries that occur on or after August 1, 1992, and prior to July 1, 2004, notwithstanding any provision of this chapter to the contrary, the trial judge may award employees permanent partial disability benefits, not to exceed four hundred (400) weeks, in appropriate cases where permanent medical impairment is found and the employee is eligible to receive the maximum disability award under § 50-6-241(a)(2) or (b). In such cases the court, on the date of maximum medical improvement, must make a specific documented finding, supported by clear and convincing evidence, of at least three (3) of the following four (4) items:

(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.

(b) 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 § 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

§ 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.

[Acts 1992, ch. 900, § 18; 2004, ch. 962, § 12.]

### **TN 50-6-243**

#### **Agreements to receive payments greater than the schedule provides--Applicability.**

(a) An employee may sign an agreement before or after an injury resulting in temporary total disability due to an accident arising out of and in the course of employment in which the employee may receive from the employer for up to six (6) months after the date of injury an amount greater than the schedule of compensation for such injury in §50-6-207. Any agreed payment that is greater than the amount provided by §50-6-207 shall be credited as an offset to any subsequent award or settlement for permanent partial disability, permanent total disability, or death benefits.

(b) If the employee's temporary total disability exceeds six (6) months from the date of injury, any payments greater than that provided by §50-6-207, made after such date, shall not be credited as an offset to any subsequent award or settlement for permanent partial disability, permanent total disability, or death benefits.

(c) The provisions of this section are applicable to employees of municipalities, counties, and other governmental entities. [Acts 1992, ch. 1002, §1.]

### **TN 50-6-244**

#### **Statistical data form for assessment of workers' compensation system.**

(a) The department shall develop a statistical data form for collecting data relevant to assessing the workers' compensation system. In developing or altering the form, the department shall seek written comment from the advisory council on workers' compensation and the administrative office of the courts. The commissioner shall submit the proposed form to the special joint committee on workers' compensation, together with any written comments of the advisory council on workers' compensation and the administrative office of the courts, prior to submission of a proposed rule to the attorney general and reporter. The initial rule shall be submitted to the committee prior to October 1, 1998. The commissioner shall promulgate the form by rule pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, on or before October 31, 1998.

(b) (1) A statistical data form shall be filed for every workers' compensation matter that is concluded by settlement, whether approved by a court or the department of labor and workforce

development. A statistical data form shall be filed for every workers' compensation matter that is concluded by a trial so that the form reflects the trial court's ruling and information that is current as of the date the trial order is submitted to the court for approval, whether or not an appeal of the matter is anticipated or filed. A statistical data form shall be either typed or completed by computer using a form available on the website of the division of workers' compensation.

(2) A statistical data form is not required to be filed in cases that involve reconsideration of a prior settlement or trial judgment order for which a statistical data form was filed at the time of submission of the prior order. A statistical data form is not required to be filed if the only issue resolved by an order is the closing of future medical benefits that remained open pursuant to a prior order for which a statistical data form was filed at the time of submission of the prior order.

(3) In cases involving a workers' compensation settlement that is approved by a court, the completed statistical data form shall be filed at the same time as the order approving the settlement is filed and shall be filed with the clerk of the court in which the settlement order is filed. A clerk of the court shall not accept a settlement order for filing unless it is accompanied by a fully completed statistical data form.

(4) In cases involving a workers' compensation case that is resolved by trial, the completed statistical data form shall be filed at the same time as the final order is submitted to the trial court for approval and shall be filed with the clerk of the court in which the matter was tried. A clerk of the court shall not accept a trial order for filing unless it is accompanied by a fully completed statistical data form.

(5) A settlement order of a court in a workers' compensation matter is not final until the statistical data form required by this section is fully completed and filed with the appropriate clerk of the court.

(6) A workers' compensation trial order is not final until the statistical data form required by this section is fully completed and filed with the appropriate clerk of the court. In the event of an appeal of a workers' compensation trial verdict to the supreme court of Tennessee, this section shall neither abrogate nor supercede the Rules of Appellate Procedure regarding the computation of the time for the proper filing of a notice of appeal. The information submitted in the statistical data form shall not be admissible on appeal for any purpose.

(c) (1) The clerk of the court shall forward to the administrator of the division of workers' compensation on or before the tenth day of each calendar month all workers' compensation statistical data forms filed with the clerk during the preceding calendar month.

(2) In addition to the fees provided in title 8, chapter 21, part 4, every clerk of the court shall be entitled to a fee of one dollar (\$1.00) for each statistical form filed with the clerk.

(3) The fee associated with the filing of the statistical data form shall be a part of the court costs accruing to the clerk and shall be collected in the same manner and in addition to the other costs in the case.

(d) In cases involving a workers' compensation settlement which is submitted to the department for approval, the statistical data form required by this section shall also be completed and submitted to the department at the time of the submission of the settlement for approval. A settlement approved by the department shall not become final until the statistical data form required by this section is fully completed and received by the department.

(e) It is the responsibility of the employer or the employer's agent to complete and file the form required by this section, contemporaneously with the filing of the final order or settlement. The

employee and any agent of the employee are required to cooperate with the employer in completing this form.

(f) (1) If the commissioner of labor and workforce development, or the commissioner's designee, determines that an insurer or self-insured employer fails to complete substantially and file the statistical data forms with such frequency as to indicate a general business practice, the commissioner may assess a monetary penalty against the insurance company for the employer or against the employer, if self insured. The amount of the monetary penalty shall not exceed one hundred dollars (\$100). For the purposes of this subsection (f), "general business practice" means an insurer or self-insured employer fails to complete substantially and file a statistical data form more than five (5) times.

(2) No monetary penalty may be assessed by the commissioner, or the commissioner's designee, with respect to a form that has been filed with the division of workers' compensation for more than ninety (90) days. No monetary penalty may be assessed for a statistical data form that was not filed with the court clerk more than ninety (90) days from the date of entry of the final order of the court. No monetary penalty may be assessed due to the failure to provide information on the statistical data form that is solely within the knowledge of the employee or due solely to the failure of the employee to sign such form.

(3) The commissioner, or the commissioner's designee, shall notify the following entities of the provisions of this section before January 1, 2004:

(A) Insurance companies licensed to write workers' compensation coverage in Tennessee;

(B) Employers who are self-insured pursuant to § 50-6-405;

(C) The Tennessee Trial Lawyers Association;

(D) The Tennessee Defense Lawyers Association;

(E) The Tennessee Bar Association;

(F) The Administrative Office of the Courts; and

(G) The County Officials Association of Tennessee.

(4) An insurance company or self insured employer assessed a monetary penalty by the commissioner pursuant to this subsection (f), may appeal the penalty under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner, or an agency member appointed by the commissioner, shall have the authority to hear as a contested case an administrative appeal of any monetary penalty assessed pursuant to this subsection (f).

[Acts 1998, ch. 1024, § 3; 1999, ch. 520, § 41; 2003, ch. 359, §§ 3, 4.]

## **TN 50-6-245**

### **Judgments with multiple findings and separate awards.**

(a) If following a civil action in a workers' compensation case filed pursuant to §50-6-225, the court enters a judgment or decree that includes multiple findings with separate awards of payment to the employee, the following shall apply:

(1) If the employer, insurer or employee appeals one (1) or more of such findings but not all, any payments owed to the employee as the result of a finding not appealed shall be due and payable to the employee when the time for appealing such judgment or decree has expired.

(2) If the employer, insurer or employee appeals more than one (1) of such findings and the Supreme Court grants permission to appeal as to at least one (1) of the findings appealed but not

all, any payments owed to the employee as the result of a finding not appealed or for which permission to appeal was not granted shall be due and payable to the employee when the time for appealing such judgment or decree has expired.

(b) (1) When the time for filing an appeal has expired under subsection (a)(1), the court, unless in its discretion it determines otherwise, shall enter final judgment pursuant to Rule 54.02 of the Rules of Civil Procedure as to all findings not appealed.

(2) When the time for filing an appeal has expired under subsection (a)(2), the Supreme Court, unless in its discretion it determines otherwise, shall issue a mandate pursuant to Rule 42 of the Rules of Appellate Procedure as to all findings for which permission to appeal was not granted.

[Acts 2000, ch. 738, § 1.]

