

Senate Bill No. 524

(By Senator Yost)

[Introduced February 10, 2014; referred to the Committee on
Banking and Insurance; and then to the Committee on the
Judiciary.]

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A BILL to amend and reenact §23-4-1c of the Code of West Virginia,
1931, as amended, relating to workers' compensation; payment
of temporary total disability benefits directly to claimant;
payment of medical benefits; payments of benefits during
protest; and right of commission, successor to the commission,
private carriers and self-insured employers to collect
payments improperly made.

Be it enacted by the Legislature of West Virginia:

That §23-4-1c of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

**§23-4-1c. Payment of temporary total disability benefits directly
to claimant; payment of medical benefits; payments**

1 **of benefits during protest; right of commission,**
2 **successor to the commission, private carriers and**
3 **self-insured employers to collect payments**
4 **improperly made.**

5 (a) In any claim for benefits under this chapter, the
6 Insurance Commissioner ~~private carrier or self-insured employer,~~
7 ~~whichever is applicable,~~ shall determine whether the claimant has
8 sustained a compensable injury within the meaning of section one of
9 this article and enter an order giving all parties immediate notice
10 of the decision.

11 (1) The Insurance Commissioner, private carrier or
12 self-insured employer, whichever is applicable, may enter an order
13 conditionally approving the claimant's application if it finds that
14 obtaining additional medical evidence or evaluations or other
15 evidence related to the issue of compensability would aid the
16 Insurance Commissioner, private carrier or self-insured employer,
17 whichever is applicable, in making a correct final decision.
18 Benefits shall be paid during the period of conditional approval;
19 however, if the final decision is one that rejects the claim, the
20 payments shall be considered an overpayment. The Insurance
21 Commissioner, private carrier or self-insured employer, whichever
22 is applicable, may only recover the amount of the overpayment as
23 provided for in subsection (h) of this section.

1 (2) In making a determination regarding the compensability of
2 a newly filed claim or upon a filing for the reopening of a prior
3 claim pursuant to the provisions of section sixteen of this article
4 based upon an allegation of recurrence, reinjury, aggravation or
5 progression of the previous compensable injury or in the case of a
6 filing of a request for any other benefits under the provisions of
7 this chapter, the Insurance Commissioner, private carrier or
8 self-insured employer, whichever is applicable, shall consider the
9 date of the filing of the claim for benefits for a determination of
10 the following:

11 (A) Whether the claimant had a scheduled shutdown beginning
12 within one week of the date of the filing;

13 (B) Whether the claimant received notice within sixty days of
14 the filing that his or her employment position was to be
15 eliminated, including, but not limited to, the claimant's worksite,
16 a layoff or the elimination of the claimant's employment position;

17 (C) Whether the claimant is receiving unemployment
18 compensation benefits at the time of the filing; or

19 (D) Whether the claimant has received unemployment
20 compensation benefits within sixty days of the filing. In the
21 event of an affirmative finding upon any of these four factors, the
22 finding shall be given probative weight in the overall
23 determination of the compensability of the claim or of the merits
24 of the reopening request.

1 (3) Any party may object to the order of the Insurance
2 Commissioner, private carrier or self-insured employer, whichever
3 is applicable, and obtain an evidentiary hearing as provided in
4 section one, article five of this chapter: *Provided*, That if the
5 successor to the commissioner, other private carrier or
6 self-insured, whichever is applicable, fails to timely issue a
7 ruling upon any application or motion as provided by law, or if the
8 claimant files a timely protest to the ruling of a self-insured
9 employer, private carrier or other issuing entity, denying the
10 compensability of the claim, denying temporary total disability
11 benefits or denying medical authorization, the office of judges
12 shall provide a hearing on the protest on an expedited basis as
13 determined by rule of the office of judges.

