

House Bill 412 (COMMITTEE SUBSTITUTE)

By: Representatives Hamilton of the 24th, Nimmer of the 178th, Fleming of the 121st, Ehrhart of the 36th, Bryant of the 162nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to
2 workers' compensation, so as to change certain provisions relating to workers' compensation;
3 to change certain provisions relating to the exclusivity of rights and remedies granted to an
4 employee under workers' compensation and immunity granted to construction design
5 professionals; to eliminate the Conformed Panel of Physicians as a method by which an
6 employer may satisfy the requirements for furnishing medical care; to increase the maximum
7 weekly compensation for temporary total disability benefits; to increase the maximum
8 weekly compensation for temporary partial disability benefits; to change provisions relating
9 to compensation payable to a surviving spouse when there are no other dependents; to change
10 certain provisions relating to payment of assessments to the Subsequent Injury Trust Fund
11 by insurers and self-insurers and calculations applicable thereto; to provide for the transfer
12 of the books, records, and property of the Subsequent Injury Trust Fund to the custody of the
13 Insurance Department upon dissolution of the fund; to change the date by which the fund and
14 members of its board of trustees shall be discharged from their duties; to provide for related
15 matters; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'
19 compensation, is amended by revising subsection (a) of Code Section 34-9-11, relating to
20 exclusivity of rights and remedies granted to employee under Chapter 9 and immunity
21 granted to construction design professionals, as follows:

22 "(a) The rights and the remedies granted to an employee by this chapter shall exclude and
23 be in place of all other rights and remedies of such employee, his or her personal
24 representative, parents, dependents, or next of kin, and all other civil liabilities whatsoever
25 at common law or otherwise, on account of such injury, loss of service, or death; provided,
26 however, that no employee the employer may be liable to the employee for rights and

H. B. 412 (SUB)

remedies beyond those provided in this chapter by expressly agreeing in writing to specific additional rights and remedies; provided, further, however, that the use of contractual provisions generally relating to workplace safety, generally relating to compliance with laws or regulations, or generally relating to liability insurance requirements shall not be construed to create rights and remedies beyond those provided in this chapter. No employee shall be deprived of any right to bring an action against any third-party tort-feasor, other than an employee of the same employer or any person who, pursuant to a contract or agreement with an employer, provides workers' compensation benefits to an injured employee, notwithstanding the fact that no common-law master-servant relationship or contract of employment exists between the injured employee and the person providing the benefits, and other than a construction design professional who is retained to perform professional services on or in conjunction with a construction project on which the employee was working when injured, or any employee of a construction design professional who is assisting in the performance of professional services on the construction site on which the employee was working when injured, unless the construction design professional specifically assumes by written contract the safety practices for the project. The immunity provided by this subsection to a construction design professional shall not apply to the negligent preparation of design plans and specifications, nor shall it apply to the tortious activities of the construction design professional or the employees of the construction design professional while on the construction site where the employee was injured and where those activities are the proximate cause of the injury to the employee or to any professional surveys specifically set forth in the contract or any intentional misconduct committed by the construction design professional or his or her employees."

SECTION 2.

Said chapter is further amended by revising subsections (b) and (c) of Code Section 34-9-201, relating to selection of physician from panel of physicians, change of physician or treatment, and liability of employer for failure to maintain panel, as follows:

"(b) The employer may satisfy the requirements for furnishing medical care under Code Section 34-9-200 in one of the following manners:

- (1) The employer shall maintain a list of at least six physicians or professional associations or corporations of physicians who are reasonably accessible to the employees; provided, however, that the board may grant exceptions to the required size of the panel where it is demonstrated that more than four physicians or groups of physicians are not reasonably accessible. This list shall be known as the 'Panel of Physicians.' At least one of the physicians ~~must~~ shall practice the specialty of orthopedic surgery. Not more than two industrial clinics shall be included on the panel. An

employee may accept the services of a physician selected by the employer from the panel or may select another physician from the panel. The physicians selected under this subsection from the panel may arrange for any consultation, referral, and extraordinary or other specialized medical services as the nature of the injury shall require without prior authorization from the board; provided, however, that any medical practitioner providing services as arranged by a primary authorized treating physician under this subsection shall not be permitted to arrange for any additional referrals. The employee may make one change from one physician to another on the same panel without prior authorization of the board; or