### **TN 50-6-246**

#### **Medical or anatomical impairment rating.**

In a request for medical records under, a physician or hospital shall include a medical or anatomical impairment rating if such record is available. A provider may not charge an additional or separate cost for providing the impairment rating as a part of a request for medical records.

[Acts 2002, ch. 523, § 3.]

### **TN 50-6-301**

#### **“Occupational diseases” defined.**

As used in the Workers’ Compensation Law, “occupational diseases” means all diseases arising out of and in the course of employment. A disease shall be deemed to arise out of the employment only if:

(1) It can be determined to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(2) It can be fairly traced to the employment as a proximate cause;

(3) It has not originated from a hazard to which workers would have been equally exposed outside of the employment;

(4) It is incidental to the character of the employment and not independent of the relation of employer and employee;

(5) It originated from a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected prior to its contraction; and

(6) There is a direct causal connection between the conditions under which the work is performed and the occupational disease. Diseases of the heart, lung, and hypertension arising out of and in the course of any type of employment shall be deemed to be occupational diseases. [Acts 1947, ch. 139, §1; C. Supp. 1950, §6852; Acts 1959, ch. 172, §12; 1969, ch. 60, §1; 1971, ch. 134, §5; 1973 ch. 122, §1; 1977, ch. 339, §§2, 5; impl. am. Acts 1; 80, ch. 534, §1; T.C.A. (orig. ed.), §50-1101.]

### **TN 50-6-302**

#### **Retroactivity--Coal worker’s pneumoconiosis, effect of federal law.**

(a) An occupational disease which an employee had on March 12, 1947, shall not be covered hereunder. An employee has an occupational disease within the meaning of this chapter if the dis-

ease or condition has developed to such an extent that it can be diagnosed as an occupational disease. In every suit for compensation benefits, the burden shall be on the employee to prove that such employee did not have, as of such date, the occupational disease for which such employee is seeking compensation.

(b) In considering whether an employee has the occupational disease of coal worker's pneumoconiosis and is totally disabled or dies therefrom, all the presumptions, criteria and standards contained in or promulgated by reason of the federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173 30 U.S.C. §901 et seq.), specified as the basis for determining eligibility of applicants for benefits because of the disease or its effects shall be used and be applicable under this chapter, and where in a proceeding under this chapter for benefits it is determined the employee or the employee's dependents would be entitled to benefits under the federal Coal Mine Health and Safety Act of 1969, and the Black Lung Benefits Act of 1972 (Pub. L. No. 92-303 as amended (30 U.S.C. §901 et seq.)), the employee or the employee's dependents by reason of the determination shall be considered totally disabled from coal worker's pneumoconiosis and its effects, under this chapter the same as if the employee, or the employee's dependents, establishes the right to recover benefits based upon a total disability from coal worker's pneumoconiosis, or death by reason thereof under the laws of this state. [Acts 1947, ch. 139, §1; C. Supp. 1950, §6852; Acts 1971, ch. 300, §4; 1980, ch. 739, §1; T.C.A. (orig. ed.),§50-1102.]

### **TN 50-6-303**

#### **Compensation and benefits.**

(a)(1) When the employer and employee are subject to the provisions of the Workers' Compensation Law, the partial or total incapacity for work or the death of an employee resulting from an occupational disease as herein defined shall be treated as the happening of an injury by accident or death by accident, and the employee, or in case of the employee's death the employee's dependents, shall be entitled to compensation as provided in this chapter.

(2) An employee who has an occupational disease shall be entitled to the same hospital, medical and miscellaneous benefits as an employee who has a compensable injury by accident, and in the event of death the same funeral benefit shall be paid as in the case of death from a compensable accident.

(b)(1) An employee totally disabled due to coal workers' pneumoconiosis shall be paid benefits during disability as provided for by the federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. §901 et seq.).

(2) In accordance with such federal Coal Mine Health and Safety Act of 1969, if the employee has one (1) or more dependents, the payments shall be increased fifty percent (50%) of such payments for the first dependent, seventy-five percent (75%) for two (2) dependents, and one hundred percent (100%) for three (3) or more dependents.

(3) In case of death of an employee receiving benefits under this chapter, benefits shall be paid to such employee's surviving spouse and any dependents in the same manner provided in the federal Coal Mine Health and Safety Act of 1969 as applicable to employees suffering from coal workers' pneumoconiosis.

(4) Benefits paid under this subsection shall not be subject to the maximum compensation limitations set forth in §§50-6-205, 50-6-207(1), (3) and (4), §50-6-209, 50-6-210(e)(10) or any other sections of the Workers' Compensation Law, but the maximum compensation limitations shall be

controlled exclusively by the maximum compensation benefits and limitations established under the federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. §901 et seq.) as applicable to employees suffering from coal workers' pneumoconiosis.

(5) However, the minimum compensation limitations for employees suffering from coal workers' pneumoconiosis shall be no less than those set forth in such federal Coal Mine Health and Safety Act of 1969. [Acts 1947, ch. 139, §1; C. Supp. 1950, §6852; Acts 1971, ch. 300, §5; 1972, ch. 699, §6; 1975, ch. 210, §1; 1977, ch. 339, §3; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1105; Acts 1985, ch. 325, §1.]

#### **TN 50-6-304**

##### **Last employer liable.**

When an employee has an occupational disease, the employer in whose employment such employee was last injuriously exposed to the hazards of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier. [Acts 1947, ch. 139, §1; C. Supp. 1950, §6852; Acts 1977, ch. 339, §4; T.C.A. (orig. ed.), §50-1106.]

#### **TN 50-6-305**

##### **Notice of contraction of disease and claim for compensation.**

(a) Within thirty (30) days after the first distinct manifestation of an occupational disease, the employee, or someone in the employee's behalf, shall give written notice thereof to the employer in the same manner as is provided in the case of a compensable accidental injury.

(b) This section shall not apply to claims for total disability or death due to or resulting from an asbestos-related disease or coal worker's pneumoconiosis. [Acts 1947, ch. 139, §1; C. Supp. 1950, §6852; Acts 1971, ch. 300, §6; T.C.A. (orig. ed.), §50-1107; Acts 1997, ch. 177, §1.]

#### **TN 50-6-306**

##### **Statute of limitations. [Amended effective January 1, 2005. See the Compiler's Notes.]**

(a) The right to compensation for an 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 § 50-6-203; provided, however, that the applicable time limitation period or periods shall commence as of the date of the beginning of the incapacity for work resulting from an occupational disease or upon the date death results from the occupational disease; provided, however, that if upon the date of the death of the employee the employee's claim has become barred, the claim of the employee's dependent or dependents shall likewise be barred, 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 § 50-6-203 within three (3) years of the discovery of total disability or the date of such death as the case may be.

[Acts 1947, ch. 139, § 1; C. Supp. 1950, § 6852; Acts 1971, ch. 300, § 7; T.C.A. (orig. ed.), § 50-1108; Acts 2004, ch. 962, § 21.]

## **TN 50-6-307**

### **Waiver of compensation for aggravation of condition.**

(a)(1) When an employee, or prospective employee, though not incapacitated for work, is found to be affected by or susceptible to a specific occupational disease, the employee or prospective employee may, subject to the approval of the workers' compensation division of the department of labor and workforce development, be permitted to waive in writing compensation for any aggravation of the employee's or prospective employee's condition that may result from the employee's or prospective employee's working or continuing to work in the same or similar occupation for the same employer or for another employer; provided, that this provision shall not apply to specific occupational diseases on which waivers are prohibited by the federal Coal Mine Health and Safety Act of 1969.

(2) All provisions of the Workers' Compensation Law in respect to accidents shall be applicable to the coverage provided in this part for occupational diseases, except as otherwise provided herein.

(b) When an employee or prospective employee has a prior history of heart disease, heart attack or coronary failure or occlusion, the employee's or prospective employee's may be permitted to waive in writing compensation from the employee's or prospective employee's employer or future employer for claims growing out of an aggravation or repetition of such condition, such waiver to be evidenced by filing with the administrator a written instrument to which shall be attached a copy of a medical statement giving the prior history of such condition, and in all such cases claims for workers' compensation benefits growing out of an aggravation or repetition of such condition by such employee or his dependents shall be barred.

(c) No employer shall require the execution of a waiver by any employee who was at work on March 17, 1961, unless such employee subsequently suffers a heart condition as defined herein.

