

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 531

BY SENATOR TRUMP

[Introduced February 5, 2019; Referred
to the Committee on Banking and Insurance]

1 A BILL to amend and reenact §23-5-7 of the Code of West Virginia, 1931, as amended, relating
2 generally to workers' compensation claims pending in the administrative or appellate
3 process; and providing that hearing loss and impairment claims are not occupational
4 disease claims for the purpose of the requirement that a claimant be represented by
5 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 "occupational*
7 *disease claim" does not include an occupational hearing loss or hearing impairment claim.* If the
8 employer is not active in the claim, the commission, the successor to the commission, other
9 private insurance carriers, and self-insured employers, whichever is applicable, may negotiate a
10 final settlement with the claimant and the settlement shall be made a part of the claim record.
11 Except in cases of fraud, no issue that is the subject of an approved settlement agreement may
12 be reopened by any party, including the commission, the successor to the commission, other
13 private insurance carriers, and self-insured employers, whichever is applicable. Any settlement
14 agreement may provide for a lump-sum payment or a structured payment plan, or any
15 combination thereof, or any other basis as the parties may agree. If a self-insured employer later
16 fails to make the agreed-upon payment, the commission shall assume the obligation to make the
17 payments and shall recover the amounts paid or to be paid from the self-insured employer and
18 its sureties or guarantors, or both, as provided in §23-2-5 or §23-2-5a of this code.

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

24 (c) The amendments to this section enacted during the regular session of the Legislature,
25 2015, apply to all settlement agreements executed after the effective date.

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NOTE: The purpose of this bill is to exclude claims for hearing loss or hearing impairment from the requirement that workers' compensation claimants must be represented by counsel to enter into a settlement agreement.

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

BANKING AND INSURANCE COMMITTEE AMENDMENT

On page one, section seven, line six, by striking out the words "term "occupational" and inserting in lieu thereof the words "term "nonorthopedic occupational".