

1 **Senate Bill No. 314**

2 (By Senators Nohe, Carmichael, Mullins and Blair)

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4 [Introduced January 27, 2015; referred to the Committee on Banking and Insurance; and then to
5 the Committee on the Judiciary.]

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10 A BILL to amend and reenact §23-5-7 of the Code of West Virginia, 1931, as amended, relating to
11 authorization of compromise and settlement of indemnity portion of occupational
12 pneumoconiosis claims.

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

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

16 **ARTICLE 5. REVIEW.**

17 **§23-5-7. Compromise and settlement.**

18 With the exception of medical benefits for nonorthopedic occupational disease claims, the
19 claimant, the employer and the Workers' Compensation Commission, the successor to the
20 commission, other private insurance carriers and self-insured employers, whichever is applicable,
21 may negotiate a final settlement of any and all issues in a claim wherever the claim is in the
22 administrative or appellate processes: Provided, That the Insurance Commissioner, under the

1 authority of article two, chapter thirty-three of this code, other private insurance carriers and
2 self-insured employers, whichever is applicable, may negotiate a final settlement of the indemnity
3 issue in a claim for occupational pneumoconiosis. If the employer is not active in the claim, the
4 commission, the successor to the commission, other private insurance carriers and self-insured
5 employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim
6 except for medical benefits for nonorthopedic occupational disease claims with the claimant:
7 Provided, That the Insurance Commissioner, under the authority of article two, chapter thirty-three
8 of this code and other private insurance carriers, whichever is applicable, may negotiate a final
9 settlement of the indemnity issue in a claim for occupational pneumoconiosis with the claimant, and
10 said the settlement shall be made a part of the claim record. Except in cases of fraud, no issue that
11 is the subject of an approved settlement agreement may be reopened by any party, including the
12 commission, the successor to the commission, other private insurance carriers and self-insured
13 employers, whichever is applicable. Any settlement agreement may provide for a lump-sum
14 payment or a structured payment plan, or any combination thereof, or any other basis as the parties
15 may agree. If a self-insured employer later fails to make the agreed-upon payment, the commission
16 shall assume the obligation to make the payments and shall recover the amounts paid or to be paid
17 from the self-insurer employer and its sureties or guarantors or both as provided in section five and
18 five-a, article two of this chapter.

19 Each settlement agreement shall provide the toll free number of the West Virginia State Bar
20 Association and shall provide the injured worker with five business days to revoke the executed
21 agreement. The Insurance Commissioner may void settlement agreements entered into by an
22 unrepresented injured worker which are determined to be unconscionable pursuant to criteria

1 established by rule of the commissioner.

2 The amendments to this section enacted during the regular session of the Legislature in the
3 year ~~one thousand nine hundred ninety-nine~~ 2015 shall apply to all settlement agreements executed
4 after the effective date.

NOTE: The purpose of this bill is to authorize the compromise and settlement of the indemnity portion of occupational pneumoconiosis claims.

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