



1           **successor to the commission, private carriers and**  
2           **self-insured employers to collect payments improperly**  
3           **made.**

4           (a) In any claim for benefits under this chapter, the  
5 Insurance Commissioner ~~private carrier or self-insured employer,~~  
6 ~~whichever is applicable,~~ shall determine whether the claimant has  
7 sustained a compensable injury within the meaning of section one of  
8 this article and enter an order giving all parties immediate notice  
9 of the decision.

10          (1) The Insurance Commissioner, private carrier or  
11 self-insured employer, whichever is applicable, may enter an order  
12 conditionally approving the claimant's application if it finds that  
13 obtaining additional medical evidence or evaluations or other  
14 evidence related to the issue of compensability would aid the  
15 Insurance Commissioner, private carrier or self-insured employer,  
16 whichever is applicable, in making a correct final decision.  
17 Benefits shall be paid during the period of conditional approval;  
18 however, if the final decision is one that rejects the claim, the  
19 payments shall be considered an overpayment. The Insurance  
20 Commissioner, private carrier or self-insured employer, whichever  
21 is applicable, may only recover the amount of the overpayment as  
22 provided for in subsection (h) of this section.

23          (2) In making a determination regarding the compensability of  
24 a newly filed claim or upon a filing for the reopening of a prior

1 claim pursuant to the provisions of section sixteen of this article  
2 based upon an allegation of recurrence, reinjury, aggravation or  
3 progression of the previous compensable injury or in the case of a  
4 filing of a request for any other benefits under the provisions of  
5 this chapter, the Insurance Commissioner, private carrier or  
6 self-insured employer, whichever is applicable, shall consider the  
7 date of the filing of the claim for benefits for a determination of  
8 the following:

9 (A) Whether the claimant had a scheduled shutdown beginning  
10 within one week of the date of the filing;

11 (B) Whether the claimant received notice within sixty days of  
12 the filing that his or her employment position was to be  
13 eliminated, including, but not limited to, the claimant's worksite,  
14 a layoff or the elimination of the claimant's employment position;

15 (C) Whether the claimant is receiving unemployment  
16 compensation benefits at the time of the filing; or

17 (D) Whether the claimant has received unemployment  
18 compensation benefits within sixty days of the filing. In the  
19 event of an affirmative finding upon any of these four factors, the  
20 finding shall be given probative weight in the overall  
21 determination of the compensability of the claim or of the merits  
22 of the reopening request.

23 (3) Any party may object to the order of the Insurance  
24 Commissioner, private carrier or self-insured employer, whichever

1 is applicable, and obtain an evidentiary hearing as provided in  
2 section one, article five of this chapter: *Provided*, That if the  
3 successor to the commissioner, other private carrier or  
4 self-insured, whichever is applicable, fails to timely issue a  
5 ruling upon any application or motion as provided by law, or if the  
6 claimant files a timely protest to the ruling of a self-insured  
7 employer, private carrier or other issuing entity, denying the  
8 compensability of the claim, denying temporary total disability  
9 benefits or denying medical authorization, the office of judges  
10 shall provide a hearing on the protest on an expedited basis as  
11 determined by rule of the office of judges.

12 (b) Where it appears from the employer's report, or from  
13 proper medical evidence, that a compensable injury will result in  
14 a disability which will last longer than three days as provided in  
15 section five of this article, the Insurance Commissioner, private  
16 carrier or self-insured employer, whichever is applicable, may  
17 immediately enter an order commencing the payment of temporary  
18 total disability benefits to the claimant in the amounts provided  
19 for in sections six and fourteen of this article, and the payment  
20 of the expenses provided for in subsection (a), section three of  
21 this article, relating to the injury, without waiting for the  
22 expiration of the thirty-day period during which objections may be  
23 filed to the findings as provided in section one, article five of  
24 this chapter. The Insurance Commissioner, private carrier or

1 self-insured employer, whichever is applicable, shall enter an  
2 order commencing the payment of temporary total disability or  
3 medical benefits within fifteen working days of receipt of either  
4 the employee's or employer's report of injury, whichever is  
5 received sooner, and also upon receipt of either a proper  
6 physician's report or any r information necessary for a  
7 determination. The Insurance Commissioner, private carrier or  
8 self-insured employer, whichever is applicable, shall give to the  
9 parties immediate notice of any order granting temporary total  
10 disability or medical benefits. When an order granting temporary  
11 total disability benefits is made, the claimant's return-to-work  
12 potential shall be assessed. The Insurance Commissioner may  
13 schedule medical and vocational evaluation of the claimant and  
14 assign appropriate personnel to expedite the claimant's return to  
15 work as soon as reasonably possible.

16 (c) The Insurance Commissioner, private carrier or  
17 self-insured employer, whichever is applicable, may enter orders  
18 granting temporary total disability benefits upon receipt of  
19 medical evidence justifying the payment of the benefits. The  
20 Insurance Commissioner, private carrier or self-insured employer,  
21 whichever is applicable, may not enter an order granting  
22 prospective temporary total disability benefits for a period of  
23 more than ninety days: *Provided*, That when the Insurance  
24 Commissioner, private carrier or self-insured employer, whichever

1 is applicable, determines that the claimant remains disabled beyond  
2 the period specified in the prior order granting temporary total  
3 disability benefits, the Insurance Commissioner, private carrier or  
4 self-insured employer shall enter an order continuing the payment  
5 of temporary total disability benefits for an additional period not  
6 to exceed ninety days and shall give immediate notice to all  
7 parties of the decision.

