

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Enrolled**

**Senate Bill 531**

BY SENATOR TRUMP

[Passed March 6, 2019; in effect 90 days from passage]



1 AN ACT to amend and reenact §23-5-7 of the Code of West Virginia, 1931, as amended, relating  
2 to compromise and settlement of certain workers' compensation claims; and providing that  
3 occupational hearing loss and hearing impairment claims are not nonorthopedic  
4 occupational disease claims for the purpose of the requirement that a claimant be  
5 represented by counsel in a settlement for medical benefits.

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

**ARTICLE 5. REVIEW.**

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

1 (a) The claimant, the employer, and the Workers' Compensation Commission, the  
2 successor to the commission, other private insurance carriers, and self-insured employers,  
3 whichever is applicable, may negotiate a final settlement of any and all issues in a claim wherever  
4 the claim is in the administrative or appellate processes: *Provided*, That in the settlement of  
5 medical benefits for nonorthopedic occupational disease claims, the claimant shall be represented  
6 by legal counsel: *Provided, however*, That for the purposes of this section, the term  
7 "nonorthopedic occupational disease claim" does not include an occupational hearing loss or  
8 hearing impairment claim. If the employer is not active in the claim, the commission, the successor  
9 to the commission, other private insurance carriers, and self-insured employers, whichever is  
10 applicable, may negotiate a final settlement with the claimant and the settlement shall be made a  
11 part of the claim record. Except in cases of fraud, no issue that is the subject of an approved  
12 settlement agreement may be reopened by any party, including the commission, the successor  
13 to the commission, other private insurance carriers, and self-insured employers, whichever is  
14 applicable. Any settlement agreement may provide for a lump-sum payment or a structured  
15 payment plan, or any combination thereof, or any other basis as the parties may agree. If a self-  
16 insured employer later fails to make the agreed-upon payment, the commission shall assume the  
17 obligation to make the payments and shall recover the amounts paid or to be paid from the self-

18 insured employer and its sureties or guarantors, or both, as provided in §23-2-5 or §23-2-5a of  
19 this code.

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

25 (c) The amendments to this section enacted during the regular session of the Legislature,  
26 2015, apply to all 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 90 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 ....., 2019.

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*Governor*