

SB2234



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2234

Introduced 2/26/2021, by Sen. Laura M. Murphy

SYNOPSIS AS INTRODUCED:

820 ILCS 305/4b

820 ILCS 305/12

820 ILCS 305/19

from Ch. 48, par. 138.12

from Ch. 48, par. 138.19

Amends the Workers' Compensation Act. Authorizes the recording of an employee's medical examination with the consent of the employee and the physician. Provides for the use of the recording as evidence.

LRB102 15981 JLS 21351 b

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Sections 4b, 12, and 19 as follows:

6 (820 ILCS 305/4b)

7 Sec. 4b. Collective bargaining pilot program.

8 (a) The Director of the Department of Labor shall adopt a
9 selection process to designate 2 international, national, or
10 statewide organizations made up of affiliates who are the
11 exclusive representatives of construction employer employees
12 recognized or certified pursuant to the National Labor
13 Relations Act to participate in the collective bargaining
14 pilot program provided for in this Section.

15 (a-5) For purposes of this Section, the term "construction
16 employer" means any person or legal entity or group of persons
17 or legal entities engaging in or planning to engage in any
18 constructing, altering, reconstructing, repairing,
19 rehabilitating, refinishing, refurbishing, remodeling,
20 remediating, renovating, custom fabricating, maintaining,
21 landscaping, improving, wrecking, painting, decorating,
22 demolishing, and adding to or subtracting from any building,
23 structure, airport facility, highway, roadway, street, alley,

1 bridge, sewer, drain, ditch, sewage disposal plant, water
2 works, parking facility, railroad, excavation or other
3 project, structure, development, real property or improvement,
4 or to do any part thereof, whether or not the performance of
5 the work herein described involves the addition to, or
6 fabrication into, any project, structure, development, real
7 property or improvement herein described, and shall also
8 include any moving of construction-related materials on the
9 job site or to or from the job site.

10 For purposes of this Section, "labor organization" means
11 an affiliate of an international, national, or statewide
12 organization that has been selected by the Department of Labor
13 to participate in the collective bargaining pilot program as
14 provided for in this Section.

15 (b) Upon appropriate filing, the Commission and the courts
16 of this State shall recognize as valid and binding any
17 provision in a collective bargaining agreement between any
18 construction employer or group of construction employers and a
19 labor organization, which contains certain obligations and
20 procedures relating to workers' compensation. This agreement
21 must be limited to, but need not include, all of the following:

22 (1) An alternative dispute resolution ("ADR") system
23 to supplement, modify or replace the procedural or dispute
24 resolution provisions of this Act. The system may include
25 mediation, arbitration, or other dispute resolution
26 proceedings, the results of which shall be final and

1 binding upon the parties;

2 (2) An agreed list of medical treatment providers that
3 may be the exclusive source of all medical and related
4 treatment provided under this Act;

5 (3) The use of a limited list of impartial physicians
6 to conduct independent medical examinations that may be
7 openly recorded for later use as evidence so long as the
8 employee and physician both consent;

9 (4) The creation of a light duty, modified job, or
10 return to work program;

11 (5) The use of a limited list of individuals and
12 companies for the establishment of vocational
13 rehabilitation or retraining programs that may be the
14 exclusive source of rehabilitation and retraining services
15 provided under this Act; or

16 (6) The establishment of joint labor management safety
17 committees and safety procedures.

18 (c) Void agreements. Nothing in this Section shall be
19 construed to authorize any provision in a collective
20 bargaining agreement that diminishes or increases a
21 construction employer's entitlements under this Act or an
22 employee's entitlement to benefits as otherwise set forth in
23 this Act. For the purposes of this Section, the procedural
24 rights and dispute resolution agreements under subparagraphs
25 (1) through (6) of subsection (b) of this Section are not
26 agreements which diminish or increase a construction

1 employer's entitlements under this Act or an employee's
2 entitlement to benefits under this Act. Any agreement that
3 diminishes or increases a construction employer's entitlements
4 under this Act or an employee's entitlement to benefits as set
5 forth in this Act is null and void. Nothing in this Section
6 shall be construed as creating a mandatory subject of
7 bargaining.

8 (d) Form of agreement. The agreement reached herein shall
9 demonstrate that:

10 (1) The construction employer or group of construction
11 employers and the recognized or certified exclusive
12 bargaining representative have entered into a binding
13 collective bargaining agreement adopting the ADR plan for
14 a period of no less than 2 years;

15 (2) Contractual agreements have been reached with the
16 construction employer's workers' compensation carrier,
17 group self-insurance fund, and any excess carriers
18 relating to the ADR plan;

19 (3) Procedures have been established by which claims
20 for benefits by employees will be lodged, administered,
21 and decided while affording procedural due process;

22 (4) The plan has designated forms upon which claims
23 for benefits shall be made;

24 (5) The system and means by which the construction
25 employer's obligation to furnish medical services and
26 vocational rehabilitation and retraining benefits shall be

1 fulfilled and provider selected;

2 (6) The method by which mediators or arbitrators are
3 to be selected.

