WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED
Committee Substitute for
HOUSE BILL No. 947
(By Mr. Hiedelbach & Mr. Green)

Passed March 7, 1979
In Effect July 1, 1979

Date 3-27-79
Time 10:10 A.M.
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 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-
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.

There is hereby created an advisory board to the commissioner of the workmen's compensation fund to be known as "the workmen's compensation advisory board."

The workmen's compensation advisory board consists of ten members. The workmen's compensation commissioner is an ex officio member of the board whose term as such member continues for that period in which he holds that office. The other nine members of the board shall be appointed by the governor with three members representing employees subject to this chapter, three members representing employers subject to this chapter and three members representing providers of medical services to such employees for which such providers are compensated under the provisions of this chapter. The term of each member except the workmen's compensation commissioner shall be three years: Provided, That of the persons originally appointed, three members, including one member of each of the three representative groups, shall be designated to serve for terms of one year each, three members, including one member of each of the three representative groups, shall be designated to serve for terms of two years each and three members, including one member of each of the three representative groups, shall be designated to serve for a term of three years each. The terms of all the initially appointed members of the board shall begin on the first day of July, one thousand nine hundred seventy-nine. Upon the expiration of each of such initial appointments the term of each new appointee shall be three years, but any person appointed to fill a vacancy occurring prior to the expiration of the term for which
his predecessor was appointed shall be appointed only for the
remainder of such term. Each member shall serve until the
appointment and qualification of his successor. Members shall
be eligible for reappointment.

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

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

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

Unless sooner terminated by law and until and unless ex-
tended, the West Virginia workmen’s compensation advisory
board shall cease to exist on the thirtieth day of June, one
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.

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

The commissioner shall determine whether or not the claimant has sustained a compensable injury within the meaning of section one of this article, and may commence payment of temporary total disability benefits as provided herein immediately upon receipt of the employer’s report of injury when the employer’s report clearly indicates a compensable injury that will last longer than three days and shall commence such payment within fifteen days upon receipt of the employee’s or employer’s report of injury, whichever is received sooner, and receipt of either a proper physician’s report or any other information necessary for a determination.

Upon receipt of the first report of injury in a claim, the commissioner shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish the commissioner with this information within fifteen days from the date the commissioner received the first report of injury in the case, the employee shall be paid
temporary total disability benefits for lost time at the rate
the commissioner believes would be justified by the usual rate
of pay for the occupation of the injured employee. The
commissioner shall adjust the rate of benefits both retroactively
and prospectively upon receipt of proper wage information.
The commissioner shall have access to all wage information in
the possession of any state agency, including wage information
received by the department of employment security under
chapter twenty-one-a of this code, pertinent to such determina-
tion.

Upon a finding of the commissioner that a claimant, who
has sustained a previous compensable injury which has been
closed by an award of temporary total disability or permanent
partial disability, suffers further temporary total disability
or requires further medical or hospital treatment resulting
from the compensable injury giving rise to the former award,
the commissioner shall immediately commence payment of
temporary total disability benefits to the claimant in the
amounts provided for in sections six and fourteen of this
article, and the expenses provided for in subdivision (a),
section three of this article, relating to said disability, without
waiting for the expiration of the thirty-day period during
which objections may be filed to such findings as provided
in section one, article five of this chapter. The commissioner
shall give immediate notice to the employer of his findings and
of the commencement of such payment.

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

Where the employer has elected to carry his own risk
under section nine, article two of this chapter, and upon
the findings aforesaid, the commissioner shall immediately
issue a pay order directing the employer to pay such amounts
as are due the claimant for temporary total disability bene-
fits. A copy of the order shall be sent to the claimant. The
self-insured employer shall commence such payments by mail-
ing or delivering the payments directly to the employee within
ten days of the date of the receipt of the pay order by the
employer. If the self-insured employer believes that his em-
ployee is entitled to benefits, he may start payments before
receiving a pay order from the commissioner.

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

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

(a) If the commissioner makes an award for permanent
partial or permanent total disability, the commissioner or
self-insured employer shall start payment of benefits by
mailing or delivering the amount due directly to the employee within fifteen days from the date of the award.

(b) If a timely protest to the award is filed, as provided in section one of article five, the commissioner or self-insured employer shall continue to pay to the claimant such benefits during the period of such disability unless it is subsequently found by the commissioner that the claimant was not entitled to receive the benefits, or any part thereof, so paid, in which event the commissioner shall, where the employer is a subscriber to the fund, credit said employer’s account with the amount of the overpayment; and, where the employer has elected to carry his own risk, the commissioner shall refund to such employer the amount of the overpayment. The amounts so credited to a subscriber or repaid to a self-insurer shall be charged by the commissioner to the surplus fund created by section one, article three of this chapter. If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him pursuant to a prior decision, such amount of benefits so paid shall be deemed overpaid. The commissioner may recover such amount by civil action or in any manner provided in this code for the collection of past-due payment and shall withhold, in whole or in part, as determined by the commissioner, any future benefits payable to the individual and credit such amount against the overpayment 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.

