

**TNRMT to provide coverage for Work Based Learning (WBL) students**

Relative to Public Chapter 991 effective July 1, 2018

*Written by John Evans, TNRMT Program Manager*

In May, the Tennessee Legislature passed the WBL law, Public Chapter 991, with the intent of encouraging employers to accept WBL students in training and intern programs in coordination with Local Education Agencies. The intent, as explained by the bill sponsors, state agencies and TNRMT attorneys, is accomplished by creating a “liability framework” to partially or completely absolve employers from liability as a result of participating in the WBL programs.

Your TNRMT staff and program managers have long supported WBL programs for our members and heartily encourage these efforts by extending student accident and liability coverage to these WBL programs. This law creates new requirements. Since its passage, we have diligently pursued clarification of those requirements to be sure our members are adequately covered for the liability created by Public Chapter 991. Unfortunately, this new law creates more questions than answers as to how to protect our members.

We apologize for the length of this explanation but want you to know that the coverage we have added may be overkill. Nonetheless, we know you need guidance on this subject before the start of the 2018-19 school term. We also encourage any other interested agency to open a dialogue with us on our coverage and opinions as we ask for an Attorney General’s opinion to further perfect coverage. In the interim, we ask that you be wary of opinions on the effects of this law as we and others get to the bottom line. Too little coverage could leave your LEA responsible for an unbudgeted loss.

After due diligence, the information below is to the best of our knowledge and belief as well as a combination of opinions of attorneys, insurance professionals and state agencies. We have viewed all videos from the State Legislature to try and understand intent. As a result, this is our best answer as to how to provide coverage for now.

A copy of Public Chapter 991 is attached for reference. We will relegate our discussion to SECTION 1, as the remainder of the Chapter concerns a grant program.

1. SECTION 1, (a) (1) states that a participating employer will only be responsible for their acts relating to the student if the employer acted willfully or with gross negligence. This is typical of tort law and changes little with respect to TNRMT coverage as TNRMT has always provided liability coverage for WBL liability proximately caused by the student or his/her LEA.
2. Section 1, (a) (2) states that an employer may “elect” to provide workers compensation coverage to WBL students. This is where it gets complicated. If this section voids the employee test contained in the workers compensation act (Title 50) then it is a significant departure from the intent of state law regarding workplace injuries. We do not believe, however, that PC 991 voids the employee test. Therefore, we believe that an employer who accepts an “employee” by definition and complies with SECTION 1, (2) (B), must provide workers compensation coverage for the participant under State law.
3. We believe the term “elect” may refer to the employer’s ability to choose whether to employ a trainee or intern and meet the test of actually employing the trainee or to simply provide training with no remuneration to the student/trainee. Otherwise, the workers compensation law would dictate whether the student/employee would be covered under existing law.

4. SECTION 1, (a) (2)(A) states that workers compensation coverage provided by the employer will be the student's "sole remedy". This is established law as workers compensation coverage has always been the "sole remedy". Since this paragraph is otherwise redundant, we believe the intent here may be to bar a lawsuit against the employer in addition to previously paid workers compensation benefits when the participating student reaches the age of majority. If so, this is a positive provision of this law.
5. SECTION 1, (b) This section creates the most questions for insurance professionals as it uses the term "liability" for what could be both second and third-party coverage. It first requires "liability coverage for all participating students". The implication of this section is that third party liability coverage must be provided to cover injuries to students equal to workers compensation benefits. Currently, there is no "liability" of an LEA to cover injuries to students unless the injury is as a result of negligence on the part of the LEA. Since this provision limiting the LEA's liability is found in Title 29, and the WBL act did not open Title 29, we believe the provisions and limitations contained in Title 29 still apply. The conundrum is that LEAs are protected from liability for injuries to students by Title 29 while the WBL law requires LEA to purchase "liability" insurance to cover student injuries. This further brings into question whether second party, voluntary student accident insurance (since it is not "liability insurance" and does not contain benefits equal to workers compensation benefits) will meet the requirements of this new chapter. It may be possible, however, that this provision of PC 991 is intended to require the LEA to name the participating student as an insured for purposes of indemnifying the employer for the student's or LEA's acts of negligence. Since both "liability coverage for all participating students" and "liability coverage to compensate the participating student for any injury not covered by the workers compensation law" appear in the same paragraph, it is only logical to assume both references are relative to liability for injuries to students.
6. This section then requires the LEA to purchase "liability" insurance to cover injuries not covered by workers compensation if the student IS covered by the employer's workers compensation program. (Again, this implies that the LEA must be responsible for benefits equal to or greater than workers compensation benefits, notwithstanding Title 29.) Since workers compensation covers 100% of workplace injuries (with very minor exceptions), we believe this may include such things as third party liability for transportation to and from the employer's facility or possibly walking across an employer's parking lot. Again, the LEAs are immune from this third-party liability under Title 29 which was not opened by this act.

### **CONCLUSIONS**

1. This Public Chapter includes contradictions and inconsistencies that can only be answered by an Attorney General's opinion for now. We are requesting that opinion.
2. This act MAY require benefits equal to workers compensation benefits although workers compensation coverage is a no-fault, third-party coverage that likely may not be legally provided to students under the provisions of Title 29.
3. It may not be legal for a LEA to provide workers compensation coverage for the benefit of an employer.
4. Voluntary student accident insurance may not serve to meet the requirements of the act because of its voluntary nature as well as benefits and limits but MAY be required in addition to workers compensation benefits to cover injuries not covered by workers compensation insurance.
5. "Liability insurance for all participating students" may mean third party liability coverage for property damage or injury to others by the student.

6. Prior to passage of PC991, there was no other mandate for any LEA to purchase liability insurance. Instead, LEAs could choose to self-insure or purchase insurance to meet their specific needs under the provisions of the Tennessee Governmental Tort Liability Act (GTLA). Purchase of insurance required by PC991 is a new mandate for Tennessee LEAs, however, PC991 did not change the GTLA and its provisions cannot supersede the GTLA.

**TNRMT will provide the following coverage for the interim period**

1. As always, TNRMT will provide student accident coverage that extends to WBL activities.
2. As always, TNRMT will provide liability coverage to the LEA for their acts or acts of their students given agency with the LEA.
3. TNRMT will increase benefits to WBL participants of its student accident program to those of the Tennessee Workers Compensation Act to the extent of the limits contained in the tort liability act under Title 29 until and unless it is determined by appropriate authority that such practice is not permitted.
4. TNRMT will provide a certificate of liability coverage to WBL employers indicating liability coverage specific to the requirements of Public Chapter 991, or as subsequent determinations may require.

Again, we believe these coverage provisions are likely overkill but due to the uncertainty of the requirements of Public Chapter 991 ensure that our members have appropriate coverage.

We encourage any interested party to offer discussion on his/her findings and opinions regarding PC 991 to help with interpretation of its provisions and develop a standard of coverage while we pursue final determination on requirements of the Act. It is our intent to foster and promote WBL programs in Tennessee while making sure our members are adequately protected.