

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2861

BY DELEGATE BATES

[Introduced March 02, 2021; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §23-4-8 of the Code of West Virginia, 1931, as amended, relating
2 to physical examination of a claimant for Workers Compensation benefits; and requiring
3 information relating to who scheduled and paid for the examination.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-8. Physical examination of claimant.

1 (a) The Insurance Commissioner, private carrier or self-insured employer, whichever is
2 applicable, may, after due notice to the claimant, whenever in its opinion it is necessary, order a
3 claimant of compensation for a personal injury other than occupational pneumoconiosis to appear
4 for examination before a medical examiner or examiners selected by the Insurance
5 Commissioner, other private carrier or self-insured employer, whichever is applicable; and the
6 claimant and employer each may select a physician of the claimant's or the employer's own
7 choosing and at the claimant's or the employer's own expense to participate in the examination.
8 All examinations shall be performed in accordance with the protocols and procedures established
9 by rules of the Insurance Commissioner: *Provided*, That the physician may exceed these
10 protocols when additional evaluation is medically necessary. The claimant and employer shall be
11 furnished with a copy of the report of examination made by the medical examiner or examiners.
12 The physicians selected by the claimant and employer have the right to submit a separate report
13 to, or concur in any report made by the medical examiner or examiners selected by the Insurance
14 Commissioner, private carrier or self-insured employer, and any separate report shall be
15 considered in passing upon the claim: *Provided, however, That all shall be clearly labeled:*
16 *"Scheduled by" [Insert name of company, carrier or individual who scheduled the evaluation] and*
17 *"Paid for by" [Insert name of company, carrier or individual who paid for the evaluation].*

18 (b) If the compensation claimed is for occupational pneumoconiosis, the Insurance
19 Commissioner, private carrier or self-insured employer, whichever is applicable, may, after due
20 notice to the employer, order a claimant to appear for examination before the Occupational

21 Pneumoconiosis Board provided for in §23-4-8a of this code.

22 (c) Where the claimant is ordered to appear for an examination by the Occupational
23 Pneumoconiosis Board pursuant to subsection (b) of this section or is required to undergo a
24 medical examination or examinations, pursuant to subsection (a) of this section, the party that
25 referred the claimant to the Occupational Pneumoconiosis Board or required the medical
26 examination shall reimburse the claimant for loss of wages and reasonable traveling expenses
27 as set forth in subsection (e) of this section and other expenses in connection with the examination
28 or examinations.

29 (d) The claimant shall be reimbursed for reasonable traveling expenses as set forth in
30 subsection (e) of this section incurred in connection with medical examinations, appointments,
31 and treatments, including appointments with the claimant's authorized treating physician.

32 (e) The claimant's traveling expenses include, at a minimum, reimbursement for meals,
33 lodging and milage. Reimbursement for travel in a personal motor vehicle shall be at the milage
34 reimbursement rates contained in the Department of Administration's Purchasing Division Travel
35 Rules as authorized by §12-3-11. of this code in effect at the time the treatment is authorized.

NOTE: The purpose of this bill is to require information relating to who scheduled and paid for the physical examination of a claimant for Workers Compensation benefits.

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