~~(2) The employer may maintain a list of physicians in conformity with the guidelines and criteria established and contained in the Rules and Regulations of the State Board of Workers' Compensation. This list shall be known as the 'Conformed Panel of Physicians.' An employee may obtain the services of any physician from the conformed panel and may thereafter also elect to change to another physician on the panel without prior authorization of the board. The physician so selected will then become the primary authorized treating physician in control of the employee's medical care and may arrange for any consultation, referral, and extraordinary or other specialized medical services as the nature of the injury shall require without prior authorization by the board; provided, however, that any of the physicians to whom the employee is referred by the primary authorized treating physician shall not be permitted to arrange for any additional referrals; or~~

~~(3)~~(2) A self-insured employer or the workers' compensation insurer of an employer may contract with a managed care organization certified pursuant to Code Section 34-9-208 for medical services required by this chapter to be provided to injured employees. Medical services provided under this paragraph shall be known as 'Managed Care Organization Procedures.' Those employees who are subject to the contract shall receive medical services in the manner prescribed in the contract. Each such contract ~~must~~ shall comply with the certification standards provided in Code Section 34-9-208. Self-insured employers or workers' compensation insurers who contract with a managed care organization for medical services shall give notice to the employees of the eligible medical service providers and such other information regarding the contract and manner of receiving medical services as the board may prescribe.

(c) Consistent with the method elected under subsection (b) of this Code section, the employer shall post the Panel of Physicians ~~or Conformed Panel of Physicians~~ or Managed Care Organization Procedures in prominent places upon the business premises and otherwise take all reasonable measures to ensure that employees:

- 99 (1) Understand the function of the panel or managed care organization procedures and
100 the employee's right to select a physician therefrom in case of injury; and
101 (2) Are given appropriate assistance in contacting panel or managed care organization
102 members when necessary."

103 SECTION 3.

104 Said chapter is further amended by revising Code Section 34-9-261, relating to compensation
105 for total disability, as follows:

106 "34-9-261.

107 While the disability to work resulting from an injury is temporarily total, the employer shall
108 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the
109 employee's average weekly wage but not more than ~~\$525.00~~ \$550.00 per week nor less
110 than \$50.00 per week, except that when the weekly wage is below \$50.00, the employer
111 shall pay a weekly benefit equal to the average weekly wage. The weekly benefit under
112 this Code section shall be payable for a maximum period of 400 weeks from the date of
113 injury; provided, however, that in the event of a catastrophic injury as defined in subsection
114 (g) of Code Section 34-9-200.1, the weekly benefit under this Code section shall be paid
115 until such time as the employee undergoes a change in condition for the better as provided
116 in paragraph (1) of subsection (a) of Code Section 34-9-104."

117 SECTION 4.

118 Said chapter is further amended by revising Code Section 34-9-262, relating to compensation
119 for temporary partial disability, as follows:

120 "34-9-262.

121 Except as otherwise provided in Code Section 34-9-263, where the disability to work
122 resulting from the injury is partial in character but temporary in quality, the employer shall
123 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the
124 difference between the average weekly wage before the injury and the average weekly
125 wage the employee is able to earn thereafter but not more than ~~\$350.00~~ \$367.00 per week
126 for a period not exceeding 350 weeks from the date of injury."

127 SECTION 5.

128 Said chapter is further amended by revising subsection (d) of Code Section 34-9-265, relating
129 to compensation for death resulting from injury and other causes, penalty for death from
130 injury proximately caused by intentional act of employer, and payment of death benefits
131 where no dependents found, as follows:

"(d) The total compensation payable under this Code section to a surviving spouse as a sole dependent at the time of death and where there is no other dependent for one year or less after the death of the employee shall in no case exceed ~~\$150,000.00~~ \$220,000.00."

SECTION 6.

Said chapter is further amended by revising Code Section 34-9-358, relating to payment of assessments to the Subsequent Injury Trust Fund by insurers and self-insurers and calculations, as follows:

"34-9-358.

(a) Prior to January 1, 2010, each insurer and self-insurer under this chapter shall, under regulations prescribed by the board of trustees, make payments to the fund in an amount equal to that proportion of 175 percent of the total disbursement made from the fund during the preceding calendar year less the amount of the net assets in the fund as of December 31 of the preceding calendar year which the total workers' compensation claims paid by the insurer or self-insurer bears to the total workers' compensation claims paid by all insurers and self-insurers during the preceding calendar year.

