

1 **H. B. 2209**

2
3 (By Delegate Walters)

4 [Introduced January 12, 2011; referred to the
5 Committee on the Judiciary.]
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10 A BILL to amend and reenact §23-5-1 of the Code of West Virginia,
11 1931, as amended, relating to improving claimants' access to
12 workers' compensation adjusters by requiring that all workers'
13 compensation adjusters employed by a private insurance carrier
14 shall be located within the geographic borders of West
15 Virginia.

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

17 That §23-5-1 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 5. REVIEW.**

20 **§23-5-1. Notice by commission or self-insured employer of**
21 **decision; procedures on claims; objections and**
22 **hearing.**

23 (a) The Insurance Commissioner, private carriers and self-
24 insured employers may determine all questions within their
25 jurisdiction. All adjusters employed by a private insurance
26 carrier shall be located within the geographic borders of West

1 Virginia. In matters arising under subsection (c), section eight,
2 article two-c of this chapter, and under articles three and four of
3 this chapter, the Insurance Commissioner, private carriers and
4 self-insured employers shall promptly review and investigate all
5 claims. The parties to a claim are the claimant and, if
6 applicable, the claimant's dependants, and the employer, and with
7 respect to claims involving funds created in article two-c of this
8 chapter for which he or she has been designated the administrator,
9 the Insurance Commissioner. In claims in which the employer had
10 coverage on the date of the injury or last exposure, the employer's
11 carrier has sole authority to act on the employer's behalf in all
12 aspects related to litigation of the claim. With regard to any
13 issue which is ready for a decision, the Insurance Commissioner,
14 private carrier or self-insured employer, whichever is applicable,
15 shall promptly send the decision to all parties, including the
16 basis of its decision. As soon as practicable after receipt of any
17 occupational pneumoconiosis or occupational disease claim or any
18 injury claim in which temporary total benefits are being claimed,
19 the Insurance Commissioner, private carrier or self-insured
20 employer, whichever is applicable, shall send the claimant a
21 brochure approved by the Insurance Commissioner setting forth the
22 claims process.

23 (b) (1) Except with regard to interlocutory matters, upon
24 making any decision, upon making or refusing to make any award or
25 upon making any modification or change with respect to former
26 findings or orders, as provided by section sixteen, article four of

1 this chapter, the Insurance Commissioner, private carrier or self-
2 insured employer, whichever is applicable, shall give notice, in
3 writing, to the parties to the claim of its action. The notice
4 shall state the time allowed for filing a protest to the finding.
5 The action of the Insurance Commissioner, private carrier or self-
6 insured employer, whichever is applicable, is final unless the
7 decision is protested within sixty days after the receipt of such
8 decision unless a protest is filed within the sixty-day period, the
9 finding or action is final. This time limitation is a condition of
10 the right to litigate the finding or action and hence
11 jurisdictional. Any protest shall be filed with the office of
12 judges with a copy served upon the parties to the claim, and other
13 parties in accordance with the procedures set forth in sections
14 eight and nine of this article. An employer may protest decisions
15 incorporating findings made by the Occupational Pneumoconiosis
16 Board, decisions made by the Insurance Commissioner acting as
17 administrator of claims involving funds created in article two-c of
18 this chapter or decisions entered pursuant to subdivision (1),
19 subsection (c), section seven-a, article four of this chapter.

20 (2) (A) With respect to every application for benefits filed
21 on or after July 1, 2008, in which a decision to deny benefits is
22 protested and the matter involves an issue as to whether the
23 application was properly filed as a new claim or a reopening of a
24 previous claim, the party that denied the application shall begin
25 to make conditional payment of benefits and must promptly give
26 notice to the office of judges that another identifiable person may

1 be liable. The office of judges shall promptly order the
2 appropriate persons be joined as parties to the proceeding:
3 *Provided*, That at any time during a proceeding in which conditional
4 payments are being made in accordance with the provisions of this
5 subsection, the office of judges may, pending final determination
6 of the person properly liable for payment of the claim, order that
7 such conditional payments of benefits be paid by another party.

8 (B) Any conditional payment made pursuant to paragraph (A) of
9 this subdivision shall not be deemed an admission or conclusive
10 finding of liability of the person making such payments. When the
11 administrative law judge has made a determination as to the party
12 properly liable for payment of the claim, he or she shall direct
13 any monetary adjustment or reimbursement between or among the
14 Insurance Commissioner, private carriers and self-insured employers
15 as is necessary.

16 (c) The office of judges may direct that:

17 (1) An application for benefits be designated as a petition to
18 reopen, effective as of the original date of filing;

19 (2) A petition to reopen be designated as an application for
20 benefits, effective as of the original date of filing; or

21 (3) An application for benefits or petition to reopen filed
22 with the Insurance Commissioner, private carrier or self-insured
23 employer be designated as an application or petition to reopen
24 filed with another private carrier, self-insured employer or
25 Insurance Commissioner, effective as of the original date of
26 filing.

1 (d) Where an employer protests a written decision entered
2 pursuant to a finding of the Occupational Pneumoconiosis Board, a
3 decision on a claim made by the Insurance Commissioner acting as
4 the administrator of a fund created in article two-c of this
5 chapter, or decisions entered pursuant to subdivision (1),
6 subsection (c), section seven-a, article four of this chapter, and
7 the employer does not prevail in its protest, and in the event the
8 claimant is required to attend a hearing by subpoena or agreement
9 of counsel or at the express direction of the office of judges,
10 then the claimant, in addition to reasonable traveling and other
11 expenses, shall be reimbursed for loss of wages incurred by the
12 claimant in attending the hearing.

13 (e) The Insurance Commissioner, private carrier or self-
14 insured employer, whichever is applicable, may amend, correct or
15 set aside any order or decision on any issue entered by it which,
16 at the time of issuance or any time after that, is discovered to be
17 defective or clearly erroneous or the result of mistake, clerical
18 error or fraud, or with respect to any order or decision denying
19 benefits, otherwise not supported by the evidence, but any protest
20 filed prior to entry of the amended decision is a protest from the
21 amended decision unless and until the administrative law judge
22 before whom the matter is pending enters an order dismissing the
23 protest as moot in light of the amendment. Jurisdiction to issue
24 an amended decision pursuant to this subsection continues until the
25 expiration of two years from the date of a decision to which the
26 amendment is made unless the decision is sooner affected by an

1 action of an administrative law judge or other judicial officer or
2 body: *Provided*, That corrective actions in the case of fraud may
3 be taken at any time.

NOTE: The purpose of this bill is to improve claimants' access to workers' compensation adjusters by requiring that all workers' compensation adjusters employed by a private insurance carrier be located within the geographic borders of West Virginia.

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