

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 71

**FISCAL
NOTE**

BY SENATOR YOST

[Introduced January 13, 2016;

Referred to the Committee on Banking and Insurance;

then to the Committee on the Judiciary; and then to

the Committee on Finance.]

1 A BILL to amend and reenact §23-4-6 of the Code of West Virginia, 1931, as amended, relating
2 to classification and criteria for disability benefits.

Be it enacted by the Legislature of West Virginia:

1 That §23-4-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-6. Classification of and criteria for disability benefits.

1 Where compensation is due an employee under the provisions of this chapter for personal
2 injury, the compensation shall be as provided in the following schedule:

3 (a) The terms "average weekly wage earnings, wherever earned, of the injured employee,
4 at the date of injury" and "average weekly wage in West Virginia", as used in this chapter, have
5 the meaning and shall be computed as set forth in section fourteen of this article except for the
6 purpose of computing temporary total disability benefits for part-time employees pursuant to the
7 provisions of section six-d of this article.

8 (b) For all awards made on and after the effective date of the amendment and reenactment
9 of this section during the year 2003, if the injury causes temporary total disability, the employee
10 shall receive during the continuance of the disability a maximum weekly benefit to be computed
11 on the basis of sixty-six and two-thirds percent of the average weekly wage earnings, wherever
12 earned, of the injured employee, at the date of injury, not to exceed one hundred percent of the
13 average weekly wage in West Virginia: *Provided*, That in no event shall an award for temporary
14 total disability be subject to annual adjustments resulting from changes in the average weekly
15 wage in West Virginia: *Provided, however*, in the case of a claimant whose award was granted
16 prior to the effective date of the amendment and reenactment of this section during the year 2003,
17 the maximum benefit rate shall be the rate applied under the prior enactment of this subsection
18 which was in effect at the time the injury occurred. The minimum weekly benefits paid under this
19 subdivision shall not be less than thirty-three and one-third percent of the average weekly wage

20 in West Virginia, except as provided in sections six-d and nine of this article. In no event, however,
21 shall the minimum weekly benefits exceed the level of benefits determined by use of the
22 applicable federal minimum hourly wage: *Provided further*, That any claimant receiving permanent
23 total disability benefits, permanent partial disability benefits or dependents' benefits prior to July
24 1, 1994, shall not have his or her benefits reduced based upon the requirement in this subdivision
25 that the minimum weekly benefit shall not exceed the applicable federal minimum hourly wage.

26 (c) Subdivision (b) of this section is limited as follows: Aggregate award for a single injury
27 causing temporary disability shall be for a period not exceeding two hundred eight weeks;
28 aggregate award for a single injury for which an award of temporary total disability benefits is
29 made on or after the effective date of the amendment and reenactment of this section in the year
30 2003 shall be for a period not exceeding one hundred four weeks. Notwithstanding any other
31 provision of this subdivision to the contrary, no person may receive temporary total disability
32 benefits under an award for a single injury for a period exceeding one hundred four weeks from
33 the effective date of the amendment and reenactment of this section in the year 2003.

34 (d) For all awards of permanent total disability benefits that are made on or after February
35 2, 1995, including those claims in which a request for an award was pending before the division
36 or which were in litigation but not yet submitted for a decision, then benefits shall be payable until
37 the claimant attains the age necessary to receive federal old age retirement benefits under the
38 provisions of the Social Security Act, 42 U.S.C. §§401 and 402, in effect on the effective date of
39 this section. The claimant shall be paid benefits so as not to exceed a maximum benefit of sixty-
40 six and two-thirds percent of the claimant's average weekly wage earnings, wherever earned, at
41 the time of the date of injury not to exceed one hundred percent of the average weekly wage in
42 West Virginia. The minimum weekly benefits paid under this section shall be as is provided for in
43 subdivision (b) of this section. In all claims in which an award for permanent total disability benefits
44 was made prior to February 2, 1995, the awards shall continue to be paid at the rate in effect prior
45 to the effective date of the amendment and reenactment of this section in the year 2003: *Provided*,