[Acts 1947, ch. 139, §1; C. Supp. 1950, §6852; Acts 1961, ch. 339, §1; 1972, ch. 699, §7; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1109; 1999, ch. 520, §41.]

## **TN 50-6-401**

### **Authority to write insurance--Tax.**

(a)(1) Every person, partnership, association, organization or corporation, whether organized under the laws of this or any other state or country, which has or may hereafter comply with the laws of the state of Tennessee and is authorized to write accident or indemnity insurance in this state shall be authorized and empowered to write workers' compensation insurance under the terms and provisions of this part, and likewise every reciprocal and mutual insurance association or corporation shall have the like privileges; provided, that any such entity offering workers' compensation insurance shall be required to offer medical benefits coverage for paid-on-call and volunteer firefighters.

(2) An entity offering workers' compensation insurance shall offer coverage for members of rescue squads on similar terms and conditions as coverage available to full-time paid firefighters or emergency medical services personnel.

(b)(1) All of such insurance carriers provided for by this section shall be subject to a tax of four percent (4%) on premiums collected for workers' compensation insurance, and a surcharge of four tenths of one percent (.4%) of the premiums, the surcharge to be earmarked for the administration of the Tennessee Occupational Safety and Health Act, compiled in chapter 3 of this title,

and this shall be in lieu of any other tax on premiums for the writing of such business of workers' compensation insurance now provided for by law.

(2) The surcharge of four tenths of one percent (.4%) on the tax on workers' compensation insurance premiums levied by the provisions of this section shall not apply to any employer who employs ten (10) or fewer employees unless such employer is in the business of construction or manufacturing.

(c) Of the funds collected pursuant to the provisions of subsection (b), a sum sufficient shall be allocated from and equal to an amount not greater than fifty percent (50%) of the revenues derived from the premium tax levied pursuant to this section, and shall be paid into the second injury fund created in §50-6-208, to provide payments for the benefits provided therein.

(d) In regard to the surcharge of four tenths of one percent (.4%) set out in subdivision (b)(1), an amount equal to the balance of the earmarked funds which remained on June 30, 1996, shall be transferred to the general fund. In the event that the funds available at the time of this one-time transfer are less than the aforementioned 1996 balance, then the total amount of the balance shall be transferred. [Acts 1919, ch. 123, §40; 1923, ch. 84, §4; Shan. Supp., §3608a190; Code 1932, §6894; C. Supp. 1950, §6894; impl. am. Acts 1980, ch. 534, §1; Acts 1981, ch. 396, §§3, 4; T.C.A. (orig. ed.), §50-1201; Acts 1985, ch. 393, §17; 1988, ch. 707, §§1, 2; 1995, ch. 449, §1; 1997, ch. 533, §51.]

## **TN 50-6-402**

**Classification of risks and premiums - Filing - Approval [Amended effective July 1, 2007. See the Compiler's Notes].**

(a) In determining classifications of risks and premiums relating thereto, the insurer may include allowances of any character made to any employee, only when such allowances are in lieu of wages, and are specified as part of the wage contract.

(b) Before approving any workers' compensation loss cost filing made by the designated rate service organization pursuant to this part or title 56, the commissioner of commerce and insurance shall consult with the advisory council on workers' compensation concerning such filing. The council shall have sixty (60) days to provide written comment on the filing. The council shall meet to provide such comment. The commissioner of commerce and insurance shall approve, disapprove or modify the filing within ninety (90) days of receiving the filing. If the commissioner of commerce and insurance modifies the filing, such modification shall be within the range established by the recommendation of the rate service organization in its filing and the recommendation of the advisory council on workers' compensation. In instances when the commissioner of commerce and insurance modifies the filing, the rate service organization shall develop a plan that reflects the commissioner's modification, unless the organization appeals the modification pursuant to § 56-5-308. The commissioner shall report the action taken on any such filing to the special joint committee on workers' compensation and to the speakers of the senate and the house of representatives.

(c) Prior to the commissioner of commerce and insurance establishing the multiplier to be applied to the assigned risk plan, as provided in § 56-5-314(c), the commissioner shall provide notice of the intended action, including supporting rationale therefor, to the advisory council on workers' compensation. The council may, within fifteen (15) days of receipt of such notice, provide written comment and recommendation to the commissioner related to the intended action. After the fif-

teen-day period has expired the commissioner shall establish the multiplier, by order, as provided in § 56-5-314(c).

(d) The commissioner of commerce and insurance shall report quarterly, beginning with the third quarter of 2003, to the advisory council on workers' compensation concerning all workers' compensation filings made by the designated rate service organization received by the department of commerce and insurance that were not referred to the council as set out in subsection (b) since the last report.

[Acts 1919, ch. 123, § 40; 1923, ch. 84, § 4; Shan. Supp., § 3608a190; Code 1932, § 6894; C. Supp. 1950, § 6894; impl. am. Acts 1971, ch. 137, § 2; Acts 1972, ch. 456, § 1; impl. am. Acts 1980, ch. 534, § 1; T.C.A. (orig. ed.), § 50-1202; Acts 1996, ch. 944, §§ 32, 33; 1998, ch. 1024, § 15; 2001, ch. 192, § 2; 2003, ch. 359, §§ 5, 6.]

#### **TN 50-6-404**

##### **Bond or certificate.**

(a)(1) Every insurance company doing a workers' compensation business in this state shall furnish a bond running to the state in the sum of fifty thousand dollars (\$50,000) with some surety company authorized to transact business in this state as surety, in such form as may be approved by the commissioner of commerce and insurance, conditioned for the payment of compensation losses on policies issued by such company upon risks located in the state of Tennessee. (2) Suit may be brought upon such bond by the workers' compensation division for the use and benefit of any party or parties at interest.

(3) The annual license of such company shall not be issued or renewed until it has filed with the commissioner a bond as aforementioned.

(4) In lieu of such bond, a deposit of the same amount may be made with the state treasurer in the form of other security satisfactory to the commissioner.

(b) The commissioner may, in the commissioner's discretion, accept, in lieu of the bond herein required, a certificate from the commissioner of insurance or other corresponding official of the state in which the insurance company is organized and domiciled, that such company has on deposit in such state the sum of not less than one hundred thousand dollars (\$100,000) in cash, or its equivalent, which deposit is for the protection of all of its policyholders ratably. [Acts 1933, ch. 158, §1; C. Supp. 1950, §6894; impl. am. Acts 1971, ch. 137, §2; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1204.]

#### **TN 50-6-405**

##### **Compensation insurance or proof of financial ability required - Self insurers - Payment of premiums - Excess catastrophe reinsurance coverage - Authority and duty of commissioner.**

(a) Every employer under and affected by the Workers' Compensation Law shall:

(1) Insure and keep insured the employer's liability hereunder in some person or persons, association, organization or corporation authorized to transact the business of workers' compensation insurance in this state; or

(2) Furnish to the commissioner of commerce and insurance satisfactory proof of such employer's financial ability to pay all claims that may arise against such employer under this chapter and guarantee the payment of the same in the amount and manner and when due as provided for in this chapter.

(b) If the employer elects to proceed under subdivision (a)(2), the commissioner of commerce and insurance shall require the applicant to file with the department of commerce and insurance and maintain the following:

(1) A deposit of acceptable negotiable securities with a market value of not less than one hundred twenty-five thousand dollars (\$125,000) or a bond in the same amount. The securities or bond shall be held by the commissioner of commerce and insurance and be conditioned to run directly for the benefit of the employees subject to the Workers' Compensation Law and may be enforced by them directly in an action in their name. All indemnity bonds filed under this provision of law must be issued by an insurance company authorized to do business in Tennessee and must contain a provision requiring the issuer to give the commissioner of commerce and insurance thirty (30) days' written notice of intention to revoke or cancel such bond; and

(2) Evidence of the employer's financial ability to pay all claims that may arise against the employer in the form of an annual certified financial statement, including a statement of assets and liabilities and a statement of profit and loss, to be filed no later than sixty (60) days after the company's immediately preceding fiscal year. Such financial statements are to include a detailed accounting for reserves for losses outstanding incurred in connection with workers' compensation self-insurance. Such financial statement shall be kept confidential by the commissioner of commerce and insurance and shall not be construed to be a public record pursuant to title 10, chapter 7.

