

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-27-79

Time 10:10 A.M.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979



ENROLLED

Committee Substitute for
HOUSE BILL No. 947

(By Mr. Niedelusch + Mr. Greer)



Passed March 7, 1979

In Effect July 1, 1979 ~~Passage~~



No. 947

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 947

(By Mr. WIEDEBUSCH and Mr. GREER)

[Passed March 7, 1979; in effect July 1, 1979.]

AN ACT to amend article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen; to amend and reenact sections one-c, one-d, seven-a and nine, article four; and section one, article four-a, all of said chapter, all relating to creating a workmen's compensation advisory board; providing for its membership and members' terms, appointment and duties; providing a method of calling meetings and requiring annual report; payment of temporary total disability benefits; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made; method and time of payments for permanent disability; monitoring of injury claims; legislative findings; review of medical evidence; ~~independent medical evidence~~; independent medical evaluations; temporary total disability benefits; mandatory action; additional authority; physical and vocational rehabilitation; payments for medical expenses on physician's request; disabled workmen's relief fund; payment of permanent total disability benefits at thirty-three and one-third percent of average weekly wage.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amend-

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ed by adding thereto a new section, designated section eighteen; that sections one-c, one-d, seven-a and nine, article four; and section one, article four-a, all of said chapter, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-18. Workmen's compensation advisory board created; membership; appointment; terms; meetings; duties; annual reports.

1 There is hereby created an advisory board to the commis-
2 sioner of the workmen's compensation fund to be known as
3 "the workmen's compensation advisory board."

4 The workmen's compensation advisory board consists of
5 ten members. The workmen's compensation commissioner is
6 an ex officio member of the board whose term as such member
7 continues for that period in which he holds that office. The
8 other nine members of the board shall be appointed by the
9 governor with three members representing employees subject
10 to this chapter, three members representing employers subject
11 to this chapter and three members representing providers of
12 medical services to such employees for which such providers
13 are compensated under the provisions of this chapter. The
14 term of each member except the workmen's compensation
15 commissioner shall be three years: *Provided*, That of the per-
16 sons originally appointed, three members, including one mem-
17 ber of each of the three representative groups, shall be desig-
18 nated to serve for terms of one year each, three members, in-
19 cluding one member of each of the three representative groups,
20 shall be designated to serve for terms of two years each and
21 three members, including one member of each of the three
22 representative groups, shall be designated to serve for a term
23 of three years each. The terms of all the initially appointed
24 members of the board shall begin on the first day of July, one
25 thousand nine hundred seventy-nine. Upon the expiration of
26 each of such initial appointments the term of each new ap-
27 pointee shall be three years, but any person appointed to fill a
28 vacancy occurring prior to the expiration of the term for which

29 his predecessor was appointed shall be appointed only for the
30 remainder of such term. Each member shall serve until the
31 appointment and qualification of his successor. Members shall
32 be eligible for reappointment.

33 The workmen's compensation commissioner shall serve as
34 chairman of the board. The other nine members shall select
35 one of their number to serve as vice chairman of the board and
36 to preside in the absence of the commissioner. Meetings may
37 be held at any time at the call of the commissioner. The com-
38 missioner shall call a meeting whenever a majority of the
39 other members of the board request him to do so. At least one
40 meeting shall be held annually.

41 The purpose of the board and the duty of its members are to
42 advise the workmen's compensation commissioner on matters
43 pertinent to the administration of the workmen's compensa-
44 tion fund. The board shall consider any matter brought before
45 it by the commissioner or any appointed member and may
46 consider any matter referred to it by a person not a member
47 of the board. At the conclusion of its consideration of any
48 proposal the board shall make its recommendation to the
49 commissioner. The commissioner is not bound by any recom-
50 mendation of the board. The board also may formulate general
51 or long-range plans for improvements in the administration of
52 the fund for the consideration of the commissioner.

53 By the second Wednesday of January of each year the
54 board shall prepare and deliver to the workmen's compensa-
55 tion commissioner and to the Legislature a report of all the
56 matters it considered, recommendations it made and plans it
57 formulated during the preceding calendar year. The report
58 shall include any recommendations it may have for changes in
59 the law which would be necessary to implement any of its
60 administrative recommendations.