14 (b) Where it appears from the employer's report, or from
15 proper medical evidence, that a compensable injury will result in
16 a disability which will last longer than three days as provided in
17 section five of this article, the Insurance Commissioner, private
18 carrier or self-insured employer, whichever is applicable, may
19 immediately enter an order commencing the payment of temporary
20 total disability benefits to the claimant in the amounts provided
21 for in sections six and fourteen of this article, and the payment
22 of the expenses provided for in subsection (a), section three of
23 this article, relating to the injury, without waiting for the
24 expiration of the thirty-day period during which objections may be

1 filed to the findings as provided in section one, article five of
2 this chapter. The Insurance Commissioner, private carrier or
3 self-insured employer, whichever is applicable, shall enter an
4 order commencing the payment of temporary total disability or
5 medical benefits within fifteen working days of receipt of either
6 the employee's or employer's report of injury, whichever is
7 received sooner, and also upon receipt of either a proper
8 physician's report or any r information necessary for a
9 determination. The Insurance Commissioner, private carrier or
10 self-insured employer, whichever is applicable, shall give to the
11 parties immediate notice of any order granting temporary total
12 disability or medical benefits. When an order granting temporary
13 total disability benefits is made, the claimant's return-to-work
14 potential shall be assessed. The Insurance Commissioner may
15 schedule medical and vocational evaluation of the claimant and
16 assign appropriate personnel to expedite the claimant's return to
17 work as soon as reasonably possible.

18 (c) The Insurance Commissioner, private carrier or
19 self-insured employer, whichever is applicable, may enter orders
20 granting temporary total disability benefits upon receipt of
21 medical evidence justifying the payment of the benefits. The
22 Insurance Commissioner, private carrier or self-insured employer,
23 whichever is applicable, may not enter an order granting
24 prospective temporary total disability benefits for a period of

1 more than ninety days: *Provided*, That when the Insurance
2 Commissioner, private carrier or self-insured employer, whichever
3 is applicable, determines that the claimant remains disabled beyond
4 the period specified in the prior order granting temporary total
5 disability benefits, the Insurance Commissioner, private carrier or
6 self-insured employer shall enter an order continuing the payment
7 of temporary total disability benefits for an additional period not
8 to exceed ninety days and shall give immediate notice to all
9 parties of the decision.

10 (d) Upon receipt of the first report of injury in a claim, the
11 Insurance Commissioner, private carrier or self-insured employer,
12 whichever is applicable, shall request from the employer or
13 employers any wage information necessary for determining the rate
14 of benefits to which the employee is entitled. If an employer does
15 not furnish this information within fifteen days from the date the
16 Insurance Commissioner, private carrier or self-insured employer,
17 whichever is applicable, received the first report of injury in the
18 case, the employee shall be paid the maximum temporary total
19 disability benefits ~~at the rate the commission obtains~~ for lost
20 time without penalty to the employee. ~~from reports made pursuant~~
21 ~~to subsection (b), section two, article two of this chapter~~ If no
22 wages have been reported, the Insurance Commissioner, private
23 carrier or self-insured employer, whichever is applicable, shall
24 make the payments at ~~the rate the Insurance Commissioner, private~~

1 ~~carrier or self-insured employer, whichever is applicable, finds~~
2 ~~would be justified by the usual rate of pay for the occupation of~~
3 ~~the injured employee. the maximum temporary total disability~~
4 ~~benefits for lost time without penalty to the employee.~~ The rate of
5 benefits shall be adjusted ~~both retroactively and~~ prospectively
6 upon receipt of proper wage information. The Insurance
7 Commissioner shall have access to all wage information in the
8 possession of any state agency.

9 (e) Subject to the limitations set forth in section sixteen of
10 this article, upon a finding of the Insurance Commissioner, private
11 carrier or self-insured employer, whichever is applicable, that a
12 claimant who has sustained a previous compensable injury which has
13 been closed by order, or by the claimant's return to work, suffers
14 further temporary total disability or requires further medical or
15 hospital treatment resulting from the compensable injury, payment
16 of temporary total disability benefits to the claimant in the
17 amount provided for in sections six and fourteen of this article
18 shall immediately commence, and the expenses provided for in
19 subsection (a), section three of this article, relating to the
20 disability, without waiting for the expiration of the thirty-day
21 period during which objections may be filed. Immediate notice to
22 the parties of the decision shall be given.

