

**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

# Tennessee Workers' Compensation Legislative Changes: A Return to Sanity

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EXPAND YOUR EXPECTATIONS™

## 2011 Developments

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- 2011 Legislative Changes
- Most Comprehensive Changes Since 2004 Reforms
- Although the 2004 changes resulted in lower workers' compensation costs, many were concerned that Tennessee's system was still complicated and costly

## Why were the 2011 Reforms Necessary?

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- Effort to promote job growth in Tennessee
  - Tennessee is consistently a higher-cost state in which to do business and this is linked to higher workers' comp costs
  - Critics argued that Tennessee is inconsistent, unpredictable, and creates "an unintended incentive to provide free health coverage along with a cash bonus, to any litigated claim."
- (Human Resource Study Committee)

## 2011 Changes

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1. Construction Industry
2. Definition of Injury
3. Occupational Diseases
4. Presumption favoring treating physicians
5. Communications with treating physicians
6. Future Medical Expenses / D & D Settlements
7. Intoxication/drug use defense

## **Legislative Change Number 1: Construction Industry**

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- Clarifies some of the language in last year's law concerning the requirement that persons in the construction industry must carry workers' compensation insurance on themselves
- Changes who may apply for an exemption from carrying workers' compensation insurance
- New law becomes effective October 1, 2011

## **Legislative Change Number 1: Construction Industry (cont.)**

- This new provision provides an exemption for certain types of construction service providers from the workers' compensation requirement
  - ✓ Up to 5 officers from one corporation may be exempt
  - ✓ Up to 5 owners of one family-owned business may be exempt
  - ✓ A member owning at least 20% or more of a limited liability company

## Legislative Change Number 1: Construction Industry (cont.)



- Additional Exemptions for:

Up to 3 construction service providers performing actual labor (not supervising) on a commercial construction project.

- General Contractor selects the three construction services providers for the construction site
- General Contractor must notify the chosen providers
- General Contractor must maintain a record of identifying each exempt construction services provider

## **Legislative Change Number 2: Definition of Injury**

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- New Law narrows the definition of the terms “injury” and “personal injury” for purposes of workers’ compensation law
- Applies to injuries occurring on or after the effective date of June 6, 2011





## Legislative Change Number 2: Definition of Injury (cont.)

- Old Definition (Tenn. Code Ann. §50-6-102(12): “Injury” and “personal injury” mean an injury by accident arising out of and in the course and scope of employment that causes either disablement or death of the employee and shall include occupational diseases....”
- New Definition: “Injury” and “personal injury” mean an injury by accident arising out of and in the course of employment that causes either disablement or death of the employee provided that:
  - An injury is by “accident” only if the injury is caused by a specific incident, or set of incidents, arising out of and in the course of employment, and is identifiable by time and place of occurrence
  - Injury does not include (1) a disease in any form, except when the disease arises out of and in the course/scope employment and (2) Cumulative trauma conditions, including hearing loss, carpal tunnel, or other repetitive motion conditions unless such condition arose primarily out of and in the course/scope employment

## Legislative Change Number 2: Definition of Injury (cont.)

- What does this change in language mean to employers?
- ✓ Employee must identify the specific time/place of the injury
- ✓ May result in less claims becoming compensable "injuries"



### **Legislative Change Number 3: Occupational Diseases**

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- Tenn. Code Ann. §50-6-301 is amended to add that: “cumulative trauma conditions, hearing loss, carpal tunnel syndrome, and all other repetitive motion conditions shall not be considered an occupational disease unless such conditions arose primarily out of and in the course/scope employment”
- Applies to all injuries occurring on or after June 6, 2011

## Legislative Change Number 3: Occupational Injuries (cont.)



### **Legislative Change Number 3: Occupational Injuries (cont.)**

- Under prior law, conditions such as an exacerbation of pre-existing arthritis would be compensable
- For example, if an employee's work contributes to the employee's hearing loss but the hearing loss is primarily due to the employee's age, the hearing loss is now not an injury covered by workers' compensation

