

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0992.01 Kristen Forrestal x4217

SENATE BILL 13-285

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Williams,

Senate Committees
Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING THE PROCEDURES IN WORKERS' COMPENSATION CLAIMS
102 FOR THE RESOLUTION OF DISPUTES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billssummaries>.)

The bill requires a claimant to be reimbursed by the employer or workers' compensation carrier for medical treatment provided if the employer, after notice of the injury, fails to provide medical treatment.

After notice of termination of a fringe benefit or other advantage, the employer, carrier, or third-party administrator is required to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

recalculate the average weekly wage and begin payment of the wages based on the recalculated amount.

The bill requires temporary partial disability to be paid at least once every 2 weeks and requires an employer, carrier, or third-party administrator to provide a claimant a complete copy of the claim file within 15 days after the mailing of a written request.

In order to request attorney fees and costs when an opposing attorney requests a hearing for an unripe issue, the requesting party must prove that it attempted to have any unripe issues stricken by a prehearing administrative law judge. Fees and costs may only be awarded if they are directly caused by the listing of the unripe issue.

The bill extends the amount of time that must pass before an employer or insurer may request an independent medical examiner if the treating physician has not determined that an injured worker has reached maximum medical improvement from 18 to 24 months. If the independent medical examiner selected determines that the worker has reached maximum medical improvement, the independent medical examiner shall also determine the worker's permanent medical impairment.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 8-42-101, **add** (6) as
3 follows:

4 **8-42-101. Employer must furnish medical aid - approval of**
5 **plan - fee schedule - contracting for treatment - no recovery from**
6 **employee - medical treatment guidelines - accreditation of physicians**
7 **- rules - repeal.** (6) (a) IF AN EMPLOYER RECEIVES NOTICE OF INJURY AND
8 THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE CARRIER,
9 AFTER NOTICE OF THE INJURY, FAILS TO FURNISH REASONABLE AND
10 NECESSARY MEDICAL TREATMENT TO THE INJURED WORKER FOR A CLAIM
11 THAT IS ADMITTED OR FOUND TO BE COMPENSABLE, THE EMPLOYER OR
12 CARRIER SHALL REIMBURSE THE CLAIMANT, OR ANY INSURER OR
13 GOVERNMENTAL PROGRAM THAT PAYS FOR RELATED MEDICAL
14 TREATMENT, FOR THE COSTS OF REASONABLE AND NECESSARY
15 TREATMENT THAT WAS PROVIDED. AN EMPLOYER, INSURER, CARRIER, OR

1 PROVIDER MAY NOT RECOVER THE COST OF CARE FROM A CLAIMANT
2 WHERE THE EMPLOYER OR CARRIER HAS FURNISHED MEDICAL TREATMENT
3 EXCEPT IN THE CASE OF FRAUD.

4 (b) IF A CLAIMANT HAS PAID FOR MEDICAL TREATMENT THAT IS
5 ADMITTED OR FOUND TO BE COMPENSABLE AND THAT COSTS MORE THAN
6 THE AMOUNT SPECIFIED IN THE WORKERS' COMPENSATION FEE SCHEDULE,
7 THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE CARRIER,
8 SHALL REIMBURSE THE CLAIMANT FOR THE FULL AMOUNT PAID. THE
9 EMPLOYER OR CARRIER IS ENTITLED TO REIMBURSEMENT FROM THE
10 MEDICAL PROVIDERS FOR THE AMOUNT IN EXCESS OF THE AMOUNT
11 SPECIFIED IN THE WORKER'S COMPENSATION FEE SCHEDULE.