(c) (1) Ten (10) or more employers of the same trade or professional association may enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insurers as provided in subdivision (a)(2). The trade or professional association shall have been in active existence in Tennessee for at least five (5) years and such association shall:

(A) Have a constitution or bylaws;

(B) Have members that support the association by regular payment of dues on an annual, semiannual, quarterly or monthly basis; and

(C) Be created in good faith for purposes other than that of creating workers' compensation self-insurer pools. The commissioner of commerce and insurance has the authority to promulgate such rules and regulations as deemed necessary to provide for the solvency, administration and enforcement of such pooling agreements. To the extent deemed necessary by the commissioner of commerce and insurance, each employer member of such approved group shall be classified as a self-insurer as otherwise provided in this chapter;

(2) Notwithstanding any other law or rule to the contrary, funds not needed for current obligations may be invested by the board of trustees in "Tennessee securities" as defined in § 56-4-210(b). The board of trustees of each workers' compensation pool shall adopt an investment policy. Such policy shall address credit, quality of investments, maximum maturity of investments and such other matters as the board deems appropriate. Real estate investments must be undertaken with the approval of the commissioner of commerce and insurance;

(3) Each group of employers qualifying as self-insurers pursuant to this subsection (c) shall submit to the commissioner of commerce and insurance a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. A thirty-day extension of the financial statement filing requirement shall be granted by the commissioner of commerce and insurance upon receipt of a request, via certified mail, by a group. Any such request shall be submitted to the commissioner of com-

merce and insurance not less than thirty (30) days prior to the date such financial statement is due to be filed; and

(4) (A) At the request of a group of employers qualifying as self-insurers pursuant to this subsection (c), the commissioner of commerce and insurance, in the commissioner of commerce and insurance's sole discretion, may grant such additional thirty (30) day extensions to the financial statement filing requirements for acts of God, public enemies, fire, flood, storms or similar events constituting force majeure which cause the group to require more time to meet the filing requirements;

(B) The commissioner of commerce and insurance, after notice and an opportunity for a hearing, may revoke the certificate of approval of a group of employers qualifying as self-insurers pursuant to this subsection if the group fails to comply with this subsection (c) or any rules promulgated hereunder. In addition to or in lieu of revoking a certificate of approval, the commissioner of commerce and insurance may assess a civil penalty of one hundred dollars (\$100) per day for failure to timely meet the filing requirements set forth herein. All hearings under this subsection (c) shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(C) Financial statements filed pursuant to this subsection (c), individual member financial statements, work papers, notes, internal documents generated by the department of commerce and insurance or any other information obtained by or disclosed to the commissioner of commerce and insurance pursuant to this chapter or any regulations promulgated hereunder, shall be confidential and shall not be disclosed to the public. This provision, however, shall not apply to the examination report prepared by the commissioner of commerce and insurance, nor to any rebuttal to such examination reports submitted by or on behalf of the group examined. However, nothing contained in this subdivision (c)(4)(C) shall be construed as prohibiting the commissioner of commerce and insurance from disclosing the above, or any matters relating thereto, to state agencies of this or any other state, or to law enforcement officials of this or any other state or agency of the federal government at any time;

(D) Upon receipt of a request from any approved authorized agent of a group of employers qualifying as self-insurers pursuant to this subsection (c), the group shall provide a copy of the annual statement of financial condition. Such agent, however, shall not further disseminate such information except for purposes of obtaining errors and omission insurance or in the exercise of due diligence of the agent on behalf of the agent's client seeking admission to the group. Further, any individual or entity obtaining a copy of the statement shall hold such information confidential and shall not share or disclose such information to any other individual or entity.

(d) (1)-(3) [Deleted by 2000 amendment.]

(4) No agreement by any employee to pay any portion of the insurance premium paid by such employee's employer is valid, and any employer who deducts any portion of such premium from the wages or salary of any employee entitled to the benefits of this law commits a Class C misdemeanor, and upon conviction shall be fined for each offense.

(e) If at any time the commissioner of commerce and insurance deems the security or bond inadequate or unsafe, such commissioner shall require adequate bond or security, and upon default thereof, such commissioner shall so advise the commissioner of labor and workforce development.

(f) The commissioner of commerce and insurance may require the employer to secure excess catastrophe reinsurance coverage.

(g) This part shall not apply to policies of insurance against loss from explosions of boilers or fly-wheels or other similar single catastrophe hazards.

(h) The commissioner of commerce and insurance may issue such rules, regulations and orders as may be necessary to properly administer the deposits, bonds and financial evidence as required in this part.

(i) It is the duty of the commissioner of commerce and insurance and the commissioner of labor and workforce development to interchange information as to matters of mutual interest under this chapter.

[Acts 1919, ch. 123, § 41; impl. am. Acts 1923, ch. 7, §§ 2, 50; Shan. Supp., § 3608a191; mod. Code 1932, § 6895; Acts 1941, ch. 90, § 11; mod. C. Supp. 1950, § 6895; impl. am. Acts 1971, ch. 137, § 1; Acts 1973, ch. 379, § 11; 1978, ch. 759, § 1; impl. am. Acts 1980, ch. 534, § 1; Acts 1980, ch. 457, §§ 1, 2; T.C.A. (orig. ed.), § 50-1205; Acts 1985, ch. 381, § 1; 1989, ch. 591, § 113; 1993, ch. 224, § 1; 1995, ch. 142, § 1; 1997, ch. 533, § 50; 1999, ch. 520, § 41; 2000, ch. 852, § 15; 2002, ch. 544, §§ 1, 2.]

## **TN 50-6-406**

### **Evidence of compliance to be filed--Penalty for refusal--Liability to employee in damages--Defenses.**

(a) Every employer, or his insurance carrier unless the employer is self-insured, subject to the provisions of the Workers' Compensation Law shall file evidence of his compliance with the provisions of §50-6-405 with the division of workers' compensation on a form prescribed by the commissioner, within thirty (30) days after procurement or renewal of suitable workers' compensation insurance or qualification as a self-insurer.

(b) If an employer fails to comply with the provisions of Section 50-6-405, then during the continuance of such failure, the employer shall be liable to an injured employee either for compensation as provided in this chapter to be recovered in an action brought in a court of competent jurisdiction for that purpose, or for damages to be recovered as if this chapter had not been enacted, as such employee may elect; and in the case suit for damages is brought instead of a suit to recover compensation under the provisions of the workers' compensation law, the employer, when sued shall not be allowed to set up as defense to the action that the employee was negligent, or that the injury was caused by negligence of a fellow servant or fellow employee, or that the employee had assumed the risk of the injury.

(c) Claim of compensation made under the Workers' Compensation Law shall be deemed a waiver of the right to sue for damages, and the institution and prosecution to final judgment of a suit for damages shall be deemed a waiver of a right to claim compensation under this chapter.

[Acts 1919, ch. 123, §42; impl. am. Acts 1923, ch. 7, §§2, 50; Shan. Supp., §3608a192; mod. Code 1932, §6896; Acts 1973, ch. 379, §12; 1978, ch. 759, §2; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1206; Acts 1989, ch. 591, §113; 1999, ch. 520, §41; 1999 TN §2381, May 31, 2000.]

## **TN 50-6-407**

### **Certificate of compliance with insurance provisions.**

Every individual, firm, association, or corporation using the services of one (1) or more persons for pay shall post and maintain in a conspicuous place on the business premises a printed notice regarding workers' compensation as prescribed by the commissioner of labor and workforce development. The notice shall include, at a minimum, a general description of the duties and obligations of both the employer and the employee under such law; the name, address and telephone number of the individual to notify in the event of a work-related injury; a toll-free number and address for the department of labor and workforce development at which employers or employees may obtain additional information; and the name, address and telephone number of a representative of the employer who can confirm whether such individual, firm, association, or corporation is subject to the Tennessee Workers' Compensation Law; and such other information as may be required through rules promulgated by the commissioner of labor and workforce development.

[Acts 1919, ch. 123, § 43; Shan. Supp., § 3608a193; Code 1932, § 6897; Acts 1978, ch. 759, § 3; T.C.A. (orig. ed.), § 50-1207; Acts 1990, ch. 795, §§ 1-3; 1999, ch. 520, § 41; 2002, ch. 695, § 7; 2003, ch. 359, § 10.]