## **Legislative Change Number 4: Presumption Favoring Treating Physicians**

- New law states that the opinion of the treating physician shall be presumed correct on the issue of causation
- This presumption may be rebutted by a preponderance of the evidence
  - Under prior law, trial court had more discretion to weigh testimony
  - Only applies to causation
  - Does not apply to treating physician's opinion regarding issues of impairment, disability, restrictions, and treatment

## Legislative Change Number 4: Presumption Favoring Treating Physician (cont.)



- Meant to eliminate analysis often employed by trial courts under the old law
- "It is entirely appropriate for a trial judge to predicate an award on medical testimony to the effect that a given incident could be the cause of the employee's injury, when the trial judge also has heard lay testimony from which it may be reasonably inferred that the incident was in fact the cause of the injury." *Hill v. Eagle Bend Mfg.*, 942 S.W.2d 483, 487.

## Legislative Change Number 5: Communications With Treating Physicians

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- Applies to injuries occurring on or after June 6, 2011
- New law is in response to the 2008 Tennessee Supreme Court case of *Overstreet v. TRW* and a 2009 law clarifying the case
- Employers thought the 2009 requirements were still burdensome to the process





### **Legislative Change Number 5: Communications With Treating Physicians (cont.)**

- Tenn. Code Ann. §50-6-204(a) now states:
- ✓ Any medical provider who is authorized by the employer and has treated or provided medical care to an injured employee may communicate, orally or in writing, with the employer, or the employer's attorney
- ✓ Employee shall sign a DOL-prescribed medical authorization form and the medical provider must honor any request by the employer for medical information, records, and opinions
- ✓ Employer shall provide to Employee copies of all materials provided to the physician or received from the physician at least 10 days prior to deposition

## **Legislative Change Number 6: Future Medical Expenses / D & D Settlements**

- Old Law: Future medical expenses could not be closed for 3 years
- New Law: Future medical expenses may be settled and closed at any time except in cases of permanent and total disability

**CLOSURE**

### **Legislative Change Number 6: Future Medical Expenses / D & D Settlements (cont.)**

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- Retains the provisions that the court or TDOL, whichever entity approves the settlement, must determine that the settlement is in the best interest of the employee
- Employee must be advised of the consequences of the settlement regarding Medicare and TennCare benefits and liabilities
- Doubtful and disputed settlements—no restrictions apply so long as the settlement is determined to be in the best interest of the employee

## **Legislative Change Number 7: Intoxication/Drug Use Defense**

- Effective July 1, 2011
- Applies only if the Employer is a TN Certified Drug-Free Workplace
- Upon a positive test (or refusal to test), there is rebuttable presumption that the drug or alcohol was the proximate cause of the injury/accident
- Presumption may be rebutted by "clear and convincing evidence"



## QUESTIONS?

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"It is a work related injury. I walked into my boss' office and took a flyer on his golf ball."

**Department of Labor & Workforce Development  
Workers' Compensation Division  
220 French Landing Drive  
Nashville, Tennessee 37243-1002  
(615) 532-4812  
Toll Free 1-800-332-2667  
TDD 1-800-848-0299  
Electronic Mail: WC.Info@tn.gov**

**2011 WORKERS' COMPENSATION LEGISLATIVE CHANGES**

This is a general overview of workers' compensation legislation passed by the 107<sup>th</sup> General Assembly. For a complete, detailed review of this information and all workers' compensation bills introduced in this legislative session, please go to [www.legislature.state.tn.us](http://www.legislature.state.tn.us).

**MAXIMUM & MINIMUM BENEFIT CHANGES**

*Temporary Benefits* – The maximum weekly benefit rate for injuries occurring July 1, 2011 through June 30, 2012 is \$867.90 or 110% of the state's average weekly wage.

*Permanent Benefits* – The maximum weekly benefit rate for injuries occurring July 1, 2011 through June 30, 2012 is \$789.00 or 100% of the state's average weekly wage.

*Minimum Weekly Benefit* – The minimum weekly benefit rate for injuries occurring July 1, 2011 through June 30, 2012 for both temporary and permanent benefits is \$118.35.

