

Senate Bill No. 395

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(By Senators Wills, Klempa, Tucker, Miller, Snyder, Yost, Kessler
(Mr. President) and Plymale)

[Introduced January 24, 2012; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §23-1-1a of the Code of West Virginia,
1931, as amended, relating to rules promulgated by the
Workers' Compensation Board of Managers; and providing that
these rules are subject to the legislative review process.

Be it enacted by the Legislature of West Virginia:
That §23-1-1a of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

**§23-1-1a. Workers' Compensation board of managers; appointment;
composition; qualifications; terms; chairperson;
meetings and quorum; compensation and travel
expenses; powers and duties.**

(a) On October 1, 2003, the compensation programs performance
council heretofore established in article three, chapter twenty-

1 one-a of this code is hereby abolished and there is hereby created
2 the "Workers' Compensation board of managers", which may also be
3 referred to as "the board of managers" or "the board".

4 (b) (1) The board shall consist of eleven voting members as
5 follows:

6 (A) The Governor or his or her designee;

7 (B) The Chief Executive Officer of the West Virginia
8 Investment Management Board; if required to attend more than one
9 meeting per month, he or she may send a designee to the additional
10 meetings;

11 (C) The Executive Director of the West Virginia Development
12 Office; if required to attend more than one meeting per month, he
13 or she may send a designee to the additional meetings; and

14 (D) Eight members appointed by the Governor with the advice
15 and consent of the Senate who meet the requirements and
16 qualifications prescribed in subsections (c) and (d) of this
17 section: *Provided*, That the members serving on the compensation
18 programs performance council heretofore established in article
19 three, chapter twenty-one-a of this code on the effective date of
20 the enactment of this section in 2003 are hereby appointed as
21 members of the board of managers subject to the provisions of
22 subdivision (1), subsection (c) of this section.

23 (2) Two members of the West Virginia Senate and two members of
24 the West Virginia House of Delegates shall serve as advisory

1 members of the board and are not voting members. The Governor
2 shall appoint the legislative members to the board. No more than
3 three of the legislative members may be of the same political
4 party.

5 (c) (1) The initial eight appointed voting members of the
6 board of managers shall consist of the members appointed under the
7 provisions of paragraph (D), subdivision (1), subsection (a) of
8 this section and the remaining members appointed pursuant to the
9 provisions of subsection (d) of this section. The term of each of
10 the initial appointed members shall expire on December 31, 2005.

11 (2) Effective January 1, 2006, if the commission continues,
12 eight members shall be appointed by the Governor with the advice
13 and consent of the Senate for terms that begin January 1, 2006, and
14 expire as follows:

15 Two members shall be appointed for a term ending June 30,
16 2007;

17 Three members shall be appointed for a term ending June 30,
18 2008; and

19 Three members shall be appointed for a term ending June 30,
20 2009.

21 (3) Except for appointments to fill vacancies, each subsequent
22 appointment shall be for a term ending June 30 of the fourth year
23 following the year the preceding term expired. In the event a
24 vacancy occurs, it shall be filled by appointment for the unexpired

1 term. A member whose term has expired shall continue in office
2 until a successor has been duly appointed and qualified. No member
3 of the board may be removed from office by the Governor except for
4 official misconduct, incompetency, neglect of duty or gross
5 immorality.

6 (4) No appointed member may be a candidate for or hold elected
7 office. Members may be reappointed for no more than two full
8 terms.

9 (d) Except for those initially appointed under the provisions
10 of paragraph (D), subdivision (1), subsection (b) of this section,
11 each of the appointed voting members of the board shall be
12 appointed based upon his or her demonstrated knowledge and
13 experience to effectively accomplish the purposes of this chapter.
14 They shall meet the minimum qualifications as follows:

15 (1) Each shall hold a baccalaureate degree from an accredited
16 college or university: *Provided*, That no more than three of the
17 appointed voting members may serve without a baccalaureate degree
18 from an accredited college or university if the member has a
19 minimum of fifteen years' experience in his or her field of
20 expertise as required in subdivision (2) of this subsection;

21 (2) Each shall have a minimum of ten years' experience in his
22 or her field of expertise. The Governor shall consider the
23 following guidelines when determining whether potential candidates
24 meet the qualifications of this subsection: Expertise in insurance

