

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 76

**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 §23-4-1c of the Code of West Virginia, 1931, as amended, relating
 2 to workers' compensation; requiring covered employee to be paid maximum temporary
 3 total disability benefits for lost time without penalty to employee; and eliminating any offset
 4 to employers for employees who have a wage replacement plan.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

14 (2) In making a determination regarding the compensability of a newly filed claim or upon

15 a filing for the reopening of a prior claim pursuant to the provisions of section sixteen of this article
16 based upon an allegation of recurrence, reinjury, aggravation or progression of the previous
17 compensable injury or in the case of a filing of a request for any other benefits under the provisions
18 of this chapter, the Insurance Commissioner, private carrier or self-insured employer, whichever
19 is applicable, shall consider the date of the filing of the claim for benefits for a determination of
20 the following:

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

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

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

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

32 (3) Any party may object to the order of the Insurance Commissioner, private carrier or
33 self-insured employer, whichever is applicable, and obtain an evidentiary hearing as provided in
34 section one, article five of this chapter: *Provided*, That if the successor to the commissioner, other
35 private carrier or self-insured, whichever is applicable, fails to timely issue a ruling upon any
36 application or motion as provided by law, or if the claimant files a timely protest to the ruling of a
37 self-insured employer, private carrier or other issuing entity, denying the compensability of the
38 claim, denying temporary total disability benefits or denying medical authorization, the office of

39 judges shall provide a hearing on the protest on an expedited basis as determined by rule of the
40 office of judges.

41 (b) Where it appears from the employer's report, or from proper medical evidence, that a
42 compensable injury will result in a disability which will last longer than three days as provided in
43 section five of this article, the Insurance Commissioner, private carrier or self-insured employer,
44 whichever is applicable, may immediately enter an order commencing the payment of temporary
45 total disability benefits to the claimant in the amounts provided ~~for~~ in sections six and fourteen of
46 this article, and the payment of the expenses provided ~~for~~ in subsection (a), section three of this
47 article, relating to the injury, without waiting for the expiration of the thirty-day period during which
48 objections may be filed to the findings as provided in section one, article five of this chapter. The
49 Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, shall
50 enter an order commencing the payment of temporary total disability or medical benefits within
51 fifteen working days of receipt of either the employee's or employer's report of injury, whichever
52 is received sooner, and also upon receipt of either a proper physician's report or any information
53 necessary for a determination. The Insurance Commissioner, private carrier or self-insured
54 employer, whichever is applicable, shall give to the parties immediate notice of any order granting
55 temporary total disability or medical benefits. When an order granting temporary total disability
56 benefits is made, the claimant's return-to-work potential shall be assessed. The Insurance
57 Commissioner may schedule medical and vocational evaluation of the claimant and assign
58 appropriate personnel to expedite the claimant's return to work as soon as reasonably possible.

59 (c) The Insurance Commissioner, private carrier or self-insured employer, whichever is
60 applicable, may enter orders granting temporary total disability benefits upon receipt of medical
61 evidence justifying the payment of the benefits. The Insurance Commissioner, private carrier or
62 self-insured employer, whichever is applicable, may not enter an order granting prospective

63 temporary total disability benefits for a period of more than ninety days: *Provided*, That when the
64 Insurance Commissioner, private carrier or self-insured employer, whichever is applicable,
65 determines that the claimant remains disabled beyond the period specified in the prior order
66 granting temporary total disability benefits, the Insurance Commissioner, private carrier or self-
67 insured employer shall enter an order continuing the payment of temporary total disability benefits
68 for an additional period not to exceed ninety days and shall give immediate notice to all parties of
69 the decision.

70 (d) Upon receipt of the first report of injury in a claim, the Insurance Commissioner, private
71 carrier or self-insured employer, whichever is applicable, shall request from the employer or
72 employers any wage information necessary for determining the rate of benefits to which the
73 employee is entitled. If an employer does not furnish this information within fifteen days from the
74 date the Insurance Commissioner, private carrier or self-insured employer, whichever is
75 applicable, received the first report of injury in the case, the employee shall be paid the maximum
76 temporary total disability benefits ~~at the rate the commission obtains~~ for lost time without penalty
77 to the employee. ~~from reports made pursuant to subsection (b), section two, article two of this~~
78 ~~chapter~~ If no wages have been reported, the Insurance Commissioner, private carrier or self-
79 insured employer, whichever is applicable, shall make the payments at ~~the rate the Insurance~~
80 ~~Commissioner, private carrier or self-insured employer, whichever is applicable, finds would be~~
81 ~~justified by the usual rate of pay for the occupation of the injured employee~~ the maximum
82 temporary total disability benefits for lost time without penalty to the employee. The rate of benefits
83 shall be adjusted ~~both retroactively and~~ prospectively upon receipt of proper wage information.
84 The Insurance Commissioner shall have access to all wage information in the possession of any
85 state agency.