**FUTURE MEDICAL BENEFITS, *OVERSTREET*, REDEFINITION OF INJURY**

**Public Chapter 416** (HB1503/SB0932) makes various revisions to the workers' compensation law. This bill allows the parties to a workers' compensation case to settle a claim, subject to the approval of a trial judge or a workers' compensation specialist, without future medical benefits. It modifies the *Overstreet* communication procedures regarding contact between the authorized treating physician and employers on the workers' compensation injury. This bill clarifies the definition of an injury and occupational disease. It clarifies that hearing loss, carpal tunnel and repetitive injury claims are compensable only if the condition primarily arises out of and in the scope of employment. This bill is effective for injuries occurring on or after June 6, 2011.

**DRUG FREE WORKPLACE**

**Public Chapter 203** (HB2047/SB1785) changes the evidence standard from a preponderance of the evidence to clear and convincing evidence for rebutting the presumption that drugs or alcohol were the proximate cause of an injury from a positive drug test result or the refusal to submit to a drug test. This bill becomes effective on July 1, 2011.

**CONSTRUCTION INDUSTRY EXEMPTION FROM  
OBTAINING WORKERS' COMPENSATION INSURANCE**

**Public Chapter 422** (HB2030/SB1550) revises various provisions of present workers' compensation law regarding construction services providers. This bill clarifies that the general contractor of a commercial construction project may select the three individual construction services providers who may be exempt from workers' compensation coverage while working on that commercial construction project. This bill increases the amount of owners of a family owned business and corporate officers eligible for an exemption from the requirements that they be covered by workers' compensation insurance to five. It allows members of a limited liability company and partners in a limited, limited liability, or general partnership with at least 20% ownership to be eligible for the exemption. It also allows an individual to obtain more than one exemption if the individual is affiliated with multiple companies. This bill becomes effective on October 1, 2011. Information about the Secretary of State's Workers' Compensation Exemption Registry may be found on their website at <http://tnbear.tn.gov/wc> .



**State of Tennessee**  
**PUBLIC CHAPTER NO. 416**

**SENATE BILL NO. 932**

**By Norris**

Substituted for: House Bill No. 1503

By Eldridge, Carr, Womick, Sanderson, McDaniel, Curtiss, Matlock, Moore, Hardaway, McManus, Johnnie Turner, McCormick, Alexander, Hall, Sargent, Harrison, Curtis Johnson, Fitzhugh, Shaw, Naifeh, Lois DeBerry, Larry Miller, Tindell, Coley, Armstrong, Brown, Don Miller, Maggart, Dennis, Wirgau, Casada, Matheny, Lundberg, Marsh, Dean

AN ACT to amend Tennessee Code Annotated, Title 50, Chapter 2; Title 50, Chapter 6 and Title 50, Chapter 7.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-7-207(a), is amended by adding the following language as a new subdivision (2) and by redesignating the existing subdivisions accordingly:

(2) Services performed by an individual who provides services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier conducting an interstate business while engaged in interstate commerce shall be deemed to be an excluded service for the purposes of this section, regardless of whether the common law relationship of master and servant exists, and regardless of whether the individual satisfies the requirements for included service as prescribed in subsection (a)(1); provided, that this subdivision does not apply to services performed under Section 50-7-207(b)(3) or (b)(4).

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 2, Part 1, is amended by adding the following language as a new, appropriately designated section:

50-2-1\_\_\_. This chapter shall not apply to any individual who provides services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier doing an interstate business while engaged in interstate commerce regardless of whether the common law relationship of master and servant exists; provided, that this chapter shall apply to those employees of the common carrier who do not provide services as a leased-operator or an owner-operator of a motor vehicle or vehicles under contract to a common carrier doing interstate business while engaged in interstate commerce.

SECTION 3. Tennessee Code Annotated, Section 50-8-206(a)(2)(A), is amended by deleting the subdivision in its entirety and by substituting instead the following:

Nothing in this section shall be construed to prohibit the parties from compromising and settling at any time the issue of future medical benefits; provided, the settlement agreement is approved by a trial court, or the commissioner or the commissioner's designee, and includes a provision confirming that the claimant has been advised of the consequences of the settlement, if any, with respect to Medicare and TennCare benefits and liabilities.

