



SENATE BILL 1981

By Briggs

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 6, relative to workers' compensation.

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

SECTION 1. Tennessee Code Annotated, Section 50-6-108, is amended by adding the following as a new subsection:

(d)

(1) Notwithstanding subsection (a) or another law to the contrary, the exclusiveness of the rights and remedies granted to an employee, or to the employee's personal representative, dependents, or next of kin, under this chapter do not apply in any civil action for damages arising out of the death of an employee where the death is alleged to have been caused, in whole or in part, by the gross negligence or criminal conduct of the employer, a principal, or intermediate contractor, as described in § 50-6-113, or any officer, director, managing agent, or supervisory employee of such person or entity.

(2) In an action brought pursuant to subdivision (d)(1):

(A) An employee's personal representative, dependents, or next of kin may pursue all remedies and damages available in a wrongful death action under title 20, chapter 5, in addition to any benefits payable under this chapter; and

(B) Any workers' compensation benefits paid or payable on account of the employee's death must be credited or set off against any recovery in such civil action to the extent required by § 50-6-112 or other applicable law.

(3) As used in this subsection (d):

(A) "Criminal conduct" means conduct that constitutes a felony or Class A or Class B misdemeanor under the laws of this state or the United States and that is a cause in fact and a legal cause of the employee's death; and

(B) "Gross negligence" means a conscious, reckless, or callous disregard of a substantial and unjustifiable risk of death to an employee, constituting a gross deviation from the standard of care that a reasonable employer would exercise under the circumstances.

(4) This subsection (d) does not limit or abrogate any existing exception to the exclusive remedy provisions of this chapter, including any judicially recognized cause of action for intentional injury by an employer or co-employee.

SECTION 2. Tennessee Code Annotated, Section 50-6-112, is amended by adding the following as a new subsection:

(e) The employer's or the employer's workers' compensation carrier's recovery of a reasonable fee for attorney's services under subsection (b) and authority to have a subrogation lien under subsection (c) are waived in the event that the medical causation, permanency, or extent of the employee's work injury are contested by the employer with medical opinion other than that from the employee's form C-42 panel physician.

SECTION 3. Tennessee Code Annotated, Section 50-6-207(1)(A), is amended by deleting "sixty-six and two-thirds percent (66 $\frac{2}{3}$ %)" and substituting "seventy-five percent (75%)".

SECTION 4. Tennessee Code Annotated, Section 50-6-207(2)(A), is amended by deleting "sixty-six and two-thirds percent (66 $\frac{2}{3}$ %)" and substituting "seventy-five percent (75%)".

SECTION 5. Tennessee Code Annotated, Section 50-6-207(2)(B), is amended by deleting "sixty-six and two-thirds percent (66 $\frac{2}{3}$ %)" and substituting "seventy-five percent (75%)".

SECTION 6. Tennessee Code Annotated, Section 50-6-207(3), is amended by adding the following as a new subdivision:

(l) Notwithstanding another provision of this chapter to the contrary:

(i) The acceptance, payment, approval, or satisfaction of an original award, as described in subdivision (3)(A), does not extinguish, waive, release, or otherwise bar an employee's right to seek benefits for permanent total disability pursuant to subdivision (4), including by trial or settlement, if the employee later becomes permanently and totally disabled as a result of the compensable injury;

(ii) An employee may file a petition for benefit determination or complaint seeking permanent total disability benefits under subdivision (4) at any time after the conclusion of the compensation period for the original award, subject only to the applicable statutes of limitation and repose in this chapter;

(iii) In any proceeding under subdivision (4) following the payment of an original award, the employer receives credit for permanent disability benefits previously paid pursuant to subdivision (3), but such credit does not preclude or limit an award of permanent total disability benefits for any period after the expiration of the original award's compensation period; and

(iv) This subdivision (3)(l) does not diminish or impair an employee's right to seek increased benefits under subdivision (3)(B) or extraordinary relief under § 50-6-242, in addition to or instead of permanent total disability benefits under subdivision (4), where otherwise available.

SECTION 7. Tennessee Code Annotated, Section 50-6-207(3)(A), is amended by deleting "sixty-six and two-thirds percent (66 $\frac{2}{3}$ %)" and substituting "seventy-five percent (75%)".

