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WEST VIRGINIA LEGISLATURE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



# ENROLLED

SENATE BILL NO. 79

*ORIGINATING FROM THE COMMITTEE ON*  
(By Senator GOVERNMENT ORGANIZATION)



PASSED MARCH 7, 1997

In Effect Thirty Days From Passage

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SENATE OF WEST VIRGINIA

**ENROLLED**

**Senate Bill No. 79**

(Originating in the Committee on Government Organization.)

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[Passed March 7, 1997; in effect ninety days from passage.]

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AN ACT to amend and reenact section eight, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the office of judges of the workers' compensation system until the first day of July, one thousand nine hundred ninety-eight.

*Be it enacted by the Legislature of West Virginia:*

That section eight, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. REVIEW.**

**§23-5-8. Continuation of office of administrative law judges; powers of chief administrative law judge and said office.**

1 (a) The workers' compensation office of administrative  
2 law judges previously created pursuant to chapter twelve,  
3 acts of the Legislature, one thousand nine hundred ninety,  
4 second extraordinary session, is hereby continued and  
5 designated to be an integral part of the workers' compen-  
6 sation system of this state. The office of judges shall be  
7 under the supervision of a chief administrative law judge  
8 who shall be appointed by the governor, with the advice  
9 and consent of the Senate. The previously appointed  
10 incumbent of that position who was serving on the second  
11 day of February, one thousand nine hundred ninety-five,  
12 shall continue to serve in that capacity unless subse-  
13 quently removed as provided for in subsection (b) of this  
14 section.

15 (b) The chief administrative law judge shall be a person  
16 who has been admitted to the practice of law in this state  
17 and shall also have had at least four years of experience as  
18 an attorney. The chief administrative law judge's salary  
19 shall be set by the compensation programs performance  
20 council created in section one, article three, chapter  
21 twenty-one-a of this code. Said salary shall be within the  
22 salary range for comparable chief administrative law  
23 judges as determined by the state personnel board created  
24 by section six, article six, chapter twenty-nine of this  
25 code. The chief administrative law judge may only be  
26 removed by a vote of two thirds of the members of the  
27 compensation programs performance council and shall not  
28 be removed except for official misconduct, incompetence,  
29 neglect of duty, gross immorality or malfeasance and then  
30 only after he or she has been presented in writing with the  
31 reasons for his or her removal and is given opportunity to  
32 respond and to present evidence. No other provision of  
33 this code purporting to limit the term of office of any  
34 appointed official or employee or affecting the removal of  
35 any appointed official or employee shall be applicable to  
36 the chief administrative law judge.

37 (c) By and with the consent of the commissioner, the  
38 chief administrative law judge shall employ administra-  
39 tive law judges and other personnel as are necessary for  
40 the proper conduct of a system of administrative review of

41 orders issued by the workers' compensation division which  
42 orders have been objected to by a party, and all such  
43 employees shall be in the classified service of the state.  
44 Qualifications, compensation and personnel practice  
45 relating to the employees of the office of judges, other  
46 than the chief administrative law judge, shall be governed  
47 by the provisions of the statutes, rules and regulations of  
48 the classified service pursuant to article six, chapter  
49 twenty-nine of this code. All such additional administra-  
50 tive law judges shall be persons who have been admitted  
51 to the practice of law in this state and shall also have had  
52 at least two years of experience as an attorney. The chief  
53 administrative law judge shall supervise the other admin-  
54 istrative law judges and other personnel which collectively  
55 shall be referred to in this chapter as the office of judges.

56 (d) The administrative expense of the office of judges  
57 shall be included within the annual budget of the workers'  
58 compensation division.

59 (e) Subject to the approval of the compensation pro-  
60 grams performance council pursuant to subdivisions (b)  
61 and (c), section seven, article three, chapter twenty-one-a  
62 of this code, the office of judges shall from time to time  
63 promulgate rules of practice and procedure for the hearing  
64 and determination of all objections to findings or orders  
65 of the workers' compensation division pursuant to section  
66 one of this article. The office of judges shall not have the  
67 power to initiate or to promulgate legislative rules as that  
68 phrase is defined in article three, chapter twenty-nine-a of  
69 this code.

70 (f) The chief administrative law judge shall continue to  
71 have the power to hear and determine all disputed claims  
72 in accordance with the provisions of this article, establish  
73 a procedure for the hearing of disputed claims, take oaths,  
74 examine witnesses, issue subpoenas, establish the amount  
75 of witness fees, keep such records and make such reports  
76 as are necessary for disputed claims, and exercise such  
77 additional powers, including the delegation of such  
78 powers to administrative law judges or hearing examiners  
79 as may be necessary for the proper conduct of a system of  
80 administrative review of disputed claims. The chief

81 administrative law judge shall make such reports as may  
82 be requested of him or her by the compensation programs  
83 performance council.

84 (g) Pursuant to the provisions of article ten, chapter four  
85 of this code, the office of judges shall continue to exist  
86 until the first day of July, one thousand nine hundred  
87 ninety-eight.

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

*Rach Schoonover*  
.....  
Chairman Senate Committee

*Nick Fantasia*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Carroll B. Bous*  
.....  
Clerk of the Senate

*Bryan W. Burd*  
.....  
Clerk of the House of Delegates

*Carl Roy Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *18th*  
day of *March*, 1997.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/13/97

Time 9:55 am