## **TN 50-6-408**

### **Mandatory policy provisions.**

All policies insuring the payment of compensation under the Workers' Compensation Law, including all contracts of mutual, reciprocal, or interinsurance, must contain a clause to the effect that:

- (1) As between the employer and the insurer or insurers, the notice of or knowledge of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer or insurers;
- (2) Jurisdiction of the insured for the purpose of this chapter shall be jurisdiction of the insurer or insurers; and
- (3) The insurer or insurers shall in all things be bound by and subject to the awards, orders, judgments or decrees rendered against such insured employer, whether a formal party to the proceedings or not. [Acts 1919, ch. 123, §44; Shan. Supp., §3608a194; Code 1932, §6898; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1208.]

## **TN 50-6-409**

### **Policy provision concerning agreement to pay benefits.**

(a) No policy of insurance against liability arising under the Workers' Compensation Law shall be issued unless it contains an express agreement of the insurer that it will promptly pay to the person entitled to same all benefits conferred by this chapter and all installments of the compensation that may be awarded or agreed upon, and that this obligation shall not be affected by any default of the insured for the injury or by any default in the giving of any notice required by such policy or otherwise.

(b) Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation under the Workers' Compensation Law, and may be enforced directly by such person in such person's name, and the failure, if any, of the insured to comply with any provisions of the policy regarding notice of injury, and such matters shall not be a defense in a suit on the

policy by the insured employee or such insured employee's dependents or representatives, unless it can be shown that such insured employee or such insured employee's representatives or dependents aided and abetted in seeking to mislead or defraud the insurer. [Acts 1919, ch. 123, §45; Shan. Supp., §3608a195; Code 1932, §6899; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §50-1209.]

## **TN 50-6-410**

### **Violations of §50-6-405.**

The grand jury of every county in the state is given inquisitorial power over all violations of §50-6-405 relating to employers insuring their compensation liability under the Workers' Compensation Law, and is required to inquire into all such violations and to present them to the court by indictment or presentment. [Acts 1933, ch. 71, §§1, 2; mod. C. Supp. 1950, §§11583.1, 11583.2; impl. am. Acts 1980, ch. 534, §1; T.C.A. (orig. ed.), §§50-1210, 50-1211; Acts 1989, ch. 591, §113; 1999 TN §2381, May 31, 2000.]

## **TN 50-6-412**

### **Penalties for noncompliance with insurance requirements.**

(a) The commissioner of the department of labor and workforce development or the commissioner'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 which may be relevant to or reasonably calculated to lead to the discovery of relevant information necessary to determine whether an employer is subject to the workers' compensation law, to determine whether an employer has secured payment of compensation pursuant to the worker's compensation law, and/or to determine the amount of any monetary penalty which is required to be assessed against an employer for failure to secure payment of compensation pursuant to the workers' compensation law.

(b) (1) All monetary penalties assessed pursuant to this section which 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 such an employer as of the date of determination that the employer is subject to the workers' compensation law and has not secured payment of compensation pursuant to the workers' compensation law.

(2) If the commissioner or commissioner's designee determines the period of noncompliance with the workers' compensation law 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 such an 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, the employer remained subject to the workers' compensation law 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 commissioner that the employer is no longer subject to the workers' compensation law and upon concurrence of the commissioner that the employer is no longer subject to the workers' compensation law, 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 the workers' compensation law and fails to secure payment of compensation as required by law.

(4) The commissioner 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 department of labor and workforce development indicate, or when the department's investigation of an employer indicates, that an employer is subject to the workers' compensation law and has failed to secure payment of compensation as required by the workers' compensation law, the department shall so notify the employer by certified letter, return receipt requested.

(2) The department shall require the employer to provide, within ten (10) days, excluding Saturdays, Sundays and holidays, of the receipt of the certified letter, either proof that the employer had secured payment of compensation as required by the workers' compensation law or a verifiable sworn affidavit, with supporting documentation, that the employer is exempt from the workers' compensation law.

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

(d) (1) If the employer responds to the certified letter within ten (10) days, excluding Saturdays, Sundays, and holidays, of its receipt and it is determined by the commissioner or the commissioner's designee that the employer has secured payment of compensation as required by the workers' compensation law or that the employer is not subject to the workers' compensation law, no monetary penalty shall be assessed.

(2) If the employer responds to the certified letter within ten (10) days, excluding Saturdays, Sundays, and holidays, of its receipt and it is determined by the commissioner or the commissioner's designee that the employer is subject to the workers' compensation law and that the employer has secured the payment of compensation since the date of receipt of the certified letter, the commissioner shall issue a monetary penalty to the employer equal to one and one-half (1 1/2) times the average yearly workers' compensation premium.

(e) (1) If the employer fails to respond to the certified letter within ten (10) days, excluding Saturdays, Sundays, and holidays, of its receipt or the employer responds to the certified letter but does not provide a verifiable sworn affidavit of exemption, the commissioner or the commissioner's designee shall issue a Show Cause Order and Notice of Hearing which shall be sent to the employer by certified mail, return receipt requested, to the employer's last known address, according to department records. If either of these circumstances occur, the commissioner shall assess two (2) penalties. The first monetary penalty shall be equal to one and one half (1 1/2) times the average yearly workers' compensation premium. The second monetary penalty shall be equal to the average yearly workers' compensation premium for such employer.

(2) The Show Cause Order and Notice of Hearing shall notify the employer of all monetary penalties which have been assessed against the employer and the criminal penalties to which the employer may be subject.

(3) The Show Cause Order and Notice of Hearing shall advise the employer it must appear at the show cause hearing before the commissioner or the commissioner's designee to show cause why it should not be held to be in violation of the workers' compensation law by its failure to secure compensation as required by the workers' compensation law.

(4) The employer shall have the burden of proof at the show cause hearing and shall be required to produce documentary evidence that the employer is not subject to the workers' compensation law or that the employer was in compliance with the workers' compensation law.

(5) The department shall schedule the show cause hearing in a timely manner, not to exceed sixty (60) days from the date of the employer's receipt of the first certified letter sent pursuant to subsection (c)(1).

(f) (1) If the commissioner or the commissioner's designee determines at the show cause hearing that the employer is not subject to the workers' compensation law or that the employer had secured and continues to secure payment of compensation as required by the workers' compensation law, all monetary penalties shall be void.

(2) If the employer appears at the show cause hearing and it is determined by the commissioner or the commissioner's designee that the employer is subject to the workers' compensation law and that the employer has come into compliance with the workers' compensation law by securing payment of compensation prior to the date of the show cause hearing, the first monetary penalty equal to one and one half (1 1/2) 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 employer appears at the show cause hearing and it is determined by the commissioner or the commissioner's designee that the employer is subject to the workers' compensation law and that the employer has failed to secure payment of compensation as required by the workers' compensation law, the employer shall be ordered to procure workers' compensation insurance coverage and to provide the department 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 department with proof of coverage as ordered, the first monetary penalty equal to one and one-half (1 1/2) 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 commissioner or commissioner's designee within the required time period, all monetary penalties, totaling two and one-half (2 1/2) times the average yearly workers' compensation premium, shall be immediately due and payable.

(g) (1) The commissioner 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 commissioner or the commissioner's designee to obtain workers' compensation insurance coverage.

(2) In the event an employer shall fail to comply with the requirements of the workers' compensation law by failing to secure payment of compensation on a second or subsequent occasion, the commissioner 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 pro-

vides proof that it has complied with the workers' compensation law by securing payment of compensation.

(h) 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 commissioner or the commissioner's designee pursuant to this section.

[Acts 1992, ch. 900, § 23; 1999, ch. 520, § 41; 2000, ch. 972, § 4.]

### **TN 50-6-413**

#### **In-state claims office or adjuster required--Authority of office or adjuster.**

Beginning January 1, 1993, every workers' compensation insurer which provides insurance for Tennessee workers' compensation claims, and every workers' compensation division-approved self-insured employer, shall be required to maintain a workers' compensation claims office or to contract with a claims adjuster located within the borders of the state of Tennessee. Such claims office or adjuster has authority to commence temporary total disability benefits and medical benefits if so ordered by the claims coordinator or by a court at a show cause hearing. [Acts 1992, ch. 900, §27.]

### **TN 50-6-414**

#### **Experience modification factors--Notification of employers.**

(a) Any employer who is assigned an experience modification factor for the purpose of determining its workers' compensation premium shall be sent annually, at no charge to the employer, a copy of any information relative to its experience modification factor that is available to an insurance company.