61 Unless sooner terminated by law and until and unless ex-
62 tended, the West Virginia workmen's compensation advisory
63 board shall cease to exist on the thirtieth day of June, one
64 thousand nine hundred eighty-two.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

1 Upon a finding by the commissioner that a claimant has
2 sustained a compensable injury within the meaning of section
3 one of this article, as may clearly appear from the employer's
4 report of injury, or otherwise, that disability will last longer
5 than three days as provided in section five of this article, the
6 commissioner may immediately commence payment of tem-
7 porary total disability benefits to the claimant in the amounts
8 provided for in sections six and fourteen of this article, and
9 payment of the expenses provided for in subdivision (a),
10 section three of this article relating to said injury without
11 waiting for the expiration of the thirty-day period during
12 which objections may be filed to such findings as provided in
13 section one, article five of this chapter. The commissioner
14 shall give immediate notice to the employer of his findings and
15 of the commencement of such payments.

16 The commissioner shall determine whether or not the
17 claimant has sustained a compensable injury within the mean-
18 ing of section one of this article, and may commence pay-
19 ment of temporary total disability benefits as provided herein
20 immediately upon receipt of the employer's report of injury
21 when the employer's report clearly indicates a compensable
22 injury that will last longer than three days and shall commence
23 such payment within fifteen days upon receipt of the em-
24 ployee's or employer's report of injury, whichever is received
25 sooner, and receipt of either a proper physician's report or
26 any other information necessary for a determination.

27 Upon receipt of the first report of injury in a claim, the
28 commissioner shall request from the employer or employers
29 any wage information necessary for determining the rate of
30 benefits to which the employee is entitled. If an employer
31 does not furnish the commissioner with this information within
32 fifteen days from the date the commissioner received the
33 first report of injury in the case, the employee shall be paid

34 temporary total disability benefits for lost time at the rate
35 the commissioner believes would be justified by the usual rate
36 of pay for the occupation of the injured employee. The
37 commissioner shall adjust the rate of benefits both retroactively
38 and prospectively upon receipt of proper wage information.
39 The commissioner shall have access to all wage information in
40 the possession of any state agency, including wage information
41 received by the department of employment security under
42 chapter twenty-one-a of this code, pertinent to such determina-
43 tion.

44 Upon a finding of the commissioner that a claimant, who
45 has sustained a previous compensable injury which has been
46 closed by an award of temporary total disability or permanent
47 partial disability, suffers further temporary total disability
48 or requires further medical or hospital treatment resulting
49 from the compensable injury giving rise to the former award,
50 the commissioner shall immediately commence payment of
51 temporary total disability benefits to the claimant in the
52 amounts provided for in sections six and fourteen of this
53 article, and the expenses provided for in subdivision (a),
54 section three of this article, relating to said disability, with-
55 out waiting for the expiration of the thirty-day period during
56 which objections may be filed to such findings as provided
57 in section one, article five of this chapter. The commissioner
58 shall give immediate notice to the employer of his findings and
59 of the commencement of such payment.

60 Where the employer is a subscriber to the workmen's
61 compensation fund under the provisions of article three of
62 this chapter, and upon the findings aforesaid, the commissioner
63 shall mail all workmen's compensation checks paying tem-
64 porary total disability benefits directly to the claimant and not
65 to the employer for delivery to the claimant.

66 Where the employer has elected to carry his own risk
67 under section nine, article two of this chapter, and upon
68 the findings aforesaid, the commissioner shall immediately
69 issue a pay order directing the employer to pay such amounts
70 as are due the claimant for temporary total disability bene-
71 fits. A copy of the order shall be sent to the claimant. The
72 self-insured employer shall commence such payments by mail-

73 ing or delivering the payments directly to the employee within
74 ten days of the date of the receipt of the pay order by the
75 employer. If the self-insured employer believes that his em-
76 ployee is entitled to benefits, he may start payments before
77 receiving a pay order from the commissioner.

78 In the event that an employer files a timely objection to
79 any finding or order of the commissioner, as provided in
80 section one, article five of this chapter, with respect to
81 the payment or continued payment of temporary total disability
82 benefits and those expenses as outlined in subdivision (a),
83 section three of this article, as provided herein, the com-
84 missioner shall continue to pay to the claimant such benefits
85 and expenses during the period of such disability unless it is
86 subsequently found by the commissioner that the claimant
87 was not entitled to receive the temporary total disability
88 benefits and the expenses provided for in subdivision (a),
89 section three of this article, or any part thereof, so paid,
90 in which event the commissioner shall, where the employer is
91 a subscriber to the fund, credit said employer's account
92 with the amount of the overpayment; and, where the employer
93 has elected to carry his own risk, the commissioner shall
94 refund to such employer the amount of the overpayment. The
95 amounts so credited to a subscriber or repaid to a self-insurer
96 shall be charged by the commissioner to the surplus fund
97 created by section one, article three of this chapter. If the
98 final decision in any case determines that a claimant was
99 not lawfully entitled to benefits paid to him pursuant to a
100 prior decision, such amount of benefits so paid shall be
101 deemed overpaid. The commissioner may recover such amount
102 by civil action or in any manner provided in this code for
103 the collection of past-due payment and shall withhold, in
104 whole or in part, as determined by the commissioner, any
105 future benefits payable to the individual and credit such
106 amount against the overpayment until it is repaid in full.