86 (e) Subject to the limitations set forth in section sixteen of this article, upon a finding of the

87 Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, that a
88 claimant who has sustained a previous compensable injury which has been closed by order, or
89 by the claimant's return to work, suffers further temporary total disability or requires further
90 medical or hospital treatment resulting from the compensable injury, payment of temporary total
91 disability benefits to the claimant in the amount provided ~~for~~ in sections six and fourteen of this
92 article shall immediately commence, and the expenses provided for in subsection (a), section
93 three of this article, relating to the disability, without waiting for the expiration of the thirty-day
94 period during which objections may be filed. Immediate notice to the parties of the decision shall
95 be given.

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

98 (g) Where the employer has elected to carry its own risk under section nine, article two of
99 this chapter, and upon the findings aforesaid, the self-insured employer shall immediately pay the
100 amounts due the claimant for temporary total disability benefits. A copy of the notice shall be sent
101 to the claimant.

102 (h) In the event that an employer files a timely objection to any order of the Insurance
103 Commissioner, private carrier or self-insured, whichever is applicable, with respect to
104 compensability, or any order denying an application for modification with respect to temporary
105 total disability benefits, or with respect to those expenses outlined in subsection (a), section three
106 of this article, the division shall continue to pay to the claimant such benefits and expenses during
107 the period of such disability. Where it is subsequently found by the Insurance Commissioner,
108 private carrier or self-insured, whichever is applicable, that the claimant was not entitled to receive
109 such temporary total disability benefits or expenses, or any part thereof, so paid, the Insurance
110 Commissioner, private carrier or self-insured, whichever is applicable, shall credit said employer's

111 account with the amount of the overpayment. When the employer has protested the
112 compensability or applied for modification of a temporary total disability benefit award or expenses
113 and the final decision in that case determines that the claimant was not entitled to the benefits or
114 expenses, the amount of benefits or expenses is considered overpaid. For all awards made or
115 nonawarded partial benefits paid the Insurance Commissioner, private carriers or self-insured
116 employer may recover the amount of overpaid benefits or expenses by withholding, in whole or
117 in part, future disability benefits payable to the individual in the same or other claims and credit
118 the amount against the overpayment until it is repaid in full.

119 (i) In the event that the Insurance Commissioner, private carrier or self-insured employer,
120 whichever is applicable, finds that, based upon the employer's report of injury, the claim is not
121 compensable, the Insurance Commissioner, private carrier or self-insured employer, whichever
122 is applicable, shall provide a copy of the employer's report to the claimant in addition to the order
123 denying the claim.

124 ~~(j) If a claimant is receiving benefits paid through a wage replacement plan, salary~~
125 ~~continuation plan or other benefit plan provided by the employer to which the employee has not~~
126 ~~contributed, and that plan does not provide an offset for temporary total disability benefits to which~~
127 ~~the claimant is also entitled under this chapter as a result of the same injury or disease, the~~
128 ~~employer shall notify the Insurance Commissioner, private carrier or self-insured of the duplication~~
129 ~~of the benefits paid to the claimant. Upon receipt of the notice, the Insurance Commissioner,~~
130 ~~private carrier or self-insured employer, whichever is applicable, shall reduce the temporary total~~
131 ~~disability benefits provided under this chapter by an amount sufficient to ensure that the claimant~~
132 ~~does not receive monthly benefits in excess of the amount provided by the employer's plan or the~~
133 ~~temporary total disability benefit, whichever is greater: *Provided*, That this subsection does not~~
134 ~~apply to benefits being paid under the terms and conditions of a collective bargaining agreement.~~

NOTE: The purpose of this bill is to require a covered employee to be paid the maximum temporary total disability benefits for lost time without penalty to the employee. The bill requires a covered employee to be paid the maximum temporary total disability benefits for lost time without penalty to the employee. The bill eliminates any offset to employers for employees who have a wage replacement plan.

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