SECTION 8. Tennessee Code Annotated, Section 50-6-207(3)(B), is amended by deleting the subdivision and substituting:

(B) If at the time the period of compensation provided by subdivision (3)(A) ends, or one hundred eighty (180) days after the employee reaches maximum medical improvement, whichever is later, the employee has not returned to work with any employer or has returned to work and is receiving wages or a salary that is less than one hundred percent (100%) of the wages or salary the employee received from the employee's pre-injury employer on the date of the injury, the injured employee may file a claim for increased benefits. The injured employee's original award as determined by subdivision (3)(A) must be increased by multiplying the original award by a factor of two and one-half (2.5). The award set out in this subdivision (3)(B) is referred to in this subdivision (3)(B) as the "resulting award." In addition, the injured employee's resulting award must be further increased by multiplying the resulting award by the product of the following factors, if applicable:

(i) For education, one and forty-five one hundredths (1.45), if the employee lacks a high school diploma or high school equivalency credential approved by the state board of education; and

(ii) For age, one and forty-five one hundredths (1.45), if the employee was more than forty (40) years of age at the time the period of compensation ends, or one hundred eighty (180) days after the employee reaches maximum medical improvement, whichever is later.

SECTION 9. Tennessee Code Annotated, Section 50-6-207(4)(A)(i), is amended by deleting "sixty-six and two-thirds percent (66 $\frac{2}{3}$ %)" and substituting "seventy-five percent (75%)".

SECTION 10. Tennessee Code Annotated, Section 50-6-207(4), is amended by adding the following as a new subdivision:

(E) The right to permanent total disability benefits under this subdivision (4) is independent of, and cumulative to, the right to permanent partial disability benefits under

subdivision (3). The prior approval, payment, or completion of an original award under subdivision (3)(A) does not preclude a subsequent adjudication that the employee is permanently and totally disabled, or limit the duration of permanent total disability benefits for periods of disability occurring after the conclusion of the compensation period for the original or increased award.

SECTION 11. Tennessee Code Annotated, Section 50-6-226(a)(1), is amended by deleting "twenty percent (20%)" wherever it appears and substituting "twenty-five percent (25%)".

SECTION 12. Tennessee Code Annotated, Section 50-6-226(d)(1), is amended by deleting subdivision (B) and substituting:

(B) Wrongfully denies a claim or wrongfully fails to timely initiate any of the benefits to which the employee or dependent is entitled under this chapter, including medical benefits under § 50-6-204, temporary or permanent disability benefits under § 50-6-207, or death benefits under § 50-6-210, if the workers' compensation judge makes a finding that the benefits were owed at an expedited hearing or compensation hearing. For purposes of this subdivision (d)(1)(B), "wrongfully" means erroneously, incorrectly, or otherwise inconsistent with the law or facts.

SECTION 13. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. 1 to SB1981

Bailey
Signature of Sponsor

AMEND Senate Bill No. 1981*

House Bill No. 2179

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 50-6-226(d), is amended by deleting the subsection and substituting:

(d)

(1) In addition to attorneys' fees provided for in this section, the court of workers' compensation claims may award reasonable attorneys' fees and reasonable costs, including, but not limited to, 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 in a settlement, expedited hearing order, compensation hearing order, or judgment under this chapter.

(2) In addition to attorneys' fees provided for in this section, the court of workers' compensation claims may award reasonable attorneys' fees and reasonable costs, including, but not limited to, reasonable and necessary court reporter expenses and expert witness fees for depositions and trials, incurred when the employer unreasonably denies a claim or unreasonably fails to timely initiate any of the benefits to which the employee or dependent is entitled under this chapter, including medical benefits under § 50-6-204, temporary or permanent disability benefits under § 50-6-207, or death benefits under § 50-6-

210, if the workers' compensation judge concludes, at either an expedited hearing or a compensation hearing, that the employer's denial or failure to timely initiate benefits was unreasonable.

(3) When, at an expedited hearing, the workers' compensation judge concludes under subdivision (d)(2) that the employer unreasonably denied the claim or unreasonably failed to timely initiate benefits, the court may award attorneys' fees and costs at that time. If, in addition, the workers' compensation judge finds that the evidence of such unreasonableness is clear and convincing, then any award of attorneys' fees and costs under subdivision (d)(2) must not be deferred to a compensation hearing. The interlocutory nature of an expedited hearing order does not, standing alone, serve as a basis to deny or defer an award of attorneys' fees and costs under this subdivision (d)(3).

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.