(b) If the experience modification factor notification is not received by the employer prior to the policy renewal date, or the policy anniversary date if different, the experience modification factor shall not be used for premium purposes if its use results in a higher premium for the employer. The mailing of the experience modification factor worksheet shall be sufficient proof of notice, provided such mailing is by certified mail, return receipt requested. [Acts 1993, ch. 370, §1; 1999 TN §2381, May 31, 2000.]

### **TN 50-6-415**

#### **Data collection--Reporting data.**

(a)(1) The commissioner of labor and workforce development has the same authority as the commissioner of commerce and insurance to request and obtain relevant information on workers' compensation claims. All workers' compensation insurers or their designated agents, self insurers and the department of commerce and insurance shall report claims information and other relevant workers' compensation data necessary to determine and analyze costs of the system to the commissioner of labor or to such agents as the commissioner may designate. The commissioner may promulgate all reasonable rules and regulations necessary to implement the provisions of this section in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) In promulgating rules concerning data collection, the commissioner of labor and workforce development shall include appropriate elements of the Detailed Claim Information Reporting Model Regulation for Workers' Compensation Insurance issued by the National Association of

Insurance Commissioners, and such other information as the commissioner deems necessary. The commissioner shall also consult with the advisory council on workers' compensation in defining the information needed to permit management of the system. The commissioner shall also report to the special joint committee on workers' compensation at the request of the chair of the committee.

(b) The division of workers' compensation shall gather, and has the duty to analyze and report, information relevant to the functioning of the workers' compensation system to the advisory council on workers' compensation, the general assembly and the governor. The division shall respond to information requests concerning workers' compensation issues from the advisory council on workers' compensation, the general assembly and the governor.

(c) The commissioner of labor and workforce development shall enforce requests pursuant to this section in the same manner and with the same authority as the commissioner of commerce and insurance possesses with respect to violations of this part and title 56. The commissioner shall also notify the principal corporate office of any insurer of any refusal to comply with such requests. The commissioner's enforcement authority under this subsection applies only to the commissioner's efforts to obtain relevant data as provided in subsections (a) and (b). [Acts 1996, ch. 944, §24; 1998, ch. 1024, §4; 1999, ch. 520, §41.]

#### **TN 50-6-417**

##### **Dispute of experience modification factor.**

In cases where an employer disputes an experience modification factor assigned to the employer, the insurer shall notify the employer of the employer's right to submit a request for review and to appeal to the commissioner of commerce and insurance pursuant to §50-5-309(b) [Acts 1996, ch. 944, §27.]

#### **TN 50-6-418**

##### **Rating plans based on drug-free workplace program participation.**

The department of commerce and insurance shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to rules adopted by the division of workers' compensation of the department of labor and workforce development. The plans must take effect January 1, 1997, must be actuarially sound, and must state the savings anticipated to result from such drug testing. The credit shall be at least five percent (5%) unless the commissioner of commerce and insurance determines that five percent (5%) is actuarially unsound. The commissioner is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that attain certain criteria for safety programs. The commissioner shall consult with the commissioner of labor and workforce development in setting such criteria. [Acts 1996, ch. 944, §51; 1999, ch. 520, §41.]

#### **TN 50-6-419**

##### **Rules governing settlement of workers' compensation claims.**

(a) Notwithstanding any other provision of this part or of title 56 to the contrary, in order to assure that injured employees are treated fairly and to assure that claims are handled in an appropriate and uniform manner, the commissioner of labor and workforce development shall set standards by

rule governing the adjustment and settlement of workers' compensation claims by insurance carriers and self-insured employers. Such standards may include, but are not limited to, standards governing contact with an employee after notice of injury has been given, the processing of claims and procedures for making an offer of settlement.

(b) The commissioner shall promulgate rules and regulations to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The commissioner of labor and workforce development shall enforce standards adopted pursuant to this section in the same manner as and with the same authority as the commissioner of commerce and insurance possesses with respect to violations of this part and title 56. The commissioner shall also notify the principal corporate office of any insurer of any violations of such standards.

(d) The commissioner shall receive recommendations concerning such standards from the advisory council on workers' compensation. On or before October 1, 1996, the commissioner shall deliver a draft of such standards to the council for comment. The council shall comment on such standards within sixty (60) days. The commissioner shall also provide the special joint committee on workers' compensation with the proposed rules for comment. [Acts 1996, ch. 944, §53; 1999, ch. 520, §41.]

#### **TN 50-6-420**

##### **Legislative intent.**

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. [Acts 2004, ch. 962, § 44.]

#### **TN 50-6-501**

##### **Establishment of safety committees--Reporting by insurance companies--Civil penalty.**

(a) In order to promote health and safety in places of employment in this state, every public or private employer which is subject to the Workers' Compensation Law shall establish and administer a safety committee in accordance with rules adopted pursuant to §50-6-502, if the commissioner of labor and workforce development finds that the employer has an experience modification factor (or rate) applied to the premium in the top twenty- five percent (25%) of all covered employers' modification factors (or rates) applied to the premium.

(b) In making determinations under subsection (a), the commissioner of labor and workforce development shall utilize the most recent statistics regarding experience modification rates.

(c)(1) Every insurance company authorized to write workers' compensation insurance shall submit its modification factors (or rates) for each of its workers' compensation insureds to the commissioner of commerce and insurance, when requested by the commissioner. On request from the commissioner of labor and workforce development, the commissioner of commerce and insurance shall provide the department of labor and workforce development with such information.

(2) The commissioner of labor and workforce development shall establish safety committee requirements for self-insured employers pursuant to rules promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) The commissioner of commerce and insurance may assess a civil penalty of up to two thousand dollars (\$2,000) per incident for failure to comply with subdivision (c)(1). [Acts 1992, ch. 900, §5; 1999, ch. 520, §41.]

### **TN 50-6-502**

#### **Rules governing committees--Duties of committees--Training--Operation under collective bargaining agreement.**

(a) In carrying out §50-6-501, the commissioner of labor and workforce development shall promulgate rules which include, but are not limited to, provisions:

(1) Prescribing the membership of the committees to ensure equal numbers of hourly employees and employer representatives as well as specifying the frequency of meetings;

(2) Requiring employers to make adequate written records of each meeting and to maintain the records subject to inspection by Tennessee occupational safety and health administration representatives; and

(3) Requiring employers to compensate employee representatives on safety committees at the regular hourly wage while the employees are engaged in safety committee training or are attending safety committee meetings.

(b) The duties and functions of the safety committee shall include, but are not limited to:

(1) Assisting in establishing procedures for workplace safety inspections by the committee;

(2) Assisting in establishing procedures for investigating all safety incidents, accidents, illnesses and deaths; and

(3) Assisting in evaluating accident and illness prevention programs.

(c) The employer shall provide training for safety committee members in their duties and responsibilities provided in subsection (b).

(d) An employer operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this section and §50-6-501, may apply to the commissioner of labor and workforce development for a determination that the employer meets the requirements of this section and §50-6-501. [Acts 1992, ch. 900, §5; 1999, ch. 520, §41.]

### **TN 50-6-503**

#### **Safe employment education and training advisory committee.**

(a) No later than January 1, 1993, the commissioner of labor and workforce development may appoint a safe employment education and training advisory committee composed of the following seven (7) members having experience in and knowledge of workplace safety and health: three (3) representing employees; three (3) representing employers; and one (1) representing the insurance industry. The committee shall elect its chair.

(b) The members of the committee shall be appointed for a term of three (3) years and shall serve at the pleasure of the commissioner. Before the expiration of the term of a member, the commissioner shall appoint a successor. A member is eligible for reappointment. If there is a vacancy for any cause, the commissioner shall make an appointment to become immediately effective.

(c) The members shall serve without compensation but shall be entitled to travel reimbursement pursuant to comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) The duties of the committee shall be determined by the commissioner of labor and work force development and shall include, but not be limited to:

(1) Recommending to the commissioner:

(A) Occupational and safety and health grant application procedures and criteria for grant approval;

(B) Occupational safety and health grant recipients; and

(C) Revocation of grants to recipients failing to comply with grant criteria established by the commissioner; and

(2) Receiving and processing occupational safety and health grant applications.