1 claims management; expertise in insurance underwriting; expertise
2 in the financial management of pensions or insurance plans;
3 expertise as a trustee of pension or trust funds of more than two
4 hundred beneficiaries or \$300 million; expertise in workers'
5 compensation management; expertise in loss prevention and
6 rehabilitation; expertise in occupational medicine demonstrated by
7 licensure as a medical doctor in West Virginia and experience,
8 board certification or university affiliation; or expertise in
9 similar areas of endeavor;

10 (3) At least one shall be a certified public accountant with
11 financial management or pension or insurance audit expertise; at
12 least one shall be an attorney with financial management
13 experience; and one shall be an academician holding an advanced
14 degree from an accredited college or university in business,
15 finance, insurance or economics.

16 (e) Each member of the board shall have a fiduciary
17 responsibility to the commission and all workers' compensation
18 funds and shall assure the proper administration of the funds in a
19 fiscally responsible manner.

20 (f) The board shall elect one member to serve as chairperson.
21 The chairperson shall serve for a one-year term and may serve more
22 than one consecutive term. The board shall hold meetings at the
23 request of the chairperson or at the request of at least three of
24 the members of the board, but no less frequently than once every

1 three months. The chairperson shall determine the date and time of
2 each meeting. Six members of the board constitute a quorum for the
3 conduct of the business of the board. No vacancy in the membership
4 of the board shall impair the right of a quorum to exercise all the
5 rights and perform all the duties of the board. No action shall be
6 taken by the board except upon the affirmative vote of six members
7 of the board.

8 (g) Notwithstanding any provision of article seven, chapter
9 six of this code to the contrary, the board shall establish the
10 salary of the executive director. The board shall establish a set
11 of performance measurements to evaluate the performance of the
12 executive director in fulfilling his or her duties as prescribed in
13 this chapter and shall annually rate the executive director's
14 performance according to the established measurements and may
15 adjust his or her annual salary in accordance with that performance
16 rating.

17 (h) (1) Each voting appointed member of the board shall
18 receive compensation of not more than \$350 per day for each day
19 during which he or she is required to and does attend a meeting of
20 the board.

21 (2) Each voting appointed member of the board is entitled to
22 be reimbursed for actual and necessary expenses incurred for each
23 day or portion thereof engaged in the discharge of official duties
24 in a manner consistent with guidelines of the travel management

1 office of the Department of Administration.

2 (i) Each member of the board shall be provided appropriate
3 liability insurance, including, but not limited to, errors and
4 omissions coverage, without additional premium, by the state Board
5 of Risk and Insurance Management established pursuant to article
6 twelve, chapter twenty-nine of this code.

7 (j) The board of managers shall:

8 (1) Review and approve, reject or modify recommendations from
9 the executive director for the development of overall policy for
10 the administration of this chapter;

11 (2) In consultation with the executive director, propose
12 legislation and establish operating guidelines and policies
13 designed to ensure the effective administration and financial
14 viability of the Workers' Compensation System of West Virginia;

15 (3) Review and approve, reject or modify rules that are
16 proposed by the executive director for operation of the workers'
17 compensation system before the rules are filed with the Secretary
18 of State. ~~The rules adopted by the board are not subject to~~
19 ~~sections nine through sixteen, inclusive, article three, chapter~~
20 ~~twenty-nine-a of this code. The board shall follow the remaining~~
21 ~~provisions of said chapter for giving notice to the public of its~~
22 ~~actions and for holding hearings and receiving public comments on~~
23 ~~the rules~~ Effective on July 1, 2012, all rules adopted by the board
24 are subject to the all provisions of chapter twenty-nine-a of this

1 code, including the provisions of sections nine through sixteen of
2 article three of said chapter. All rules adopted by the board
3 prior to July 1, 2012 shall be resubmitted for approval of the
4 Legislature in accordance with the provisions of article three of
5 chapter twenty-nine-a of this code;;

6 (4) In accordance with the laws, rules and regulations of West
7 Virginia and the United States government, establish and monitor
8 performance standards and measurements to ensure the timeliness and
9 accuracy of activities performed under the workers' compensation
10 laws and rules;

11 (5) Review and approve, reject or modify all classifications
12 of occupations or industries, premium rates and taxes,
13 administrative charges, rules and systems of rating, rating plans,
14 rate revisions, deficit management and deficit reduction
15 assessments and merit rating for employers covered by this chapter.
16 The executive director shall provide all information required for
17 the board's review;