SECTION 4. Tennessee Code Annotated, Section 50-8-206(a)(2)(B), is amended by deleting the subdivision in its entirety.

SECTION 5. Tennessee Code Annotated, Section 50-6-206(a)(2)(D), is amended by deleting the subdivision in its entirety.

SECTION 6. Tennessee Code Annotated, Section 50-8-206(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

Notwithstanding any other provision of this section, if there is a dispute between the parties as to whether a claim is compensable, or as to the amount of compensation due, the



parties may settle the matter without regard to whether the employee is receiving substantially the benefits provided by this chapter, provided, the settlement is determined by the court, or the commissioner or the commissioner's designee, to be in the best interest of the employee.

SECTION 7. Tennessee Code Annotated, Section 50-6-204(a), is amended by deleting subdivisions (1) and (2) in their entirety and by substituting instead the following:

(1)(A) 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 reasonable and necessary 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 defined in the chapter.

(B) No medical provider shall charge more than ten dollars (\$10.00) for the first twenty (20) pages or less, and twenty-five cents (25¢) per page for each page after the first twenty (20) pages, for any medical reports, medical records or documents pertaining to medical treatment or hospitalization of the employee that are furnished pursuant to this subsection (a).

(2)(A) It is the intent of the general assembly that the administration of the workers' compensation system proceed in a timely manner and that the parties and the department have reasonable access to the employee's medical records and medical providers that are pertinent to and necessary for the swift resolution of the employee's workers' compensation claim. Notwithstanding any law to the contrary, there shall be no implied covenant of confidentiality, prohibition against ex parte communications or privacy of medical records in the custody of authorized treating physicians with respect to case managers, employers, or insurance companies, or their attorneys, if these persons comply with subdivision (a)(2)(C); provided, however that the employee, or the employee's attorney, shall be provided copies, no later than ten (10) days in advance of a deposition of the authorized treating physician taken for any purpose or the appearance of the authorized treating physician for testimony, of any and all written memorandum or visual or recorded materials, including e-mails or other written materials:

(i) Provided to the employee's authorized treating physician by case managers, employers, insurance companies, or their attorneys; or

(ii) Received from the employee's authorized treating physician.

(B) For purposes of subdivision (a)(2)(C), "employer" means the employer, the employer's attorney, the employer's insurance carrier or third party administrator, a case manager as authorized by § 50-6-123, or any utilization review agent as authorized by § 50-6-124 during the employee's treatment for the claimed workers' compensation injury.

(C) To facilitate the timely resolution of workers' compensation claims and to facilitate the use of the benefit review process established by this chapter, there shall be reasonable access to any employee's medical information only by compliance with the following:

(i) An employee claiming workers' compensation benefits shall provide the employer or the division of workers' compensation with a signed, written medical authorization form as prescribed by the commissioner, provided, the form shall:

(a) Be addressed to a specific medical provider authorized by the employer pursuant to this section;

(b) Permit the release of information through communication, either orally or in writing, as authorized under this subdivision (a)(2)(C); and

(c) Plainly state in capitalized lettering on the face of the document the following language:

THIS MEDICAL AUTHORIZATION FORM ONLY PERMITS THE EMPLOYER OR THE DIVISION OF WORKERS' COMPENSATION

TO OBTAIN MEDICAL INFORMATION THROUGH ORAL OR WRITTEN COMMUNICATION, INCLUDING, BUT NOT LIMITED TO, CHARTS, FILES, RECORDS, AND REPORTS IN THE POSSESSION OF A MEDICAL PROVIDER AUTHORIZED BY THE EMPLOYER PURSUANT TO T.C.A. § 50-8-204 AND A MEDICAL PROVIDER THAT IS REIMBURSED BY THE EMPLOYER FOR THE EMPLOYEE'S TREATMENT;

(ii) An employee claiming workers' compensation benefits, or the employee's attorney, shall be entitled to obtain medical information, records, opinions, or reports from, or communicate in writing or in person with, any medical provider who has treated or provided medical care to the employee; provided, that the employee executes and provides the medical provider with a properly completed form as described in subdivision (a)(2)(C)(i).