(b) On ~~or~~ and after January 1, 2010, but prior to January 1, 2016, each insurer and self-insurer under this chapter shall, under regulations prescribed by the board of trustees, make payments to the fund in an amount equal to that proportion of 175 percent of the total disbursement made from the fund during the preceding calendar year as of December 31 of the preceding calendar year which the total workers' compensation claims paid by the insurer or self-insurer bears to the total workers' compensation claims paid by all insurers and self-insurers during the preceding calendar year but not to exceed \$100 million.

(c) On and after January 1, 2016, each insurer and self-insurer under this chapter shall, under regulations prescribed by the board of trustees, make payments to the fund in an amount equal to that proportion of \$100 million the total workers' compensation claims paid by the insurer or self-insurer bears to the total workers' compensation claims paid by all insurers and self-insurers during the preceding calendar year but not to exceed \$100 million.

(d) The administrator is authorized to create and maintain a reserve of surplus moneys as may be deemed necessary by the board of trustees in order to ensure sufficient moneys will be available for the payment of all claims that are to be paid by the fund in accordance with Code Section 34-9-368.

~~(c)~~(e) The administrator is authorized to reduce or suspend assessments for the fund when a completed actuarial survey shows further assessments are not needed for all bona fide claims that are to be paid by the fund.

~~(d)~~(f)(1) When further assessments are not needed as all eligible workers' compensation claims for which the fund is liable in accordance with Code Section 34-9-368 have been paid and all related administrative costs have been accrued or paid and a balance remains in the fund, all insurers and self-insurers in this state who have maintained workers' compensation insurance in this state for any time during the preceding three years from the date that the last claim has been paid shall be entitled to a pro rata refund of assessments previously collected and unexpended in the remaining fund balance.

(2) The calculation for such pro rata refund to be paid by the fund to each individual insurer and self-insurer shall be determined by the following formula:

The balance remaining in the fund shall be the numerator and shall be divided by the total amount of assessments for workers' compensation coverage paid by all insurers and self-insurers during the three-year period, which shall be the denominator. The quotient of the numerator and denominator shall be multiplied by the total amount of assessments that are paid by the individual insurer or self-insurer during the three-year period. The product of those numbers shall represent the amount to be paid to such insurer or self-insurer as its pro rata refund from the balance remaining in the fund.

(3) Nothing in this subsection shall preclude the board of trustees from authorizing a loss portfolio transfer of any unresolved claims.

~~(e)~~(g) An employer who has ceased to be a self-insurer prior to the end of the calendar year shall be liable to the fund for the assessment of the calendar year. Such employer who has ceased to be a self-insurer shall continue to be liable to the fund for assessments in subsequent calendar years so long as payments are made on any workers' compensation claims made while in self-insured status.

~~(f)~~(h) The initial assessment of each insurer or self-insurer for the purpose of generating revenue to begin operation of the fund shall be in the amount of one-half of 1 percent of the workers' compensation premiums collected by the insurer for the preceding calendar years from an employer who is subject to this chapter or the equivalent of such in the case of a self-insurer."

SECTION 7.

Said chapter is further amended by revising subsection (c) of Code Section 34-9-368, relating to reimbursement of self-insured employers or insureds and dissolution of the Subsequent Injury Trust Fund, as follows:

"(c) Upon or in contemplation of the final payment of all claims filed for subsequent injuries for which claims are filed for injuries occurring on and prior to June 30, 2006, the board of trustees shall adopt and implement resolutions providing for the final dissolution

203 of the Subsequent Injury Trust Fund. Such resolutions shall become effective when all
204 claims made for injuries occurring on and prior to June 30, 2006, have been fully paid or
205 otherwise resolved and shall include provisions for:

- 206 (1) The termination of assessments against insurers or self-insurers;
207 (2) The pro rata refund of assessments previously collected and unexpended, consistent
208 with the provisions of subsection ~~(d)~~ (f) of Code Section 34-9-358;
209 (3) The termination of employment of the employees of the fund or the transfer of
210 employment of any employees to any other state agency desiring to accept them;
211 (4) A final accounting of the financial affairs of the fund; and
212 (5) The transfer of the books, records, and property of the fund to the custody of the ~~State~~
213 ~~Board of Workers' Compensation~~ Insurance Department.

214 Upon the completion of all matters provided for in such resolutions, but not later than
215 ~~December 31, 2020~~ December 31, 2023, the Subsequent Injury Trust Fund and the
216 members of its board of trustees shall be discharged from their duties except for such
217 personnel necessary to administer any remaining claims."

218 **SECTION 8.**

219 All laws and parts of laws in conflict with this Act are repealed.