(a) The Legislature hereby finds and declares that injured claimants should receive the type of treatment needed as promptly as possible; that overpayments of temporary total disability benefits with the resultant hardship created by the requirement of repayment should be minimized; and that to achieve these two objectives, it is essential that the commissioner establish and operate a systematic program for the monitoring of injury claims where the disability continues longer than might ordinarily be expected.
(b) In view of the foregoing findings, the commissioner, in consultation with medical experts, shall establish guidelines as to the anticipated period of disability for the various types of injuries. Each injury claim in which temporary total disability continues beyond the anticipated period of disability so established for the injury involved shall be reviewed by the commissioner. If satisfied, after reviewing the medical evidence, that the claimant would not benefit by an independent medical evaluation, the commissioner shall mark the claim file accordingly and shall diary such claim file as to the next date for required review which shall not exceed sixty days. If the commissioner concludes that the claimant might benefit by an independent medical evaluation, he shall proceed as specified in subsection (c) of this section.

(c) When the commissioner concludes that an independent medical evaluation is indicated, or that a claimant may be ready for disability evaluation in accordance with other provisions of this chapter, he shall refer the claimant to a physician or physicians of his selection for examination and evaluation. If the physician or physicians so selected recommend continued, additional or different treatment, the recommendation shall be relayed to the claimant and his then treating physician and the recommended treatment may be authorized by the commissioner. If the physician or physicians so selected conclude that the claimant has reached his maximum degree of improvement and that the claimant has no permanent partial disability or that it is too early to evaluate the claimant as to permanent partial disability, temporary total disability benefits shall cease as of the date of receipt by the commissioner of the report or reports of such physician or physicians and the same rule shall govern and control in any claim in which the treating physician shall advise the commissioner that the claimant has reached his maximum degree of improvement or that he is ready for disability evaluation: Provided, That if the examining physician or physicians conclude that the claimant has reached his maximum degree of improvement and has permanent partial disability, the temporary total disability benefits shall continue for thirty days or until an order is entered granting to the claimant a permanent partial disability award, which-
ever shall first occur: *Provided, however, That under no circumstances shall a claimant be entitled to receive temporary total disability benefits beyond the date he is released to return to work.*

(d) Notwithstanding the anticipated period of disability established pursuant to the provisions of subsection (b) of this section, whenever in any claim temporary total disability shall continue longer than one hundred twenty days from the date of injury (or from the date of the last preceding examination and evaluation pursuant to the provisions of this subsection or pursuant to the directions of the commissioner under other provisions of this chapter), the commissioner shall refer the claimant to a physician or physicians of his selection for examination and evaluation in accordance with the provisions of subsection (c) of this section and all of the other provisions of such subsection (c) shall be fully applicable: *Provided further, That the requirement of mandatory examinations and evaluations pursuant to the provisions of this subsection (d) shall not apply to any claimant who sustained a brain stem or spinal cord injury with resultant paralysis or an injury which resulted in an amputation necessitating a prosthetic appliance.*

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

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

In cases where an employee has sustained a permanent disability, or has sustained injuries likely to result in permanent disability, and such fact has been determined by the commissioner, and the employee can be physically and vocationally rehabilitated and returned to remunerative employment by vocational training, by the use of crutches, artificial limbs, or other approved mechanical appliances, or by medicines, medical, surgical, dental or hospital treat-
ment, the commissioner shall forthwith, after due notice
to the employer, expend such an amount as may be neces-
sary for the aforesaid purposes: *Provided,* That such ex-
penditure for vocational rehabilitation shall not exceed ten
thousand dollars for any one injured employee: *Provided,
however,* That no payment shall be made for such vocational
rehabilitation purposes as provided by this section unless
authorized by the commissioner prior to the rendering of such
physical or vocational rehabilitation except, that payments
shall be made for reasonable medical expenses without prior
authorization if sufficient evidence exists which would relate
the treatment to the injury and the attending physician or
physicians have requested authorization prior to the rendering
of such treatment.

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

**ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.**

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

For the relief of persons who are receiving benefits pursuant
to a permanent total disability award in amounts less than
thirty-three and one-third percent of the average weekly wage
for the state of West Virginia per month, and for the relief of
widows who are receiving benefits on account of the death
of an employee in amounts less than thirty-three and one-
third percent of the average weekly wage in the state of West
Virginia per month, and for the relief of children of em-
ployees deceased before one thousand nine hundred sixty-
seven, who are under the age of twenty-three and who are
full-time students, and for the relief of other persons who
are receiving dependents' benefits on account of the death
of an employee in amounts less than the specific monetary
amounts set forth in section ten, article four of this chapter
and in effect as of July one, one thousand nine hundred
seventy-three, there is hereby created a separate fund to
be known as the "Disabled Workmen's Relief Fund," which
fund shall consist of such sums as are from time to time
made available to carry out the objects and purposes of this
article. Said fund shall be in the custody of the state treasurer
and disbursements therefrom shall be made upon requisition
signed by the commissioner to those persons entitled to
participate therein and in such amounts of each participant
as is provided in section three of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect July 1, 1979.

J. C. Hillman
Clerk of the Senate

Clerk of the House of Delegates

W. L. Hallford
President of the Senate

Speaker House of Delegates

The within _______ is approved ______ this the ______ day of ______, 1979.

John Roach
Governor