

H. B. 2396

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(By Delegates Fleischauer, Miley, Brown,
Caputo, Longstreth and D. Poling)
[Introduced January 12, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §23-5-7 of the Code of West Virginia,
1931, as amended, relating to requiring review and approval of
final settlements of Workers' Compensation awards.

Be it enacted by the Legislature of West Virginia:

That §23-5-7 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 5. Review.

§23-5-7. Compromise and settlement.

(a) With the exception of medical benefits for nonorthopedic
occupational disease claims, ~~the claimant, the employer and the
workers' compensation commission, the~~ Insurance Commissioner, the
~~successor to the commission, other private insurance carriers
carrier and self-insured employers or~~ self-insured employer,
whichever is applicable, and the claimant may negotiate a final
settlement of any and all issues in a claim, and any settlement
agreement may provide for a lump-sum payment or a structured

1 payment plan, or any combination thereof, or any other basis as the
2 parties may agree, including those settlements made pursuant to
3 article two-c of this chapter. Every settlement proposal must be
4 submitted to the compromise settlement division for review and
5 approval in accordance with this section and the rules promulgated
6 hereunder upon a finding that the settlement is in the best
7 interests of the claimant or, if the claimant is deceased, his or
8 her dependents, the employer and the state. ~~wherever the claim is~~
9 ~~in the administrative or appellate processes. If the employer is~~
10 ~~not active in the claim, the commission, the successor to the~~
11 ~~commission, other private insurance carriers and self-insured~~
12 ~~employers, whichever is applicable, may negotiate a final~~
13 ~~settlement of any and all issues in a claim except for medical~~
14 ~~benefits for nonorthopedic occupational disease claims with the~~
15 ~~claimant and said settlement shall be made a part of the claim~~
16 ~~record.~~

17 (b) The Insurance Commissioner shall establish within the
18 office of judges a compromise settlement division to review each
19 settlement subject to approval and to issue a recommendation to the
20 chief administrative law judge.

21 (c) Every settlement proposal, including settlements involving
22 the Insurance Commissioner acting as administrator of claims
23 involving funds created in article two-c of this chapter, must be
24 on forms prescribed by the Insurance Commissioner.

1 (d) (1) Upon receipt of a completed application for approval
2 of a settlement proposal, the compromise settlement division shall,
3 after consideration of those factors contained herein and as
4 prescribed by rule, issue its recommendation to the chief
5 administrative law judge within thirty days.

6 (2) Upon review of such a recommendation, the chief
7 administrative law judge shall enter an order either:

8 (A) Adopting the recommendation as filed if he or she finds
9 that the settlement is in the best interests of the claimant and
10 his or her dependents, the employer and the state; or

11 (B) Rejecting the recommendation and, if the chief judge deems
12 it advisable, remanding the matter to the settlement review
13 division with directions to resubmit the recommendation after
14 reconsideration of any issues designated in the remand order.

15 (3) Settlements of claims or orders approving settlements
16 issued pursuant to this section are not subject to further review,
17 including a hearing or review under sections thirteen and fourteen,
18 article two, chapter thirty-three of this code, respectively, and,
19 except in cases of fraud, no issue that is the subject of such a an
20 approved settlement agreement may be reopened by any party.
21 including the commission, the successor to the commission, other
22 private insurance carriers and self-insured employers, whichever is
23 applicable. Any settlement agreement may provide for a lump-sum
24 payment or a structured payment plan, or any combination thereof,

1 ~~or any other basis as the parties may agree.~~

2 (e) If a self-insured employer ~~later~~ fails to make the agreed-
3 upon payment, the ~~commission~~ Insurance Commissioner shall assume
4 the obligation to make the payments and shall recover the amounts
5 paid or to be paid from the self-insurer employer and its sureties
6 or guarantors or both as provided in section five and five-a,
7 article two of this chapter.

8 (f) The Insurance Commissioner shall promulgate rules in
9 accordance with subsection (b), section ten, article two, chapter
10 thirty-three of this code, to establish standards and procedures
11 for the review and approval of all settlement proposals.

12 Standards for review include at a minimum, the following:

13 (1) The extent to which the proposal avoids undue expense,
14 litigation or extreme hardship;

15 (2) The possible shifting of costs for future medical and
16 other expenses of the claimant to the state or other persons;

17 (3) Verification that the claimant fully understands the
18 impact of the settlement on future insurance claims relating to the
19 injury; and

20 (4) Administrative penalties for noncompliance with this
21 section.

22 ~~Each settlement agreement shall provide the toll free number~~
23 ~~of the West Virginia State Bar Association and shall provide the~~
24 ~~injured worker with five business days to revoke the executed~~

1 ~~agreement. The Insurance Commissioner may void settlement~~
2 ~~agreements entered into by an unrepresented injured worker which~~
3 ~~are determined to be unconscionable pursuant to criteria~~
4 ~~established by rule of the commissioner.~~

5 ~~The amendments to this section enacted during the regular~~
6 ~~session of the Legislature in the year one thousand nine hundred~~
7 ~~ninety-nine shall apply to all settlement agreements executed after~~
8 ~~the effective date.~~

NOTE: The purpose of this bill is to require review and approval of final settlements of Workers' Compensation awards.

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