(iii) Any medical provider authorized by the employer pursuant to this section and who has treated or provided medical care to an employee claiming workers' compensation benefits is permitted to communicate, orally or in writing, with the employer, or the employer's attorney, and shall honor any request by the employer for medical information, medical records, professional opinions, or medical reports pertaining to the claimed workers' compensation injury. Oral communication may be utilized, and includes, but is not limited to, a telephone conversation or an in-person meeting.

(iv) If an employee or employer files a request for assistance with the department, requesting the department to make a determination as to whether the claim is compensable or concerning an issue related to medical benefits or temporary disability benefits, the department may request, orally or in writing, medical information, records, opinions, or reports from the medical provider; provided, that:

(a) Any response by the medical provider to the department's request shall be in writing; and

(b) If the department receives documents or written responses to any request for information pursuant to this subdivision (a)(2)(C)(iv), then the department shall notify the employee, the employer and any attorney representing the employee or employer within fourteen (14) days of receipt of the document or written response that such persons may review or copy the documents or responses; provided, the requesting party shall pay the copying fee authorized by subdivision (a)(1)(B) prior to the department providing the requested copies; and

(v) If the department becomes involved in the appeal of a utilization review issue, then the department is authorized to communicate with the medical provider involved in the dispute either orally or in writing to permit the timely resolution of the issue and shall notify the employee, employer or any attorney representing the employee or employer that they may review or copy the documents or responses; provided, the requesting party shall pay the copying fee authorized by subdivision (a)(1)(B) prior to the department providing the requested copies.

(D) No relevant information developed in connection with authorized medical treatment or an examination provided pursuant to this section for which compensation is sought by the employee shall be considered a privileged communication, and no medical provider shall incur any liability as a result of providing medical information, records, opinions, or reports as described in subdivision (a)(2)(C); provided, the medical provider complies with subdivision (a)(2)(C).

SECTION 8. Tennessee Code Annotated, Section 50-6-102(12), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(12) "Injury" and "personal injury":

(A) Mean an injury by accident, arising out of and in the course of employment, that causes either disablement or death of the employee; provided, that:

(i) An injury is "accidental" only if the injury is caused by a specific incident, or set of incidents, arising out of and in the course of employment, and is identifiable by time and place of occurrence; and

(ii) The opinion of the physician, selected by the employee from the employer's designated panel of physicians pursuant to §§ 50-6-204(a)(4)(A) or (B), shall be presumed correct on the issue of causation but said presumption shall be rebutted by a preponderance of the evidence;

(B) Include a mental injury arising out of and in the course of employment; and

(C) Do not include:

(i) A disease in any form, except when the disease arises out of and in the course and scope of employment; or

(ii) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, or any other repetitive motion conditions unless such conditions arose primarily out of and in the course and scope of employment;

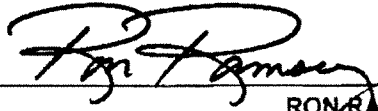
SECTION 9. Tennessee Code Annotated, Section 50-6-301, is amended by designating the existing language as subsection (a), and by adding the following language as a new subsection:

(b) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, and all other repetitive motion conditions shall not be considered an occupational disease unless such conditions arose primarily out of and in the course and scope of employment. The opinion of the physician, selected by the employee from the employer's designated panel of physicians pursuant to §§ 50-6-204(a)(4)(A) or (B), shall be presumed correct on the issue of causation but said presumption shall be rebutted by a preponderance of the evidence.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it. For purposes of Sections 1 and 2, this act shall apply to causes of action arising on or after the effective date of this act. For purposes of Sections 3 through 9, this act shall apply to injuries occurring on or after the effective date of this act.