§23-4-1d. Method and time of payments for permanent disability.

- 1 (a) If the commissioner makes an award for permanent
- 2 partial or permanent total disability, the commissioner or
- 3 self-insured employer shall start payment of benefits by

4 mailing or delivering the amount due directly to the em-
5 ployee within fifteen days from the date of the award.

6 (b) If a timely protest to the award is filed, as pro-
7 vided in section one of article five, the commissioner or
8 self-insured employer shall continue to pay to the claimant
9 such benefits during the period of such disability unless it
10 is subsequently found by the commissioner that the claimant
11 was not entitled to receive the benefits, or any part thereof,
12 so paid, in which event the commissioner shall, where the
13 employer is a subscriber to the fund, credit said employer's
14 account with the amount of the overpayment; and, where
15 the employer has elected to carry his own risk, the com-
16 missioner shall refund to such employer the amount of the
17 overpayment. The amounts so credited to a subscriber or
18 repaid to a self-insurer shall be charged by the commis-
19 sioner to the surplus fund created by section one, article
20 three of this chapter. If the final decision in any case deter-
21 mines that a claimant was not lawfully entitled to benefits
22 paid to him pursuant to a prior decision, such amount of
23 benefits so paid shall be deemed overpaid. The commis-
24 sioner may recover such amount by civil action or in any
25 manner provided in this code for the collection of past-
26 due payment and shall withhold, in whole or in part, as
27 determined by the commissioner, any future benefits payable
28 to the individual and credit such amount against the over-
29 payment until it is repaid in full.

**§23-4-7a. Monitoring of injury claims; legislative findings; review
of medical evidence; independent medical evaluations;
temporary total disability benefits; mandatory action;
additional authority.**

1 (a) The Legislature hereby finds and declares that in-
2 jured claimants should receive the type of treatment needed
3 as promptly as possible; that overpayments of temporary
4 total disability benefits with the resultant hardship created
5 by the requirement of repayment should be minimized; and
6 that to achieve these two objectives, it is essential that
7 the commissioner establish and operate a systematic program
8 for the monitoring of injury claims where the disability
9 continues longer than might ordinarily be expected.

10 (b) In view of the foregoing findings, the commissioner,
11 in consultation with medical experts, shall establish guidelines
12 as to the anticipated period of disability for the various
13 types of injuries. Each injury claim in which temporary
14 total disability continues beyond the anticipated period of
15 disability so established for the injury involved shall be
16 reviewed by the commissioner. If satisfied, after reviewing
17 the medical evidence, that the claimant would not benefit by
18 an independent medical evaluation, the commissioner shall
19 mark the claim file accordingly and shall diary such claim
20 file as to the next date for required review which shall not
21 exceed sixty days. If the commissioner concludes that the
22 claimant might benefit by an independent medical evaluation,
23 he shall proceed as specified in subsection (c) of this section.

24 (c) When the commissioner concludes that an independent
25 medical evaluation is indicated, or that a claimant may be
26 ready for disability evaluation in accordance with other
27 provisions of this chapter, he shall refer the claimant to a
28 physician or physicians of his selection for examination and
29 evaluation. If the physician or physicians so selected recom-
30 mend continued, additional or different treatment, the recom-
31 mendation shall be relayed to the claimant and his then
32 treating physician and the recommended treatment may be
33 authorized by the commissioner. If the physician or physicians
34 so selected conclude that the claimant has reached his maxi-
35 mum degree of improvement and that the claimant has no
36 permanent partial disability or that it is too early to evaluate
37 the claimant as to permanent partial disability, temporary
38 total disability benefits shall cease as of the date of receipt
39 by the commissioner of the report or reports of such phy-
40 sician or physicians and the same rule shall govern and con-
41 trol in any claim in which the treating physician shall advise
42 the commissioner that the claimant has reached his maximum
43 degree of improvement or that he is ready for disability
44 evaluation: *Provided*, That if the examining physician or
45 physicians conclude that the claimant has reached his maxi-
46 mum degree of improvement and has permanent partial
47 disability, the temporary total disability benefits shall con-
48 tinue for thirty days or until an order is entered granting
49 to the claimant a permanent partial disability award, which-

50 ever shall first occur: *Provided, however,* That under no
51 circumstances shall a claimant be entitled to receive tem-
52 porary total disability benefits beyond the date he is released
53 to return to work.