23 (f) The Insurance Commissioner, private carrier or
24 self-insured employer shall deliver amounts due for temporary total

1 disability benefits directly to the claimant.

2 (g) Where the employer has elected to carry its own risk under
3 section nine, article two of this chapter, and upon the findings
4 aforesaid, the self-insured employer shall immediately pay the
5 amounts due the claimant for temporary total disability benefits.
6 A copy of the notice shall be sent to the claimant.

7 (h) In the event that an employer files a timely objection to
8 any order of the Insurance Commissioner, private carrier or
9 self-insured, whichever is applicable, with respect to
10 compensability, or any order denying an application for
11 modification with respect to temporary total disability benefits,
12 or with respect to those expenses outlined in subsection (a),
13 section three of this article, the division shall continue to pay
14 to the claimant such benefits and expenses during the period of
15 such disability. Where it is subsequently found by the Insurance
16 Commissioner, private carrier or self-insured, whichever is
17 applicable, that the claimant was not entitled to receive such
18 temporary total disability benefits or expenses, or any part
19 thereof, so paid, the Insurance Commissioner, private carrier or
20 self-insured, whichever is applicable, shall credit said employer's
21 account with the amount of the overpayment. When the employer has
22 protested the compensability or applied for modification of a
23 temporary total disability benefit award or expenses and the final
24 decision in that case determines that the claimant was not entitled

1 to the benefits or expenses, the amount of benefits or expenses is
2 considered overpaid. For all awards made or nonawarded partial
3 benefits paid the Insurance Commissioner, private carriers or
4 self-insured employer may recover the amount of overpaid benefits
5 or expenses by withholding, in whole or in part, future disability
6 benefits payable to the individual in the same or other claims and
7 credit the amount against the overpayment until it is repaid in
8 full.

9 (I) In the event that the Insurance Commissioner, private
10 carrier or self-insured employer, whichever is applicable, finds
11 that, based upon the employer's report of injury, the claim is not
12 compensable, the Insurance Commissioner, private carrier or
13 self-insured employer, whichever is applicable, shall provide a
14 copy of the employer's report to the claimant in addition to the
15 order denying the claim.

16 ~~(j) If a claimant is receiving benefits paid through a wage~~
17 ~~replacement plan, salary continuation plan or other benefit plan~~
18 ~~provided by the employer to which the employee has not contributed,~~
19 ~~and that plan does not provide an offset for temporary total~~
20 ~~disability benefits to which the claimant is also entitled under~~
21 ~~this chapter as a result of the same injury or disease, the~~
22 ~~employer shall notify the Insurance Commissioner, private carrier~~
23 ~~or self-insured of the duplication of the benefits paid to the~~
24 ~~claimant. Upon receipt of the notice, the Insurance Commissioner,~~

1 ~~private carrier or self-insured employer, whichever is applicable,~~
2 ~~shall reduce the temporary total disability benefits provided under~~
3 ~~this chapter by an amount sufficient to ensure that the claimant~~
4 ~~does not receive monthly benefits in excess of the amount provided~~
5 ~~by the employer's plan or the temporary total disability benefit,~~
6 ~~whichever is greater: *Provided,* That this subsection does not~~
7 ~~apply to benefits being paid under the terms and conditions of a~~
8 ~~collective bargaining agreement.~~

NOTE: The purpose of this bill is to provide prompt benefits to the injured while off from work; require the insurance carrier to promptly provide the required wage information and indemnity benefits and provide a penalty for the failure to do so; require the initial compensability determination to be made by the West Virginia workers Compensation Commissioner's office; and eliminate any offset to employers for employee's who have a wage replacement plan.

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