(e) The committee shall meet at the call of the commissioner but at least annually at a place, day and hour determined by the committee. The committee shall also meet at other times and places specified by a majority of the members of the committee or the chair of the committee. A majority of the members of the committee constitutes a quorum for the transaction of business.

[Acts 1992, ch. 900, §5; 1999, ch. 520, §41.]

#### **TN 50-6-504**

##### **Occupational safety and health grants.**

(a) No later than January 1, 1993, the commissioner of labor and workforce development, in consultation with the safe employment education and training advisory committee, shall establish an occupational safety and health grant program to employers subject to this chapter for the sole purpose of funding the education and training of employees in safe employment practices and conduct in the employer's own business for the employer's own employees, and to promote the development of employer sponsored health and safety programs in the employer's own business for the employer's own employees. The commissioner shall consider the presence of a drug-free workplace policy pursuant to chapter 9 of this title to be a safe employment practice for the purpose of evaluating and awarding grants under this section.

(b) The commissioner of labor shall adopt rules establishing:

(1) Grant application procedures and criteria for grant approval; and

(2) Procedures for revocation of grants to recipients failing to comply with grant criteria established by the commissioner pursuant to this section.

(c) The commissioner, after reviewing the recommendation of the safe employment education and training advisory committee, shall approve or deny an application for an occupational safety and health grant. If the commissioner approves a grant under this section, the commissioner shall set the amount of the grant awarded to the grant recipient.

(d) The commissioner shall monitor grant recipients for compliance with grant criteria and procedures established by the commissioner.

(e) The grants awarded under this section shall be funded only from civil penalties arising out of chapter 3 of this title, paid to the department of labor and workforce development. [Acts 1992, ch. 900, §5; 1996, ch. 944, §52; 1999, ch. 520, §41.]

## **TN 50-6-505**

### **Civil liability of labor organization.**

When an employee incurs an injury compensable under this chapter, the discussion or furnishing, or failure to discuss or furnish, or failure to enforce any safety or health provision, shall not subject a labor organization representing the injured employee to any civil liability for the injury. [Acts 1992, ch. 900, §5.]

## **TN 50-6-601**

### **Short title--Establishment of competitive state workers' compensation insurance fund.**

(a) This part shall be known as and may be cited as the "Workers' Compensation Insurance Fund Act of 1992." (b)(1) There shall be established a competitive state workers' compensation insurance fund to insure employers under the Workers' Compensation Law.

(2) This fund shall operate as a nonprofit insurance company and is subject to all requirements of law and regulation as any other insurer offering workers' compensation insurance in Tennessee pursuant to title 56, and this chapter.

(3) This fund shall act in addition to, and not as a substitute for, an assigned risk pool.

(4) The fund shall be required to maintain an adequate rate and any assessment for accumulated liabilities shall be made only against those insured within the state workers' compensation insurance fund. No assessments shall be made against or for the Tennessee Guaranty Association, as described in title 56, chapter 12, and no assessment shall be made against a private insurer and/or any entity authorized under §50-6-405(c), not participating in the state workers' compensation insurance fund. The policies written by the fund shall be assessable against the policyholders. [Acts 1992, ch. 900, §26; 1994, ch. 979, §2.]

## **TN 50-6-602**

### **Definitions.**

As used in this part, unless the context otherwise requires:

(1) "Board" means the board of directors of the competitive state compensation insurance fund;

(2) "Fund" means the competitive state compensation insurance fund;

(3) "Personal injury" or "injury" has the meaning given to it in §50-6-102. [Acts 1992, ch. 900, §26; 1994, ch. 979, §3.]

## **TN 50-6-603**

### **Purpose and organization of fund.**

The fund shall be created as a nonprofit independent public corporation for the purpose of insuring employers against liability for personal injuries for which their employees may be entitled to benefits under this part. The fund shall be organized as a domestic insurance company. [Acts 1992, ch. 900, §26.]

## **TN 50-6-604**

### **Board of directors--Members.**

(a) In the event the commissioner of commerce and insurance elects to make the fund operational pursuant to §56-5-314, the existing board of directors shall terminate and a new board shall be appointed within sixty (60) days of such election.

(b) The board of directors shall initially consist of seven (7) members who are knowledgeable concerning the workers' compensation system. The state treasurer shall be an ex officio member. Initially, the speakers of the senate and the house of representatives and the governor shall each appoint one (1) member for a two-year term and one (1) member for a three-year term. Each director shall hold office until a successor is appointed and qualifies. The board shall annually elect a chair from among its members and other officers it deems necessary for the performance of its duties.

(c)(1) Once the fund is operational and the commissioner of commerce and insurance certifies it as a fund able to effectively operate under the provisions of this part and title 56, then on the next scheduled expiration of board members' terms:

(A) The members shall be elected by policyholders; and

(B) The state treasurer shall, on expiration of its term, cease to be a member of the board.

(2) Such successor board shall consist of seven (7) members selected by policy holders for three-year terms. [Acts 1992, ch. 900, §26; 1996, ch. 944, §28.]

## **TN 50-6-605**

### **Management of fund.**

The management and control of the fund is vested solely in the board. [Acts 1992, ch. 900, §26.]

## **TN 50-6-606**

### **Powers of board.**

(a)(1) The board is vested with full power, authority, and jurisdiction over the fund. (2) The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the fund, either in the administration of the fund or in connection with the insurance business to be carried on by it under the provisions of this part, as fully and completely as the governing body of a private insurance carrier to fulfill the objectives and intent of this part.

(b) The board may invest assets as permitted by §56-3-402. [Acts 1992, ch. 900, §26.]

## **TN 50-6-608**

### **Nonliability of board members, officers or employees.**

The members of the board and officers or employees of the fund shall not be liable personally, either jointly or severally, for any debt or obligation created or incurred by the fund. [Acts 1992, ch. 900, §26.]

## **TN 50-6-609**

### **Scope of insurance by fund.**

The fund shall insure an employer against any workers' compensation claim arising out of and in the course of employment, as fully as any other insurer. [Acts 1992, ch. 900, §26.]

## **TN 50-6-610**

### **Powers of fund.**

For purposes of exercising the specific powers granted in this part and carrying out the other purposes of this part, the fund:

- (1) May sue and be sued;
- (2) May have a seal and alter it at will;
- (3) May make, amend, and repeal rules relating to the conduct of the business of the fund; (4) May enter into contracts relating to the administration of the fund;
- (5) May rent, lease, buy, or sell property in its own name and may construct or repair buildings necessary to provide space for its operations;
- (6) May declare a dividend when there is an excess of assets over liabilities, and minimum surplus requirements;
- (7) May pay medical expenses, rehabilitation expenses, compensation due claimants of insured employers, pay salaries, and pay administrative and other expenses;
- (8) May hire personnel and set salaries and compensation; and
- (9) May perform all other functions and exercise all other powers of a domestic insurance company that are necessary, appropriate, or convenient to administer the fund. [Acts 1992, ch. 900, §26.]

## **TN 50-6-615**

### **Property of fund--Fund employees.**

All premiums and other money paid to the fund, all property and securities acquired through the use of money belonging to the fund, and all interest and dividends earned upon money belonging to the fund and deposited or invested by the fund are the sole property of the fund and shall be used exclusively for the operation and obligations of the fund. The money of the fund is not state property. The employees of the fund shall not be considered state employees. [Acts 1992, ch. 900, §26.]

The fund shall not receive any state appropriation at any time other than as provided by §50-6-621. [Acts 1992, ch. 900, §26.]

## **TN 50-6-617**

### **Fund not a state agency.**

The fund shall not be considered a state agency for any purpose. [Acts 1992, ch. 900, §26.]

## **TN 50-6-618**

### **Rules for sale of coverage by agents.**

Private independent insurance agents licensed to sell workers' compensation insurance in this state may sell insurance coverage for the fund according to rules adopted by the board. The board shall by rule also establish a schedule of commissions which the fund will pay for the services of an agent. [Acts 1992, ch. 900, §26.]

## **TN 50-6-619**

### **Annual report required.**

The board shall submit an annual report to the governor and general assembly indicating the business done by the fund the previous year and containing a statement of the resources and liabilities of the fund. [Acts 1992, ch. 900, §26; 1994, ch. 979, §5.]

