

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-SECOND LEGISLATURE**  
**REGULAR SESSION, 2015**



**ENROLLED**

**Senate Bill No. 578**

(BY SENATORS TRUMP, CARMICHAEL, FERNS, GAUNCH, D. HALL,  
KARNES, LEONHARDT, MAYNARD, NOHE AND WILLIAMS)

[PASSED MARCH 10, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

E N R O L L E D

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(BY SENATORS TRUMP, CARMICHAEL, FERNS, GAUNCH, D. HALL,  
KARNES, LEONHARDT, MAYNARD, NOHE AND WILLIAMS)

[Passed March 10, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §23-4-8d of the Code of West Virginia, 1931, as amended; and to amend and reenact §23-5-7 of said code, all relating to authorization of compromise and settlement of occupational disease claims; permitting final settlement of medical benefits for nonorthopedic occupational disease claims; and requiring claimant be represented by legal counsel in these claims.

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

That §23-4-8d of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §23-5-7 of said code be amended and reenacted, all to read as follows:

**ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

**§23-4-8d. Occupational pneumoconiosis claims never closed for  
medical benefits with exception of settled claims.**

1 Notwithstanding the provisions of subdivision (4),  
2 subsection (a), section sixteen of this article, with the  
3 exception of claims settled pursuant to article five, section

4 seven of this chapter, a request for medical services, durable  
5 medical goods or other medical supplies in an occupational  
6 pneumoconiosis claim may be made at any time.

#### ARTICLE 5. REVIEW.

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

1 (a) The claimant, the employer and the Workers'  
2 Compensation Commission, the successor to the commission,  
3 other private insurance carriers and self-insured employers,  
4 whichever is applicable, may negotiate a final settlement of  
5 any and all issues in a claim wherever the claim is in the  
6 administrative or appellate processes: *Provided*, That in the  
7 settlement of medical benefits for nonorthopedic occupational  
8 disease claims, the claimant shall be represented by legal  
9 counsel. If the employer is not active in the claim, the  
10 commission, the successor to the commission, other private  
11 insurance carriers and self-insured employers, whichever is  
12 applicable, may negotiate a final settlement with the claimant  
13 and the settlement shall be made a part of the claim record.  
14 Except in cases of fraud, no issue that is the subject of an  
15 approved settlement agreement may be reopened by any  
16 party, including the commission, the successor to the  
17 commission, other private insurance carriers and self-insured  
18 employers, whichever is applicable. Any settlement  
19 agreement may provide for a lump-sum payment or a  
20 structured payment plan, or any combination thereof, or any  
21 other basis as the parties may agree. If a self-insured  
22 employer later fails to make the agreed-upon payment, the  
23 commission shall assume the obligation to make the  
24 payments and shall recover the amounts paid or to be paid  
25 from the self-insurer employer and its sureties or guarantors  
26 or both as provided in sections five and five-a, article two of  
27 this chapter.

28       (b) Each settlement agreement shall provide the toll-free  
29 number of the West Virginia State Bar Association and shall  
30 provide the injured worker with five business days to revoke  
31 the executed agreement. The Insurance Commissioner may  
32 void settlement agreements entered into by an unrepresented  
33 injured worker which are determined to be unconscionable  
34 pursuant to criteria established by rule of the commissioner.

35       (c) The amendments to this section enacted during the  
36 regular session of the Legislature in the year 2015 apply to all  
37 settlement agreements executed after the effective date.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....

Day of ....., 2015.

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*Governor*