12 **SECTION 2.** In Colorado Revised Statutes, 8-42-103, **add** (2) as
13 follows:

14 **8-42-103. Disability indemnity payable as wages - period of**
15 **disability.** (2) WITHIN FIFTEEN DAYS AFTER WRITTEN NOTICE TO THE
16 EMPLOYER OR, IF INSURED, THE EMPLOYER'S WORKERS' COMPENSATION
17 INSURANCE CARRIER OR THIRD-PARTY ADMINISTRATOR OF THE
18 TERMINATION OF A FRINGE BENEFIT OR ADVANTAGE ENUMERATED IN
19 SECTION 8-40-201 (19) (b), AND THE EFFECTIVE DATE OF THE
20 TERMINATION AND COST OF CONVERSION, THE EMPLOYER OR, IF INSURED,
21 THE EMPLOYER'S WORKERS' COMPENSATION INSURANCE CARRIER OR
22 THIRD-PARTY ADMINISTRATOR SHALL RECALCULATE THE APPLICABLE
23 AVERAGE WEEKLY WAGE AND BEGIN PAYMENT OF BENEFITS IN
24 ACCORDANCE WITH THE RECALCULATION WITH INTEREST BEGINNING ON
25 THE DATE THE BENEFIT WAS TERMINATED.

26 **SECTION 3.** In Colorado Revised Statutes, 8-42-106, **amend** (1)
27 as follows:

1 **8-42-106. Temporary partial disability.** (1) In case of
2 temporary partial disability, the employee shall receive sixty-six and
3 two-thirds percent of the difference between ~~said~~ THE employee's average
4 weekly wage at the time of the injury and ~~said~~ THE employee's average
5 weekly wage during the continuance of the temporary partial disability,
6 not to exceed a maximum of ninety-one percent of the state average
7 weekly wage per week. TEMPORARY PARTIAL DISABILITY SHALL BE PAID
8 AT LEAST ONCE EVERY TWO WEEKS.

9 **SECTION 4.** In Colorado Revised Statutes, 8-43-203, **add** (4) as
10 follows:

11 **8-43-203. Notice concerning liability - notice to claimants -**
12 **notice of rights and claims process - rules.** (4) WITHIN FIFTEEN DAYS
13 AFTER THE MAILING OF A WRITTEN REQUEST FOR A COPY OF THE CLAIM
14 FILE, THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE
15 CARRIER OR THIRD-PARTY ADMINISTRATOR SHALL PROVIDE TO THE
16 CLAIMANT OR HIS OR HER REPRESENTATIVE A COMPLETE COPY OF THE
17 CLAIM FILE THAT INCLUDES ALL MEDICAL RECORDS, PLEADINGS,
18 CORRESPONDENCE, INVESTIGATION FILES, INVESTIGATION REPORTS,
19 WITNESS STATEMENTS, INFORMATION ADDRESSING DESIGNATION OF THE
20 AUTHORIZED TREATING PHYSICIAN, AND WAGE AND FRINGE BENEFIT
21 INFORMATION FOR THE TWELVE MONTHS LEADING UP TO THE DATE OF
22 INJURY AND THEREAFTER, REGARDLESS OF THE FORMAT. IF A PRIVILEGE OR
23 OTHER PROTECTION IS CLAIMED FOR ANY MATERIALS, THE MATERIALS
24 MUST BE DETAILED IN AN ACCOMPANYING PRIVILEGE LOG.

25 **SECTION 5.** In Colorado Revised Statutes, 8-43-211, **amend** (2)
26 (d) as follows:

27 **8-43-211. Notice - request for hearing.** (2) Hearings shall be set

1 by the office of administrative courts in the department of personnel
2 within eighty to one hundred days after any of the following occur:

3 (d) If ~~any person~~ AN ATTORNEY requests a hearing or files a notice
4 to set a hearing on ~~issues which are~~ AN ISSUE THAT IS not ripe for
5 adjudication at the time ~~such~~ THE request or filing is made, ~~such person~~
6 ~~shall~~ THE ATTORNEY MAY be assessed the reasonable attorney fees and
7 costs of the opposing party in preparing for ~~such~~ THE hearing or setting.
8 THE REQUESTING PARTY MUST PROVE ITS ATTEMPT TO HAVE AN UNRIPE
9 ISSUE STRICKEN BY A PREHEARING ADMINISTRATIVE LAW JUDGE TO
10 REQUEST FEES OR COSTS. REQUESTED FEES OR COSTS INCURRED AFTER A
11 PREHEARING CONFERENCE MAY ONLY BE AWARDED IF THEY ARE DIRECTLY
12 CAUSED BY THE LISTING OF THE UNRIPE ISSUE.