SENATE BILL NO. 932

PASSED: May 20, 2011



RON RAMSEY  
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 6 day of June 2011



BILL HASLAM, GOVERNOR

**State of Tennessee**  
**PUBLIC CHAPTER NO. 422**

**SENATE BILL NO. 1550**

**By Ketron, Barnes**

Substituted for: House Bill No. 2030

By Curliss, Pitts, Matheny, Eldridge, Stewart

AN ACT to amend Tennessee Code Annotated, Title 50 and Title 56, relative to workers' compensation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-102(10)(E), is amended by deleting the subdivision in its entirety and substituting instead the following:

(E) "Employee" does not include a construction services provider, as defined in § 50-6-901, if the construction services provider is:

(i) Listed on the registry established pursuant to Part 9 of this chapter as having a workers' compensation exemption and is working in the service of the business entity through which the provider obtained such an exemption;

(ii) Not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services; and

(iii) Rendering services on a construction project that:

(A) Is not a commercial construction project, as defined in § 50-6-901;  
or

(B) Is a commercial construction project, as defined in § 50-6-901, and the general contractor for whom the construction services provider renders construction services complies with § 50-6-914(b)(2);

SECTION 2. Tennessee Code Annotated, Section 50-6-103(a), is amended by deleting the language "any employee who is a corporate officer of the employer" and substituting instead the language "any person who has an exemption pursuant to § 50-6-104 or Part 9 of this chapter".

SECTION 3. Tennessee Code Annotated, Section 50-6-901(8), is amended by deleting the subdivision in its entirety and substituting instead the following:

(8) "Engaged in the construction industry" means any person or entity assigned to the contracting group as those classifications are designated by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320; provided, where more than one (1) classification applies, the governing classification, as that term is defined by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320, shall be used to determine whether the person or entity is engaged in the construction industry;

SECTION 4. Tennessee Code Annotated, Section 50-6-902(b), is amended by deleting subdivisions (4) and (5) and by substituting instead the following:

(4) Is a construction services provider performing work directly for the owner of the property; provided, however that this subdivision (4) shall not apply to a construction services provider who acts as a general or intermediate contractor and who subsequently subcontracts any of the work contracted to be performed on behalf of the owner;

(5) Is a construction services provider building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on the construction service provider's own property; or

SECTION 5. Tennessee Code Annotated, Section 50-6-903, is amended by deleting the section in its entirety and substituting instead the following:

(a) Any construction services provider who meets one (1) of the following criteria may apply for an exemption from § 50-6-902(a):

(1) An officer of a corporation who is engaged in the construction industry, provided, that no more than five (5) officers of one (1) corporation shall be eligible for an exemption;

(2) A member of a limited liability company who is engaged in the construction industry if such member owns at least twenty percent (20%) of such company;

(3) A partner in a limited partnership, limited liability partnership or a general partnership who is engaged in the construction industry if such partner owns at least twenty percent (20%) of such partnership;

(4) A sole proprietor engaged in the construction industry; or

(5) An owner of any business entity listed in subdivisions (1)-(3) that is family-owned; provided, no more than five (5) owners of one (1) family-owned business may be exempt from § 50-6-902(a).

(b) A construction services provider may be eligible for and may utilize multiple exemptions if the construction services provider meets the requirements set out in subsection (a) for each such exemption and complies with § 50-6-904 for each such exemption in which the construction services provider seeks to obtain; provided, however, a construction services provider applying for a second or subsequent exemption shall not be required to pay the fees set out in § 50-6-912(a)(1) and (a)(2), but shall instead pay the fee set out in § 50-6-912(a) for each subsequent workers' compensation exemption registration and shall pay the fee set out in § 50-6-912(a) for each subsequent registration renewal.

SECTION 6. Tennessee Code Annotated, Section 50-6-908(b)(1), is amended by deleting the language "may be revoked" and substituting instead the language "shall be revoked".