46 That the provisions of sections one through eight, inclusive, article four-a of this chapter shall be
47 applied thereafter to all prior awards that were previously subject to its provisions. A single or
48 aggregate permanent disability of eighty-five percent or more entitles the employee to a rebuttable
49 presumption of a permanent total disability for the purpose of paragraph (2), subdivision (n) of
50 this section: *Provided, however,* That the claimant must also be at least fifty percent medically
51 impaired upon a whole body basis or has sustained a thirty-five percent statutory disability
52 pursuant to the provisions of subdivision (f) of this section. The presumption may be rebutted if
53 the evidence establishes that the claimant is not permanently and totally disabled pursuant to
54 subdivision (n) of this section. Under no circumstances may the commission, successor to the
55 commission, other private carrier or self-insured employer, whichever is applicable, grant an
56 additional permanent disability award to a claimant receiving a permanent total disability award:
57 *Provided further,* That if any claimant thereafter sustains another compensable injury and has
58 permanent partial disability resulting from the injury, the total permanent disability award benefit
59 rate shall be computed at the highest benefit rate justified by any of the compensable injuries.

60 (e) (1) For all awards made on or after the effective date of the amendment and
61 reenactment of this section during the year 2003, if the injury causes permanent disability less
62 than permanent total disability, the percentage of disability to total disability shall be determined
63 and the award computed on the basis of four weeks' compensation for each percent of disability
64 determined at the maximum or minimum benefit rates as follows: Sixty-six and two-thirds percent
65 of the average weekly wage earnings, wherever earned, of the injured employee at the date of
66 injury, not to exceed seventy percent of the average weekly wage in West Virginia: *Provided,* That
67 in no event shall an award for permanent partial disability be subject to annual adjustments
68 resulting from changes in the average weekly wage in West Virginia: *Provided, however,* That in
69 the case of a claimant whose award was granted prior to the effective date of the amendment and
70 reenactment of this section during the year 2003, the maximum benefit rate shall be the rate
71 applied under the prior enactment of this section which was in effect at the time the injury

72 occurred.

73 (2) If a claimant is released by his or her treating physician to return to work at the job he
74 or she held before the occupational injury occurred and if the claimant's preinjury employer does
75 not offer the preinjury job or a comparable job to the employee when a position is available to be
76 offered, the award for the percentage of partial disability shall be computed on the basis of six
77 weeks of compensation for each percent of disability.

78 (3) The minimum weekly benefit under this subdivision shall be as provided in subdivision
79 (b) of this section for temporary total disability.

80 (f) If the injury results in the total loss by severance of any of the members named in this
81 subdivision, the percentage of disability shall be determined by the percentage of disability,
82 specified in the following table:

83 The loss of a great toe shall be considered a ten percent disability.

84 The loss of a great toe (one phalanx) shall be considered a five percent disability.

85 The loss of other toes shall be considered a four percent disability.

86 The loss of other toes (one phalanx) shall be considered a two percent disability.

87 The loss of all toes shall be considered a twenty-five percent disability.

88 The loss of forepart of foot shall be considered a thirty percent disability.

89 The loss of a foot shall be considered a thirty-five percent disability.

90 The loss of a leg shall be considered a forty-five percent disability.

91 The loss of thigh shall be considered a fifty percent disability.

92 The loss of thigh at hip joint shall be considered a sixty percent disability.

93 The loss of a little or fourth finger (one phalanx) shall be considered a three percent
94 disability.

95 The loss of a little or fourth finger shall be considered a five percent disability.

96 The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

97 The loss of ring or third finger shall be considered a five percent disability.

98 The loss of middle or second finger (one phalanx) shall be considered a three percent
99 disability.

100 The loss of middle or second finger shall be considered a seven percent disability.

101 The loss of index or first finger (one phalanx) shall be considered a six percent disability.

102 The loss of index or first finger shall be considered a ten percent disability.

103 The loss of thumb (one phalanx) shall be considered a twelve percent disability.

104 The loss of thumb shall be considered a twenty percent disability.

105 The loss of thumb and index fingers shall be considered a thirty-two percent disability.

106 The loss of index and middle fingers shall be considered a twenty percent disability.

107 The loss of middle and ring fingers shall be considered a fifteen percent disability.

108 The loss of ring and little fingers shall be considered a ten percent disability.

109 The loss of thumb, index and middle fingers shall be considered a forty percent disability.

110 The loss of index, middle and ring fingers shall be considered a thirty percent disability.

111 The loss of middle, ring and little fingers shall be considered a twenty percent disability.

112 The loss of four fingers shall be considered a thirty-two percent disability.

113 The loss of hand shall be considered a fifty percent disability.

114 The loss of forearm shall be considered a fifty-five percent disability.

115 The loss of arm shall be considered a sixty percent disability.

116 The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three
117 percent disability. For the partial loss of vision in one or both eyes, the percentages of disability
118 shall be determined by the commission, using as a basis the total loss of one eye.

119 The total and irrecoverable loss of the hearing of one ear shall be considered a twenty-
120 two and one-half percent disability. The total and irrecoverable loss of hearing of both ears shall
121 be considered a fifty-five percent disability.

122 For the partial loss of hearing in one or both ears, the percentage of disability shall be
123 determined by the commission, successor to the commission, other private carrier or self-insured

124 employer, whichever is applicable, using as a basis the total loss of hearing in both ears.

125 If a claimant sustains a compensable injury which results in the total loss by severance of
126 any of the bodily members named in this subdivision or dies from sickness or noncompensable
127 injury before the commission makes the proper award for the injury, the commission shall make
128 the award to the claimant's dependents as defined in this chapter, if any; the payment to be made
129 in the same installments that would have been paid to claimant if living: *Provided*, That no
130 payment shall be made to any surviving spouse of the claimant after his or her remarriage and
131 that this liability shall not accrue to the estate of the claimant and is not subject to any debts of,
132 or charges against, the estate.

133 (g) If a claimant to whom has been made a permanent partial award dies from sickness
134 or noncompensable injury, the unpaid balance of the award shall be paid to claimant's dependents
135 as defined in this chapter, if any; the payment to be made in the same installments that would
136 have been paid to claimant if living: *Provided*, That no payment shall be made to any surviving
137 spouse of the claimant after his or her remarriage, and that this liability shall not accrue to the
138 estate of the claimant and is not subject to any debts of, or charges against, such estate.

139 (h) For the purposes of this chapter, a finding of the occupational pneumoconiosis board
140 has the force and effect of an award.

141 (i) For the purposes of this chapter, with the exception of those injuries provided for in
142 subdivision (f) of this section and in section six-b of this article, the degree of permanent disability
143 other than permanent total disability shall be determined exclusively by the degree of whole body
144 medical impairment that a claimant has suffered. For those injuries provided for in subdivision (f)
145 of this section and section six-b of this article, the degree of disability shall be determined
146 exclusively by the provisions of said subdivision and said section. The occupational
147 pneumoconiosis board created pursuant to section eight-a of this article shall premise its
148 decisions on the degree of pulmonary function impairment that claimants suffer solely upon whole
149 body medical impairment. The Workers' Compensation Commission shall adopt standards for the

150 evaluation of claimants and the determination of a claimant's degree of whole body medical
151 impairment. Once the degree of medical impairment has been determined, that degree of
152 impairment shall be the degree of permanent partial disability that shall be awarded to the
153 claimant. This subdivision is applicable to all injuries incurred and diseases with a date of last
154 exposure on or after February 2, 1995, to all applications for an award of permanent partial
155 disability made on and after that date and to all applications for an award of permanent partial
156 disability that were pending before the commission or pending in litigation but not yet submitted
157 for decision on and after that date. The prior provisions of this subdivision remain in effect for all
158 other claims.