13 **SECTION 6.** In Colorado Revised Statutes, 8-42-107, **amend** (8)
14 (b) (II) (A), (8) (b) (III), and (8) (c) as follows:

15 **8-42-107. Permanent partial disability benefits - schedule -**
16 **medical impairment benefits - how determined.** (8) **Medical**
17 **impairment benefits - determination of MMI for scheduled and**
18 **nonscheduled injuries.** (b) (II) If either party disputes a determination
19 by an authorized treating physician on the question of whether the injured
20 worker has or has not reached maximum medical improvement, an
21 independent medical examiner may be selected in accordance with
22 section 8-42-107.2; except that, if an authorized treating physician has not
23 determined that the employee has reached maximum medical
24 improvement, the employer or insurer may only request the selection of
25 an independent medical examiner if all of the following conditions are
26 met:

27 (A) At least ~~eighteen~~ TWENTY-FOUR months have passed since the

1 date of injury;

2 (III) NOTWITHSTANDING PARAGRAPH (c) OF THIS SUBSECTION (8),
3 IF THE INDEPENDENT MEDICAL EXAMINER SELECTED PURSUANT TO
4 SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) FINDS THAT THE INJURED
5 WORKER HAS REACHED MAXIMUM MEDICAL IMPROVEMENT, THE
6 INDEPENDENT MEDICAL EXAMINER SHALL ALSO DETERMINE THE INJURED
7 WORKER'S PERMANENT MEDICAL IMPAIRMENT RATING. The finding
8 REGARDING MAXIMUM MEDICAL IMPROVEMENT AND PERMANENT MEDICAL
9 IMPAIRMENT of an independent medical examiner in a dispute arising
10 under subparagraph (II) of this paragraph (b) shall MAY be overcome only
11 by clear and convincing evidence. A hearing on this matter shall not take
12 place until the finding of the independent medical examiner has been filed
13 with the division.

14 (c) When the injured employee's date of maximum medical
15 improvement has been determined pursuant to SUBPARAGRAPH (I) OF
16 paragraph (b) of this subsection (8), and there is a determination that
17 permanent medical impairment has resulted from the injury, the
18 authorized treating physician shall determine a medical impairment rating
19 as a percentage of the whole person based on the revised third edition of
20 the "American Medical Association Guides to the Evaluation of
21 Permanent Impairment", in effect as of July 1, 1991. Except for a
22 determination by the authorized treating physician providing primary care
23 that no permanent medical impairment has resulted from the injury, any
24 physician who determines a medical impairment rating shall have
25 received accreditation under the level II accreditation program pursuant
26 to section 8-42-101. For purposes of determining levels of medical
27 impairment, the physician shall not render a medical impairment rating

1 based on chronic pain without anatomic or physiologic correlation.
2 Anatomic correlation must be based on objective findings. If either party
3 disputes the authorized treating physician's finding of medical
4 impairment, including a finding that there is no permanent medical
5 impairment, the parties may select an independent medical examiner in
6 accordance with section 8-42-107.2. The finding of ~~such~~ THE independent
7 medical examiner ~~shall~~ MAY be overcome only by clear and convincing
8 evidence. A hearing on this matter shall not take place until the finding
9 of the independent medical examiner has been filed with the division.

10 **SECTION 7. Act subject to petition - effective date.** This act
11 takes effect at 12:01 a.m. on the day following the expiration of the
12 ninety-day period after final adjournment of the general assembly (August
13 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
14 referendum petition is filed pursuant to section 1 (3) of article V of the
15 state constitution against this act or an item, section, or part of this act
16 within such period, then the act, item, section, or part will not take effect
17 unless approved by the people at the general election to be held in
18 November 2014 and, in such case, will take effect on the date of the
19 official declaration of the vote thereon by the governor.