SECTION 7. Tennessee Code Annotated, Section 50-6-908(b)(1)(A), is amended by deleting the subdivision in its entirety and substituting instead the following:

(A) Notification from the board that the board has revoked or suspended any license issued to the construction services provider by the board, including a license issued to a business entity through which the construction services provider obtained such an exemption. For purposes of this subdivision (b)(1)(A), if a construction services provider's license is revoked, whether or not such license is in the provider's individual name or in the name of a business entity through which the provider obtained an exemption, then any exemption obtained through such business entity shall be revoked;

SECTION 8. Tennessee Code Annotated, Section 50-6-908(b)(1)(B), is amended by deleting the subdivision in its entirety and substituting instead the following:

(B) Notification from the department of any violations of § 50-6-412 by the construction services provider, including any violation against a business entity through which the construction services provider obtained such an exemption. For purposes of this subdivision (b)(1)(B), if a construction services provider has violated § 50-6-412, whether or not such violation was committed by the individual or a business entity through which the provider obtained an exemption, then any exemption obtained through such business entity shall be revoked and all exemptions in the provider's name shall be subject to revocation;

SECTION 9. Tennessee Code Annotated, Section 50-6-910, is amended by deleting the section in its entirety and substituting instead the following:

(a) Any action to recover damages for injury, as defined by § 50-6-102, by a construction services provider shall proceed as at common law, and the defendant in the suit may make use of all common law defenses if, at the time of the injury, the construction services provider was:

(1) Listed on the registry as having a workers' compensation exemption and working in the service of a business entity through which the construction services provider obtained such an exemption;

(2) Not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider was providing services at the time of such injury; and

(3) Eligible for an exemption pursuant to § 50-6-914(b)(2), if such eligibility requirements apply, at the time of such injury.

(b) Any construction services provider proceeding as at common law pursuant to subsection (a) shall forego the right to sue to establish or reestablish workers' compensation coverage.

SECTION 10. Tennessee Code Annotated, Section 50-6-912(a), is amended by adding the following new, appropriately designated subdivisions:

( ) The issuance of a second or subsequent construction services provider workers' compensation exemption registration..... \$20 per registration

( ) The filing of a second or subsequent construction services provider workers' compensation exemption renewal..... \$20 per renewal

SECTION 11. Tennessee Code Annotated, Section 50-6-914(b)(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(2)(A) No more than three (3) construction services providers performing direct labor on a commercial construction project may be exempt from § 50-6-902(a).

(B) For purposes of subdivision (b)(2)(A), the three (3) construction services providers shall be selected by the general contractor. The limit of three (3) set out in subdivision (b)(2)(A) shall be three (3) individuals listed on the registry as having a workers' compensation exemption and working in the service of a business entity through which the construction services provider obtained such an exemption.

(C) If a general contractor allows a construction services provider to provide services on a commercial construction project while such provider is utilizing an exemption pursuant to this part, the general contractor shall:

(i) Notify each such construction services provider in writing that the provider has been chosen by the general contractor as one of the three (3) construction services providers performing direct labor who may be exempt from § 50-6-902(a); and

(ii) Maintain a record identifying each such construction services provider. The general contractor shall make the record maintained pursuant to this subdivision (b)(2)(C)(ii) available for inspection upon request by the general contractor's insurance provider, the department, and the Department of Commerce and Insurance.

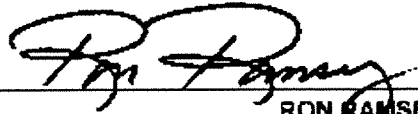
SECTION 12. Tennessee Code Annotated, Section 50-6-921, is amended by deleting the language "under current law" and substituting instead the language "prior to March 1, 2011".

SECTION 13. If any policyholder chooses to cancel a policy of insurance as a result of obtaining an exemption pursuant to this act and cancels prior to February 1, 2012, then the policy of insurance shall be canceled as if the insured were retiring from the business in which the policy of insurance was required.

SECTION 14. For purposes of the secretary of state making necessary provisions for the implementation of this act, this act shall take effect upon becoming law; for all other purposes, this act shall take effect October 1, 2011, the public welfare requiring it.

SENATE BILL NO. 1550

PASSED: May 21, 2011



RON RAMSEY  
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 6 day of June 2011



BILL HASLAM, GOVERNOR