159 (j) From a list of names of seven persons submitted to the executive director by the Health
160 Care Advisory Panel, the executive director shall appoint an Interdisciplinary Examining Board
161 consisting of five members to evaluate claimants, including by examination if the board elects.
162 The Interdisciplinary Examining Board shall terminate upon termination of the commission and all
163 administrative and adjudicatory functions performed by the Interdisciplinary Examining Board
164 shall be performed by the following reviewing bodies for those claims over which they have
165 administrative jurisdiction: (1) The Insurance Commissioner or his or her designated administrator
166 of each of the funds set forth in this chapter; (2) private carriers; or (3) self-insured employers.
167 The reviewing bodies shall employ or otherwise engage adequate resources, including medical
168 professionals, to perform the functions of the Interdisciplinary Examining Board. The board shall
169 be composed of three qualified physicians with specialties and expertise qualifying them to
170 evaluate medical impairment and two vocational rehabilitation specialists who are qualified to
171 evaluate the ability of a claimant to perform gainful employment with or without retraining. One
172 member of the board shall be designated annually as chairperson by the executive director. The
173 term of office of each member of the board shall be six years and until his or her successor has
174 been appointed and has qualified. Any member of the board may be appointed to any number of
175 terms. Any two physician members and one vocational rehabilitation specialist member shall

176 constitute a quorum for the transaction of business. The executive director, from time to time,
177 shall fix the compensation to be paid to each member of the board, and the members are also
178 entitled to reasonable and necessary traveling and other expenses incurred while actually
179 engaged in the performance of their duties. The board shall perform the duties and responsibilities
180 assigned by the provisions of this chapter, consistent with the administrative policies developed
181 by the executive director with the approval of the board of managers.

182 (1) The executive director shall establish requirements for the proper completion and
183 support for an application for permanent total disability benefits within an existing or a new rule
184 no later than January 1, 2004. Upon adoption of the rule by the board of managers, no issue of
185 permanent total disability may be referred to the Interdisciplinary Examining Board, or, any other
186 reviewing body, unless a properly completed and supported application for permanent total
187 disability benefits has been first filed. Prior to the referral of any issue to the interdisciplinary
188 examining board, or, upon its termination, prior to a reviewing body's adjudication of a permanent
189 total disability application, the commission, or reviewing body shall conduct examinations of the
190 claimant that it finds necessary and obtain all pertinent records concerning the claimant's medical
191 history and reports of examinations and forward them to the board at the time of the referral. The
192 commission or reviewing body shall provide adequate notice to the employer of the filing of the
193 request for a permanent total disability award and the employer shall be granted an appropriate
194 period in which to respond to the request. The claimant and the employer may furnish all pertinent
195 information to the board or other reviewing body and shall furnish to the board or other reviewing
196 body any information requested. The claimant and the employer may each submit no more than
197 one report and opinion regarding each issue present in a given claim. The employer may have
198 the claimant examined by medical specialists and vocational rehabilitation specialists: *Provided,*
199 That the employer is entitled to only one examination on each issue present in a given claim. Any
200 additional examinations must be approved by the commission or other reviewing body and shall
201 be granted only upon a showing of good cause. The reports from all employer-conducted

202 examinations must be filed with the board or other reviewing body and served upon the claimant.
203 The board or other reviewing body may request that those persons who have furnished reports
204 and opinions regarding a claimant provide it with additional information considered necessary.
205 Both the claimant and the employer, as well as the commission, or other reviewing body may
206 submit or obtain reports from experts challenging or supporting the other reports in the record
207 regardless of whether or not the expert examined the claimant or relied solely upon the evidence
208 of record.

209 (2) If the board or a quorum of the board elects to examine a claimant, the individual
210 members shall conduct any examinations that are pertinent to each of their specialties. If a claim
211 presents an issue beyond the expertise of the board, the board may obtain advice or evaluations
212 by other specialists. In addition, if the board of managers determines that the number of
213 applications pending before the interdisciplinary examining board has exceeded the level at which
214 the board can review and make recommendations within a reasonable time, the board of
215 managers may authorize the executive director to appoint any additional members to the board
216 that are necessary to reduce the backlog of applications. The additional members shall be
217 recommended by the health care advisory panel. The executive director may make any
218 appointments he or she chooses from the recommendations. The additional board members shall
219 not serve a set term but shall serve until the board of managers determines that the number of
220 pending applications has been reduced to an acceptable level.

221 (3) Referrals to the board shall be limited to matters related to the determination of
222 permanent total disability under the provisions of subdivision (n) of this section and to questions
223 related to medical cost containment, utilization review decisions and managed care decisions
224 arising under section three of this article.