54 (d) Notwithstanding the anticipated period of disability
55 established pursuant to the provisions of subsection (b) of
56 this section, whenever in any claim temporary total disability
57 shall continue longer than one hundred twenty days from the
58 date of injury (or from the date of the last preceding examina-
59 tion and evaluation pursuant to the provisions of this sub-
60 section or pursuant to the directions of the commissioner
61 under other provisions of this chapter), the commissioner
62 shall refer the claimant to a physician or physicians of his
63 selection for examination and evaluation in accordance with
64 the provisions of subsection (c) of this section and all of
65 the other provisions of such subsection (c) shall be fully
66 applicable: *Provided further,* That the requirement of manda-
67 tory examinations and evaluations pursuant to the provisions
68 of this subsection (d) shall not apply to any claimant who
69 sustained a brain stem or spinal cord injury with resultant
70 paralysis or an injury which resulted in an amputation neces-
71 sitating a prosthetic appliance.

72 (e) The provisions of this section are in addition to
73 and in no way in derogation of the power and authority
74 vested in the commissioner by other provisions of this
75 chapter or vested in the employer to have a claimant examined
76 by a physician or physicians of its selection and at its
77 expense, or vested in the claimant or employer to file a
78 protest, under other provisions of this chapter.

§23-4-9. Physical and vocational rehabilitation.

1 In cases where an employee has sustained a permanent
2 disability, or has sustained injuries likely to result in per-
3 manent disability, and such fact has been determined by
4 the commissioner, and the employee can be physically and
5 vocationally rehabilitated and returned to remunerative em-
6 ployment by vocational training, by the use of crutches,
7 artificial limbs, or other approved mechanical appliances,
8 or by medicines, medical, surgical, dental or hospital treat-

9 ment, the commissioner shall forthwith, after due notice
10 to the employer, expend such an amount as may be neces-
11 sary for the aforesaid purposes: *Provided*, That such ex-
12 penditure for vocational rehabilitation shall not exceed ten
13 thousand dollars for any one injured employee: *Provided*,
14 *however*, That no payment shall be made for such vocational
15 rehabilitation purposes as provided by this section unless
16 authorized by the commissioner prior to the rendering of such
17 physical or vocational rehabilitation except, that payments
18 shall be made for reasonable medical expenses without prior
19 authorization if sufficient evidence exists which would relate
20 the treatment to the injury and the attending physician or
21 physicians have requested authorization prior to the rendering
22 of such treatment.

23 In every case in which the commissioner shall order
24 physical or vocational rehabilitation of a claimant as pro-
25 vided herein, the claimant shall, during the time he is re-
26 ceiving any vocational rehabilitation or rehabilitative treat-
27 ment that renders him totally disabled during the period there-
28 of, be compensated on a temporary total disability basis for
29 such period.

ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.

§23-4A-1. Disabled workmen's relief fund created.

1 For the relief of persons who are receiving benefits pursuant
2 to a permanent total disability award in amounts less than
3 thirty-three and one-third percent of the average weekly wage
4 for the state of West Virginia per month, and for the relief of
5 widows who are receiving benefits on account of the death
6 of an employee in amounts less than thirty-three and one-
7 third percent of the average weekly wage in the state of West
8 Virginia per month, and for the relief of children of em-
9 ployees deceased before one thousand nine hundred sixty-
10 seven, who are under the age of twenty-three and who are
11 full-time students, and for the relief of other persons who
12 are receiving dependents' benefits on account of the death
13 of an employee in amounts less than the specific monetary
14 amounts set forth in section ten, article four of this chapter
15 and in effect as of July one, one thousand nine hundred

16 seventy-three, there is hereby created a separate fund to
17 be known as the "Disabled Workmen's Relief Fund," which
18 fund shall consist of such sums as are from time to time
19 made available to carry out the objects and purposes of this
20 article. Said fund shall be in the custody of the state treasurer
21 and disbursements therefrom shall be made upon requisition
22 signed by the commissioner to those persons entitled to
23 participate therein and in such amounts of each participant
24 as is provided in section three of this article.

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Quence L. Chambers
Chairman House Committee

Originated in the House.

Takes effect July 1, 1979.

J. S. Hillong
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. T. Bullock
President of the Senate

Hyde H. See, Jr.
Speaker House of Delegates

The within *is approved* this the *27*
day of *March*, 1979.

John R. Rupp
Governor



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