18 (6) In conjunction with the executive director initiate,
19 oversee and review all independent financial and actuarial reviews
20 of the commission. The board shall employ an internal auditor for
21 the purpose of examining internal compliance with the provisions of
22 this chapter. The internal auditor shall be employed directly by
23 the board. The internal auditor shall submit copies of all reports
24 prepared by the internal auditor for the board to the Joint

1 Committee on Government and Finance within five days of submitting
2 or making the report to the board, by filing the report with the
3 legislative librarian;

4 (7) Approve the allocation of sufficient administrative
5 resources and funding to efficiently operate the Workers'
6 Compensation System of West Virginia. To assure efficient
7 operation, the board shall direct the development of a plan for the
8 collections performed under section five-a, article two of this
9 chapter. The plan for collections shall maximize ratio of dollars
10 potentially realized by the collection proceeding to the dollars
11 invested in collection activity;

12 (8) Review and approve, reject or modify the budget prepared
13 by the executive director for the operation of the commission. The
14 budget shall include estimates of the costs and necessary
15 expenditures of the commission in the discharge of all duties
16 imposed by this chapter as well as the cost of providing offices,
17 furniture, equipment and supplies to all commission officers and
18 employees;

19 (9) In consultation with the executive director, approve the
20 designation of health care providers to make decisions for the
21 commission regarding appropriateness of medical services;

22 (10) Require the Workers' Compensation Commission to develop,
23 maintain and use an effective program of return-to-work services
24 for employers and workers;

1 (11) Require the Workers' Compensation Commission to develop,
2 maintain and use thorough and efficient claims management
3 procedures and processes and fund management in accordance with the
4 generally accepted practices of the Workers' Compensation insurance
5 industry;

6 (12) Consider such other matters regarding the Workers'
7 Compensation system as the Governor, executive director or any
8 member of the board may desire;

9 (13) Review and approve, reject or modify standards
10 recommended by the executive director to be considered by the
11 commission in making decisions on all levels of disability awards.
12 The standards should be established as an effective means to make
13 prompt, appropriate decisions relating to medical care and methods
14 to assist employees to return to work as quickly as possible;

15 (14) Appoint, if necessary, a temporary executive director;

16 (15) Employ sufficient professional and clerical staff to
17 carry out the duties of the board. Employees of the board shall
18 serve at the will and pleasure of the board. The board's employees
19 are exempt from the salary schedule or pay plan adopted by the
20 Division of Personnel;

21 (16) Study the feasibility of, provide a plan for and provide
22 a proposal for a request for proposals from the private sector for
23 privatizing the Workers' Compensation system of this state,
24 including, but not limited to, a plan for privatizing the

1 administration of the Workers' Compensation system of this state
2 and a plan for allowing employers to obtain private insurance to
3 insure their obligations under the Workers' Compensation system of
4 this state; study the effect, if any, of attorneys fees on the cost
5 of administering the Workers' Compensation system; study the extent
6 to which fraud or abuse on the part of employees, providers and
7 others have an effect on the cost of administering the Workers'
8 Compensation system; study the extent, if any, that the rates and
9 amounts of disability awards exceed the rates and amounts of such
10 awards in other states; study the comparative desirability of
11 alternative permanent disability administration in those other
12 states, and alternative deficit management strategies, including
13 nontraditional funding; study the feasibility of authorizing a plan
14 of multiple rate classifications by individual employers for
15 employers who have different or seasonally diverse job
16 classifications and duties: *Provided*, That no such plan may be
17 implemented until adopted by the Legislature; and, in consultation
18 with the director of the Division of Personnel, study the
19 feasibility of establishing a work incentive program to place
20 unemployed qualified recipients of Workers' Compensation benefits
21 in state or local government employment. On or before January 1,
22 2006, the commission shall report the findings and conclusions of
23 each study, the plans and proposals, and any recommendations the
24 commission may have as a result of the study to the Joint Committee

1 on Government and Finance; and

2 (17) Complete all duties set forth in article two-c of this
3 chapter.

4 (k) The board of managers shall continue to exist pursuant to
5 this article until the commission is terminated pursuant to the
6 provisions of this chapter.

NOTE: The purpose of this bill is to provide that rules adopted by the Workers' Compensation board of managers are subject to the legislative review process.

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