

SENATE BILL 2862

By Black

AN ACT to amend Tennessee Code Annotated, Title 1, Chapter 3; Title 29; Title 39, Chapter 11; Title 50; Title 56, Title 68 and Chapter ____ of the Public Acts of 2010 (Ex. Sess.) (Senate Bill 1 / House Bill 7 of the First Extraordinary Session), relative to workers' compensation.

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

SECTION 1. Chapter ____ of the Public Acts of 2010 (Ex. Sess.) (Senate Bill 1 / House Bill 7 of the First Extraordinary Session) is amended by deleting SECTION 2 of the bill/public chapter.

SECTION 2. Chapter ____ of the Public Acts of 2010 (Ex. Sess.) (Senate Bill 1 / House Bill 7 of the First Extraordinary Session) is amended by deleting the language "March 28, 2011" in the first sentence of SECTION 3 of the bill/public chapter and substituting instead the language "July 1, 2010".

SECTION 3. Chapter ____ of the Public Acts of 2010 (Ex. Sess.) (Senate Bill 1 / House Bill 7 of the First Extraordinary Session) is amended by deleting the second sentence of SECTION 3 of the bill/public chapter.

SECTION 4. Tennessee Code Annotated, Section 50-6-113(f)(1), is amended by adding the following new appropriately designated subdivision thereto:

(D)

(i) Any sole proprietor or partner engaged in the construction industry, or a member of an LLC, engaged in the construction industry, may elect to be exempt from the operation of this chapter; provided, that no more than three (3) members of an LLC may make such election; provided further, that any sole

proprietor, partner or LLC member electing exemption pursuant to this subdivision (f)(1)(D)(i) shall:

(a) Annually give notice to the department of labor and workforce development on a form with an accompanying affidavit provided by the department of the intent to be excluded from the provisions of this chapter; and

(b) Deliver a copy of such form with an accompanying affidavit to any principal contractor, intermediate contractor or subcontractor for each individual contract under which the sole proprietor, partner or LLC member intends to work, prior to commencing such work.

(ii) The department shall develop a uniform affidavit of workers' compensation election that shall be completed by any sole proprietor, partner or LLC member electing to be exempt pursuant to this subdivision (f)(1)(D). Such affidavit shall state that any individual electing to be exempt from the operation of this chapter understands that he or she is renouncing and giving up any and all rights to coverage under this chapter.

(iii) Nothing in this subdivision (f)(1)(D) shall be construed as exempting any sole proprietor, partner or LLC member engaged in the construction industry from providing workers' compensation coverage for any of its employees.

(iv) Any sole proprietor, partner or LLC member who files a notice of election of exemption pursuant to subdivision (f)(1)(D) shall not be eligible for workers' compensation coverage under this chapter. Any action to recover damages for personal injury or death by accident brought against an employer by a sole proprietor, partner or LLC member who has filed a notice of election pursuant to (f)(1)(D) shall proceed as at common law, and the employer in the

suit may make use of all common law defenses; provided, however, such sole proprietor, partner or LLC member shall forego the right to sue to establish or reestablish workers' compensation coverage while such election is in effect.

(v) Any sole proprietor, partner or LLC member who elects exemption and who, after electing exemption then revokes such exemption, shall give notice to that effect in accordance with a form prescribed by the department. In order to be covered by this chapter, notice of revocation shall be given to the department thirty (30) days prior to any accident resulting in injury or death to the person electing such exemption.

SECTION. 5. Tennessee Code Annotated, Section 50-6-412, is amended by deleting the language "one and one half (1 1/2) times" wherever it appears and substituting instead the language "one and one half (1 1/2) times or three (3) times if the employer is engaged in the construction industry, as defined in § 50-6-113(f)(3)".

SECTION 6. Tennessee Code Annotated, Section 50-6-412(f)(4), is amended by designating the existing language as subdivision (A) and adding a new subdivision (B):

(B) If any employer engaged in the construction industry, as defined in § 50-6-113(f)(3), fails to obtain workers' compensation insurance coverage as ordered by the commissioner or commissioner's designee within the required time period, the employer shall lose any right to an exemption under § 50-6-113 for a period of five (5) years from the date of the commissioner's order. If such employer fails to obtain workers' compensation insurance coverage as ordered by the commissioner or commissioner's designee within the required time period, and such failure is a second or subsequent failure to do such, the commissioner or the commissioner's designee shall notify the state board of licensing contractors of such failure. If the employer is licensed by the

board, the board shall revoke the employer's contractor's license pursuant to § 62-6-118 for a period to be determined by the department.

SECTION 7. This act shall take effect July 1, 2010, the public welfare requiring it.