225 (4) In the event the board members or other reviewing body elects to examine a claimant,
226 the board or other reviewing body shall prepare a report stating the tests, examinations,
227 procedures and other observations that were made, the manner in which each was conducted

228 and the results of each. The report shall state the findings made by the board or other reviewing
229 body and the reasons for the findings. Copies of the reports of all examinations made by the board
230 or other reviewing body shall be served upon the parties and the commission until its termination.
231 Each shall be given an opportunity to respond in writing to the findings and conclusions stated in
232 the reports.

233 (5) The board or other reviewing body shall state its initial recommendations to the
234 commission in writing with an explanation for each recommendation setting forth the reasons for
235 each. The recommendations shall be served upon the parties and the commission and each shall
236 be afforded a thirty-day opportunity to respond in writing to the board or other reviewing body
237 regarding its recommendations. The board or other reviewing body shall review any responses
238 and issue its final recommendations. The final recommendations shall be effectuated by the entry
239 of an appropriate order by the commission, or, upon its termination, the private carrier or self-
240 insured employer. For all awards for permanent total disability where the claim was filed on or
241 after the effective date of the amendment and reenactment of this section in the year 2003, the
242 commission or other reviewing body shall establish the date of onset of the claimant's permanent
243 total disability as the date when a properly completed and supported application for permanent
244 total disability benefits as prescribed in subdivision (1) of this subsection that results in a finding
245 of permanent total disability was filed with the commission or other reviewing body: *Provided,*
246 That upon notification of the commission or other reviewing body by a claimant or his or her
247 representative that the claimant seeks to be evaluated for permanent total disability, the
248 commission or other reviewing body shall send the claimant or his or her representative the proper
249 application form. The commission or other reviewing body shall set time limits for the return of the
250 application. A properly completed and supported application returned within the time limits set by
251 the commission or other reviewing body shall be treated as if received on the date the commission
252 or other reviewing body was notified the claimant was seeking evaluation for permanent total
253 disability: *Provided, however,* That notwithstanding any other provision of this section to the

254 contrary, the onset date may not be sooner than the date upon which the claimant meets the
255 percentage thresholds of prior permanent partial disability that are established by subsection (n)
256 of this section as a prerequisite to the claimant's qualification for consideration for a permanent
257 total disability award.

258 ~~(6) Except as noted below, objections pursuant to section one, article five of this chapter~~
259 ~~to any order shall be limited in scope to matters within the record developed before the Workers'~~
260 ~~Compensation Commission and the board or other reviewing body and shall further be limited to~~
261 ~~the issue of whether the board or other reviewing body properly applied the standards for~~
262 ~~determining medical impairment, if applicable, and the issue of whether the board's findings are~~
263 ~~clearly wrong in view of the reliable, probative and substantial evidence on the whole record. The~~
264 ~~preponderance of the evidence set forth in article one of this chapter shall apply to decisions~~
265 ~~made by reviewing bodies other than the commission instead of the clearly wrong standard. If~~
266 either party contends that the claimant's condition has changed significantly since the review
267 conducted by the board or other reviewing body, the party may file a motion with the administrative
268 law judge, together with a report supporting that assertion. Upon the filing of the motion, the
269 administrative law judge shall cause a copy of the report to be sent to the examining board or
270 other reviewing body asking the board to review the report and provide comments if the board
271 chooses within sixty days of the board's receipt of the report. The board or other reviewing body
272 may either supply comments or, at the board's or other reviewing body's discretion, request that
273 the claim be remanded to the board for further review. If remanded, the claimant is not required
274 to submit to further examination by the employer's medical specialists or vocational rehabilitation
275 specialists. Following the remand, the board or other reviewing body shall file its
276 recommendations with the administrative law judge for his or her review. If the board or other
277 reviewing body elects to respond with comments, the comments shall be filed with the
278 administrative law judge for his or her review. Following the receipt of either the board's or other
279 reviewing body's recommendations or comments, the administrative law judge shall issue a

