

**PUBLIC CHAPTER NO. 1183**

**SENATE BILL NO. 3791**

**By Haynes**

**Substituted for: House Bill No. 3436**

**By Rinks**

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 50-6-238(a)(1), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(a)(1)(A) Any party or their attorney may request the assistance of a workers' compensation specialist in the determination of whether temporary disability or medical benefits are appropriate by filing with the division a form prescribed for that purpose by the commissioner.

(B) For injuries occurring on or after July 1, 2008, if the request for the assistance of a workers' compensation specialist is filed pursuant to (a)(1)(A) within the time prescribed by § 50-6-203 or § 50-6-306, the time within which to file a request for a benefit review conference shall not expire before sixty (60) days after the issuance of a benefit review report by the workers' compensation specialist making the determination on the request for assistance. This provision notwithstanding, in no event shall the parties have less time to file a request for benefit review conference than is prescribed by § 50-6-203 or § 50-6-306.

(C) 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.

SECTION 2. Tennessee Code Annotated, Section 50-6-238(d), is amended by deleting the word "reconsider" wherever it appears in the subsection and replacing it with the words "administratively review" and by deleting the word "reconsideration" wherever it appears in the subsection and replacing it with the words "administrative review" throughout the subsection.

SECTION 3. Tennessee Code Annotated, Section 50-6-238(d)(2)(A), is amended by deleting the third and final sentence and by substituting instead the following language:

The administrator's designee shall be a Tennessee licensed attorney, shall have a minimum of five (5) years of experience with the Tennessee Workers' Compensation Law, and shall not be the specialist who issued the order that is the subject of administrative review.

SECTION 4. Tennessee Code Annotated, Section 50-6-239(b), is amended by deleting the period at the end of the subsection and adding the following language and punctuation:

, unless the benefit review conference process is otherwise exhausted pursuant to rules promulgated by the commissioner.

SECTION 5. Tennessee Code Annotated, Section 50-6-225(a)(2)(A), is amended by adding the following language after the word "claim" and before the comma in the first sentence:

or the benefit review conference process is otherwise exhausted pursuant to rules promulgated by the commissioner

SECTION 6. Tennessee Code Annotated, Section 50-6-225(a)(2)(B), is amended by adding the following language after the word "claim" and before the comma in the first phrase:

or the benefit review conference process is otherwise exhausted pursuant to rules promulgated by the commissioner

SECTION 7. Tennessee Code Annotated, Section 50-6-239(c), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(c)(1) 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.

(2) If a request for a benefit review conference is on file for a period in excess of one year, the division shall have the authority to schedule a date specific for the benefit review conference and give the parties written notice at their last known address.

(3) If the division fails to conduct a benefit review conference within sixty (60) days of receipt of a request for a benefit review conference or the date on which the employee reaches maximum medical improvement, whichever date is later, 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.

SECTION 8. Tennessee Code Annotated, Section 50-6-246, is amended by deleting the language of the section in its entirety and by substituting instead the following:

To assure employees, employers and the department have the information necessary to resolve a workers' compensation claim and to effectuate the legislative intent of Section 50-6-241, the Commissioner of Labor and Workforce Development shall establish rules, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, to govern the provision of a medical impairment rating required by Section 50-6-204(d)(3)(A). The commissioner shall promulgate these rules in conjunction with the advisory council on workers' compensation. The rules required by this section shall take effect on October 1, 2008. The commissioner is authorized to use public necessity rules under Section 4-5-209(a)(4) or emergency rules under Section 4-5-208, as appropriate, in order to have such rules in effect no later than October 1, 2008.

SECTION 9. Tennessee Code Annotated, Section 50-6-121, is amended by deleting the words "Tennessee Trial Lawyers' Association" wherever they appear and by substituting instead the words "Tennessee Association for Justice".

SECTION 10. Tennessee Code Annotated, Section 50-6-203(f), is amended by deleting the phrase and punctuation ", signed by the employee,"

SECTION 11. Tennessee Code Annotated, Section 50-6-121(i), is amended by deleting the last sentence of the subsection in its entirety and substituting instead the following:

The comments of the council shall describe the potential effects of the proposed legislation on the workers' compensation system and its operations and any other information or suggestions that the council may think helpful to the sponsors, the standing committees or the general assembly. The comments of the council may include recommendations for or against passage of the proposed legislation. Other than reporting the recommendations for or against passage of proposed legislation and responding to any questions that the legislators may have, no staff of the advisory council shall lobby or advocate for or against passage of proposed legislation.

SECTION 12. This act shall take effect upon becoming law, the public welfare requiring it.

**PASSED: May 20, 2008**

  
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RON RAMSEY  
SPEAKER OF THE SENATE

  
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JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of June 2008

  
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PHIL BREDESEN, GOVERNOR