8 (d) Upon receipt of the first report of injury in a claim, the  
9 Insurance Commissioner, private carrier or self-insured employer,  
10 whichever is applicable, shall request from the employer or  
11 employers any wage information necessary for determining the rate  
12 of benefits to which the employee is entitled. If an employer does  
13 not furnish this information within fifteen days from the date the  
14 Insurance Commissioner, private carrier or self-insured employer,  
15 whichever is applicable, received the first report of injury in the  
16 case, the employee shall be paid the maximum temporary total  
17 disability benefits ~~at the rate the commission obtains from reports~~  
18 ~~made pursuant to subsection (b), section two, article two of this~~  
19 ~~chapter~~ for lost time without penalty to the employee. If no wages  
20 have been reported, the Insurance Commissioner, private carrier or  
21 self-insured employer, whichever is applicable, shall make the  
22 payments at ~~the rate the Insurance Commissioner, private carrier or~~  
23 ~~self-insured employer, whichever is applicable, finds would be~~  
24 ~~justified by the usual rate of pay for the occupation of the~~

1 ~~injured employee.~~ the maximum temporary total disability benefits  
2 for lost time without penalty to the employee. The rate of benefits  
3 shall be adjusted ~~both retroactively and~~ prospectively upon receipt  
4 of proper wage information. The Insurance Commissioner shall have  
5 access to all wage information in the possession of any state  
6 agency.

7 (e) Subject to the limitations set forth in section sixteen of  
8 this article, upon a finding of the Insurance Commissioner, private  
9 carrier or self-insured employer, whichever is applicable, that a  
10 claimant who has sustained a previous compensable injury which has  
11 been closed by order, or by the claimant's return to work, suffers  
12 further temporary total disability or requires further medical or  
13 hospital treatment resulting from the compensable injury, payment  
14 of temporary total disability benefits to the claimant in the  
15 amount provided for in sections six and fourteen of this article  
16 shall immediately commence, and the expenses provided for in  
17 subsection (a), section three of this article, relating to the  
18 disability, without waiting for the expiration of the thirty-day  
19 period during which objections may be filed. Immediate notice to  
20 the parties of the decision shall be given.

21 (f) The Insurance Commissioner, private carrier or  
22 self-insured employer shall deliver amounts due for temporary total  
23 disability benefits directly to the claimant.

24 (g) Where the employer has elected to carry its own risk under

1 section nine, article two of this chapter, and upon the findings  
2 aforesaid, the self-insured employer shall immediately pay the  
3 amounts due the claimant for temporary total disability benefits.  
4 A copy of the notice shall be sent to the claimant.

5 (h) In the event that an employer files a timely objection to  
6 any order of the Insurance Commissioner, private carrier or  
7 self-insured, whichever is applicable, with respect to  
8 compensability, or any order denying an application for  
9 modification with respect to temporary total disability benefits,  
10 or with respect to those expenses outlined in subsection (a),  
11 section three of this article, the division shall continue to pay  
12 to the claimant such benefits and expenses during the period of  
13 such disability. Where it is subsequently found by the Insurance  
14 Commissioner, private carrier or self-insured, whichever is  
15 applicable, that the claimant was not entitled to receive such  
16 temporary total disability benefits or expenses, or any part  
17 thereof, so paid, the Insurance Commissioner, private carrier or  
18 self-insured, whichever is applicable, shall credit said employer's  
19 account with the amount of the overpayment. When the employer has  
20 protested the compensability or applied for modification of a  
21 temporary total disability benefit award or expenses and the final  
22 decision in that case determines that the claimant was not entitled  
23 to the benefits or expenses, the amount of benefits or expenses is  
24 considered overpaid. For all awards made or nonawarded partial

1 benefits paid the Insurance Commissioner, private carriers or  
2 self-insured employer may recover the amount of overpaid benefits  
3 or expenses by withholding, in whole or in part, future disability  
4 benefits payable to the individual in the same or other claims and  
5 credit the amount against the overpayment until it is repaid in  
6 full.

7 (i) In the event that the Insurance Commissioner, private  
8 carrier or self-insured employer, whichever is applicable, finds  
9 that, based upon the employer's report of injury, the claim is not  
10 compensable, the Insurance Commissioner, private carrier or  
11 self-insured employer, whichever is applicable, shall provide a  
12 copy of the employer's report to the claimant in addition to the  
13 order denying the claim.

14 ~~(j) If a claimant is receiving benefits paid through a wage~~  
15 ~~replacement plan, salary continuation plan or other benefit plan~~  
16 ~~provided by the employer to which the employee has not contributed,~~  
17 ~~and that plan does not provide an offset for temporary total~~  
18 ~~disability benefits to which the claimant is also entitled under~~  
19 ~~this chapter as a result of the same injury or disease, the~~  
20 ~~employer shall notify the Insurance Commissioner, private carrier~~  
21 ~~or self-insured of the duplication of the benefits paid to the~~  
22 ~~claimant. Upon receipt of the notice, the Insurance Commissioner,~~  
23 ~~private carrier or self-insured employer, whichever is applicable,~~  
24 ~~shall reduce the temporary total disability benefits provided under~~

1 ~~this chapter by an amount sufficient to ensure that the claimant~~  
2 ~~does not receive monthly benefits in excess of the amount provided~~  
3 ~~by the employer's plan or the temporary total disability benefit,~~  
4 ~~whichever is greater: *Provided,* That this subsection does not~~  
5 ~~apply to benefits being paid under the terms and conditions of a~~  
6 ~~collective bargaining agreement.~~

NOTE: The purpose of this bill is to provide prompt benefits to the injured while off from work; require the insurance carrier to promptly provide the required wage information and indemnity benefits and provide a penalty for the failure to do so; require the initial compensability determination to be made by the West Virginia workers Compensation Commissioner's office; and eliminate any offset to employers for employee's who have a wage replacement plan.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.