280 written decision ruling upon the asserted change in the claimant's condition. ~~No additional~~
281 ~~evidence may be introduced during the review of the objection before the office of judges or~~
282 ~~elsewhere on appeal: *Provided*, That each party and the commission may submit one written~~
283 ~~opinion on each issue pertinent to a given claim based upon a review of the evidence of record~~
284 ~~either challenging or defending the board's or other reviewing body's findings and conclusions.~~
285 ~~Thereafter, based upon the evidence of record, the administrative law judge shall issue a written~~
286 ~~decision containing his or her findings of fact and conclusions of law regarding each issue involved~~
287 ~~in the objection. The limitation of the scope of review otherwise provided in this subsection is not~~
288 ~~applicable upon termination of the commission and any objections shall be subject to article five~~
289 ~~of this chapter in its entirety.~~

290 (k) Compensation payable under any subdivision of this section shall not exceed the
291 maximum nor be less than the weekly benefits specified in subdivision (b) of this section.

292 (l) Except as otherwise specifically provided in this chapter, temporary total disability
293 benefits payable under subdivision (b) of this section shall not be deductible from permanent
294 partial disability awards payable under subdivision (e) or (f) of this section. Compensation, either
295 temporary total or permanent partial, under this section shall be payable only to the injured
296 employee and the right to the compensation shall not vest in his or her estate, except that any
297 unpaid compensation which would have been paid or payable to the employee up to the time of
298 his or her death, if he or she had lived, shall be paid to the dependents of the injured employee if
299 there are any dependents at the time of death.

300 (m) The following permanent disabilities shall be conclusively presumed to be total in
301 character:

302 Loss of both eyes or the sight thereof.

303 Loss of both hands or the use thereof.

304 Loss of both feet or the use thereof.

305 Loss of one hand and one foot or the use thereof.

306 (n) (1) Other than for those injuries specified in subdivision (m) of this section, in order to
307 be eligible to apply for an award of permanent total disability benefits for all injuries incurred and
308 all diseases, including occupational pneumoconiosis, regardless of the date of last exposure, on
309 and after the effective date of the amendment and reenactment of this section during the year
310 2003, a claimant: (A) Must have been awarded the sum of ~~fifty~~ forty percent in prior permanent
311 partial disability awards; (B) must have suffered a single occupational injury or disease which
312 results in a finding by the commission that the claimant has suffered a medical impairment of ~~fifty~~
313 forty percent; or (C) has sustained a thirty-five percent statutory disability pursuant to the
314 provisions of subdivision (f) of this section. Upon filing an application, the claim will be reevaluated
315 by the examining board or other reviewing body pursuant to subdivision (l) of this section to
316 determine if the claimant has suffered a whole body medical impairment of ~~fifty~~ forty percent or
317 more resulting from either a single occupational injury or occupational disease or a combination
318 of occupational injuries and occupational diseases or has sustained a thirty-five percent statutory
319 disability pursuant to the provisions of subdivision (f) of this section. A claimant whose prior
320 permanent partial disability awards total eighty-five percent or more shall also be examined by
321 the board or other reviewing body and must be found to have suffered a whole body medical
322 impairment of fifty percent in order for his or her request to be eligible for further review. The
323 examining board or other reviewing body shall review the claim as provided for in subdivision (j)
324 of this section. If the claimant has not suffered whole body medical impairment of at least fifty
325 percent or has sustained a thirty-five percent statutory disability pursuant to the provisions of
326 subdivision (f) of this section, the request shall be denied. Upon a finding that the claimant has a
327 fifty percent whole body medical impairment or has sustained a thirty-five percent statutory
328 disability pursuant to the provisions of subdivision (f) of this section, the review of the application
329 continues as provided for in the following paragraph of this subdivision. Those claimants whose
330 prior permanent partial disability awards total eighty-five percent or more and who have been
331 found to have a whole body medical impairment of at least fifty percent or have sustained a thirty-

332 five percent statutory disability pursuant to the provisions of subdivision (f) of this section are
333 entitled to the rebuttable presumption created pursuant to subdivision (d) of this section for the
334 remaining issues in the request.