## **TN 50-6-620**

### **Contents of annual report.**

The board shall annually report to the general assembly, governor, and the director of the division of state audit the operations of the fund up to that date. The report shall include, but not be limited to:

- (1) The volume of premiums insured through the state fund and its share of the state workers' compensation insurance market;
- (2) The percent division of premium dollars among various types of benefit payments and administrative costs for policies and claims under the state fund; (3) The average rate of return enjoyed by the state fund on its invested assets;
- (4) Recommendations concerning desirable changes in the state fund to promote its prompt and efficient administration of policies and claims;
- (5) A recommendation to the general assembly and governor regarding the continued operation of the fund;
- (6) A full report concerning reserve practices including any actuarial analysis of the funds reserved; and
- (7) Any other information the director deems appropriate. [Acts 1992, ch. 900, §26; 1994, ch. 979, §5.]

## **TN 50-6-621**

### **Bonds, appropriation for start-up costs.**

(a) The state of Tennessee is hereby authorized to issue bonds in accordance with law or appropriate funds in the general appropriations act to the competitive state compensation insurance fund for start-up costs to be repaid pursuant to terms set by authorizing legislation for issuance of such bonds or appropriated funds. The start-up costs may be utilized by the fund to meet the reserve and capitalization requirements of the department of commerce and insurance. The funds set aside for this purpose shall be considered an admitted asset for regulatory purposes. The time for the fund repaying the appropriations may be extended by the funding board.

(b) In the fiscal year ending June 30, 1995, the unexpended balance of the appropriation made for establishing the workers' compensation insurance fund under the provisions of Acts 1992, ch. 1018, §41, item 48, shall revert to the general fund. [Acts 1992, ch. 900, §26; 1994, ch. 979, §1; 1995, ch. 448, §1.]

## **TN 50-6-622**

### **Start-up of operations.**

The members of the board shall be appointed no later than August 1, 1992. The fund shall begin providing workers' compensation insurance coverage when the board determines that the fund is

able to do so and all requirements under state law have been met. The fund shall not issue insurance policies to employers until the approval of the director of the division of state audit has been obtained. [Acts 1992, ch. 900, §26; 1994, ch. 979, §6.]

### **TN 50-6-623**

#### **Submission and review of organizational and operating plans.**

Before the fund established by this part shall enter into any contract, except for consulting services, or issue any bonds, or incur any liability, the board of directors shall submit organizational and operating plans for the fund to a review committee for approval. The review committee shall consist of the commissioners of labor and workforce development, commerce and insurance, and finance and administration, the state treasurer, and the comptroller of the treasury. The review committee shall approve such operational and organizational plans if it determines such plans to be in accord with the provisions of this part and to be fiscally sound and responsible. If the committee approves the plan, then the fund may become fully operational. If the committee does not approve the plan, then the committee shall make appropriate recommendations to the board of directors, governor, and the speakers of the senate and house of representatives concerning any deficiencies. [Acts 1992, ch. 900, §26; 1994, ch. 979, §7; 1999, ch. 520, §41.]

### **TN 50-6-701**

#### **Definitions.**

As used in this part, unless the context otherwise requires:

- (1) "Association captive insurance company" means an association captive insurance company described in §56-13-102(4), operated by an association described in §56-13-102(3)(C);
- (2) "Electric cooperative" means an electric cooperative or electric membership corporation, whether organized or operating under the provisions of title 65, chapter 25, or similar statutes of any other state, which distributes electric power purchased from the Tennessee valley authority (TVA);
- (3) "Interlocal agreement" means an agreement authorized by title 12, chapter 9, or by this part, or by both; and
- (4) "Municipal utility" means any governmental entity as defined in §29-20-102, having a system for the distribution of electric power whether operated under the authority of a board of the governmental entity, by a department of the governmental entity or under the authority of a board created pursuant to the Tennessee Municipal Electric Plant Act, or by the authority of any other law of the state, and that operates an electric generation or distribution system which distributes electric power purchased from the Tennessee valley authority; and also includes any municipality, county or other political subdivision of another state, whether operated under a board or as a county or municipal department, which distributes electric power purchased from the Tennessee valley authority. [Acts 1995, ch. 488, §1.]

### **TN 50-6-702**

#### **Authorization to enter interlocal agreements--General assembly findings.**

For the purpose of insuring or self-insuring the obligations and liabilities under this chapter, municipal utilities and electric cooperatives are authorized to enter into interlocal agreements to pool their liabilities pursuant to the provisions of §29-20-401, as if each electric cooperative were

a “governmental entity” for purposes of §29-20-401, and as if each cooperative were a “public agency” for purposes of title 12, chapter 9, and under which the interlocal agreement is administered by an association captive insurance company or any of its affiliates or subsidiaries. The general assembly hereby finds and determines that participation in such interlocal agreements by electric cooperatives and municipal utilities provides a mutual benefit to help reduce the expense of operations of municipal utilities and electric cooperatives and hence reduces the cost of electricity for the citizens of Tennessee, and hereby finds that all contributions of financial and administrative resources and associated costs and expenses made by a municipal utility pursuant to an interlocal agreement as authorized herein, are made for a public and governmental purpose, and that all such contributions benefit the contributing municipal utilities. To the extent that such interlocal agreements provide for the respective parties to indemnify or hold harmless each other from certain liabilities arising out of participation in the pooling agreement, such provisions are authorized in accordance with the foregoing findings of the general assembly. [Acts 1995, ch. 488, §2.]

### **TN 50-6-703**

#### **Association captive insurance companies as administrators for certain entities.**

An association captive insurance company may, directly or through an entity it may create and control, enter into agreements with participating governmental entities or electric cooperatives under §29-20-401, to serve as administrator or act as the special fund or legal or administrative entity of the pooled financial and administrative resources thereunder and under this part, and may charge fees and costs for such services as administrator, and may provide insurance or reinsurance for excess losses above such amounts as are retained by the pooled financial resources the same as if it were created by governmental entities under the provisions of §29-20-401(e), for such purposes, an electric cooperative shall be deemed to be a governmental entity. To the extent that an association captive insurance company shall be deemed to become a party to an interlocal agreement, it shall be deemed to have the status of a public agency for such purposes. The administrative activities and operations of the fund or entity, whether by, through or under the direction or supervision of the association captive insurance company or otherwise shall be subject to the provisions of §29-20-401(d), and certificates of compliance may be issued as authorized by §29-20-401(c)(2). [Acts 1995, ch. 488, §3.]

### **TN 50-6-704**

#### **Liability--Participation in other arrangements--No implied repeal.**

(a) Nothing in this part shall be construed to confer upon any electric cooperative any immunity from liability for damages for injuries to persons or property granted to a governmental entity under the provisions of the Tennessee Governmental Tort Liability Act, nor to prevent a municipal utility from exercising any right, privilege or option it may have under the workers’ compensation law.

(b) Nothing in this part shall preclude a municipal utility or electric cooperative from participating in any other insured, self-insured, or risk-pooling arrangement permitted under any other law of this state.

(c) Nothing in this part shall be deemed to be an implied repeal of any of the provisions of title 65, chapter 25. [Acts 1995, ch. 488, §§4 - 6.]

## **TN 50-6-705**

### **Liberal construction.**

This part shall be liberally construed to permit electric cooperatives and municipal utilities to enter into agreements to pool their resources to provide for satisfaction of obligations under the Workers' Compensation Law as if electric cooperatives were governmental entities under §29-20-401 or public agencies under title 12, chapter 9. [Acts 1995, ch. 488, §7.]

## **TN 50-6-801**

### **Creation - Legislative intent.**

(a) There is hereby created the uninsured employers fund as an account in the general fund which shall be invested pursuant to § 9-4-603. Moneys from the fund may be expended to fund activities authorized by this part. Any revenues deposited in this fund shall remain in the fund until expended for purposes consistent with this part, and shall not revert to the general fund on any June 30. Any appropriation for such fund shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

(b) The uninsured employers fund may receive revenues that shall include all penalties assessed and collected from employers who fail to provide workers' compensation coverage or who fail to qualify as self-insurers pursuant to the workers' compensation law and any other amounts which may be appropriated.

(c) The uninsured employers fund shall be used for payment of the costs incurred by the department of labor and workforce development to administer the assessment of and collection of penalties provided in § 50-6-412. [Acts 2000, ch. 972, § 2.]