335 (2) For all awards made on or after the effective date of the amendment and reenactment
336 of this section during the year 2003, disability which renders the injured employee unable to
337 engage in substantial gainful activity requiring skills or abilities which can be acquired or which
338 are comparable to those of any gainful activity in which he or she has previously engaged with
339 some regularity and over a substantial period of time shall be considered in determining the issue
340 of total disability. The comparability of preinjury income to post-disability income will not be a
341 factor in determining permanent total disability. Geographic availability of gainful employment
342 within a driving distance of ~~seventy-five~~ thirty miles from the residence of the employee or within
343 the distance from the residence of the employee to his or her preinjury employment, whichever is
344 greater, will be a factor in determining permanent total disability. ~~For any permanent total disability~~
345 ~~award made after the amendment and reenactment of this section in the year 2003, permanent~~
346 ~~total disability benefits shall cease at age seventy years. In addition, the vocational standards~~
347 ~~adopted pursuant to subsection (m), section seven, article three of this chapter shall be~~
348 ~~considered once they are effective.~~

349 (3) In the event that a claimant, who has been found to have at least a ~~fifty~~ forty percent
350 whole body medical impairment or has sustained a thirty-five percent statutory disability pursuant
351 to the provisions of subdivision (f) of this section, is denied an award of permanent total disability
352 benefits pursuant to this subdivision and accepts and continues to work at a lesser paying job
353 than he or she previously held, the claimant is eligible, notwithstanding the provisions of section
354 nine of this article, to receive temporary partial rehabilitation benefits for a period of four years.
355 The benefits shall be paid at the level necessary to ensure the claimant's receipt of the following
356 percentages of the average weekly wage earnings of the claimant at the time of injury calculated
357 as provided in this section and sections six-d and fourteen of this article:

358 (A) Eighty percent for the first year;
359 (B) Seventy percent for the second year;
360 (C) Sixty percent for the third year; and
361 (D) Fifty percent for the fourth year: *Provided*, That in no event shall the benefits exceed
362 one hundred percent of the average weekly wage in West Virginia. In no event shall the benefits
363 be subject to the minimum benefit amounts required by the provisions of subdivision (b) of this
364 section.

365 ~~(4) Notwithstanding any provision of this subsection, subsection (d) of this section or any~~
366 ~~other provision of this code to the contrary, on any claim filed on or after the effective date of the~~
367 ~~amendment and reenactment of this section in the year 2003:~~

368 ~~(A) No percent of whole body medical impairment existing as the result of carpal tunnel~~
369 ~~syndrome for which a claim has been made under this chapter may be included in the aggregation~~
370 ~~of permanent disability under the provisions of this subsection or subsection (d) of this section;~~
371 ~~and~~

372 ~~(B) No percent of whole body medical impairment existing as the result of any occupational~~
373 ~~disease, the diagnosis of which is based solely upon symptoms rather than specific, objective and~~
374 ~~measurable medical findings, and for which a claim has been made under this chapter may be~~
375 ~~included in the aggregation of permanent disability under the provisions of this subsection or~~
376 ~~subsection (d) of this section.~~

377 (o) To confirm the ongoing permanent total disability status of the claimant, the
378 commission, successor to the commission, other private carrier or self-insured employer,
379 whichever is applicable, may elect to have any recipient of a permanent total disability award
380 undergo one independent medical examination during each of the first five years that the
381 permanent total disability award is paid and one independent medical examination during each
382 three-year period thereafter until the claimant reaches the age of seventy years: *Provided*, That
383 the commission, successor to the commission, other private carrier or self-insured employer,

384 whichever is applicable, may elect to have any recipient of a permanent total disability award
385 under the age of fifty years undergo one independent medical examination during each year that
386 the permanent total disability award is paid until the recipient reaches the age of fifty years, and
387 thereafter one independent medical examination during each three-year period thereafter until
388 the claimant reaches the age of ~~seventy~~ sixty years.

NOTE: The purpose of this bill is to make the weighing of workers' compensation evidence a liberal interpretation; to allow parties to submit evidence after the Permanent Total Reviewing body has made its initial determination; to change the application standard to file for a permanent total disability to forty percent; to allow permanent total disability benefits until death; to allow for carpel tunnel and occupational disease to be included in the aggregation of permanent disability under the provisions of this subsection; and to require that reviews of permanent total disability stop after the age of sixty; and to limit vocational rehabilitation job searches to thirty miles..

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