4 (e) Filing. A copy of the agreement and a statement
5 identifying the parties to the agreement shall be filed with
6 the Commission. Within 21 days of receipt of an agreement, the
7 Chairman shall review the agreement for compliance with this
8 Section and notify the parties of its acceptance or notify the
9 parties of any additional information required or any
10 recommended modification that would bring the agreement into
11 compliance. If no additional information or modification is
12 required, the agreement shall be valid and binding from the
13 time the parties receive acceptance of the agreement from the
14 Chairman. Upon receipt of any requested information or
15 modification, the Chairman shall notify the parties within 21
16 days whether the agreement is in compliance with this Section.
17 All rejections made by the Chairman under this subsection
18 shall be subject to review by the courts of this State, said
19 review to be taken in the same manner and within the same time
20 as provided by Section 19 of this Act for review of awards and
21 decisions of the Commission. Upon the review, the Circuit
22 Court shall have power to review all questions of fact as well
23 as of law.

24 (f) Notice to insurance carrier. If the construction
25 employer is insured under this Act, it shall provide notice to
26 and obtain consent from its insurance carrier, in the manner

1 provided in the insurance contract, of its intent to enter
2 into an agreement as provided in this Section with its
3 employees.

4 (g) Employees' claims for workers' compensation benefits.

5 (1) Claims for benefits shall be filed with the ADR
6 plan administrator within those periods of limitation
7 prescribed by this Act. Within 10 days of the filing of a
8 claim, the ADR plan administrator shall serve a copy of
9 the claim application upon the Commission, which shall
10 maintain records of all ADR claims and resolutions.

11 (2) Settlements of claims presented to the ADR plan
12 administrator shall be evidenced by a settlement
13 agreement. All such settlements shall be filed with the
14 ADR plan administrator, who within 10 days shall forward a
15 copy to the Commission for recording.

16 (3) Upon assignment of claims, unless settled,
17 mediators and arbitrators shall render final orders
18 containing essential findings of fact, rulings of law and
19 referring to other matters as pertinent to the questions
20 at issue. The ADR plan administrator shall maintain a
21 record of the proceedings.

22 (h) Reporting requirements. Annually, each ADR plan
23 administrator shall submit a report to the Commission
24 containing the following information:

25 (1) The number of employees within the ADR program;

26 (2) The number of occurrences of work-related injuries

1 or diseases;

2 (3) The breakdown within the ADR program of injuries
3 and diseases treated;

4 (4) The total amount of disability benefits paid
5 within the ADR program;

6 (5) The total medical treatment cost paid within the
7 ADR program;

8 (6) The number of claims filed within the ADR program;
9 and

10 (7) The disposition of all claims.

11 (Source: P.A. 97-18, eff. 6-28-11.)

12 (820 ILCS 305/12) (from Ch. 48, par. 138.12)

13 Sec. 12. An employee entitled to receive disability
14 payments shall be required, if requested by the employer, to
15 submit himself, at the expense of the employer, for
16 examination to a duly qualified medical practitioner or
17 surgeon selected by the employer, at any time and place
18 reasonably convenient for the employee, either within or
19 without the State of Illinois, for the purpose of determining
20 the nature, extent and probable duration of the injury
21 received by the employee, and for the purpose of ascertaining
22 the amount of compensation which may be due the employee from
23 time to time for disability according to the provisions of
24 this Act. The examination may be recorded with the consent of
25 the employee and the practitioner for later use as evidence.

1 An employee may also be required to submit himself for
2 examination by medical experts under subsection (c) of Section
3 19.

4 An employer requesting such an examination, of an employee
5 residing within the State of Illinois, shall deliver to the
6 employee with the notice of the time and place of examination
7 sufficient money to defray the necessary expense of travel by
8 the most convenient means to and from the place of
9 examination, and the cost of meals necessary during the trip,
10 and if the examination or travel to and from the place of
11 examination causes any loss of working time on the part of the
12 employee, the employer shall reimburse him for such loss of
13 wages upon the basis of his average daily wage. Such
14 examination shall be made in the presence of a duly qualified
15 medical practitioner or surgeon provided and paid for by the
16 employee, if such employee so desires.

17 In all cases where the examination is made by a surgeon
18 engaged by the employer, and the injured employee has no
19 surgeon present at such examination, it shall be the duty of
20 the surgeon making the examination at the instance of the
21 employer to deliver to the injured employee, or his
22 representative, a statement in writing of the condition and
23 extent of the injury to the same extent that said surgeon
24 reports to the employer and the same shall be an exact copy of
25 that furnished to the employer, said copy to be furnished the
26 employee, or his representative as soon as practicable but not

1 later than 48 hours before the time the case is set for
2 hearing. Such delivery shall be made in person either to the
3 employee or his representative, or by registered mail to
4 either, and the receipt of either shall be proof of such
5 delivery. If such surgeon refuses to furnish the employee with
6 such statement to the same extent as that furnished the
7 employer said surgeon shall not be permitted to testify at the
8 hearing next following said examination.

9 If the employee refuses so to submit himself to
10 examination or unnecessarily obstructs the same, his right to
11 compensation payments shall be temporarily suspended until
12 such examination shall have taken place, and no compensation
13 shall be payable under this Act for such period.

14 It shall be the duty of surgeons treating an injured
15 employee who is likely to die, and treating him at the instance
16 of the employer, to have called in another surgeon to be
17 designated and paid for by either the injured employee or by
18 the person or persons who would become his beneficiary or
19 beneficiaries, to make an examination before the death of such
20 injured employee.

21 In all cases where the examination is made by a surgeon
22 engaged by the injured employee, and the employer has no
23 surgeon present at such examination, it shall be the duty of
24 the surgeon making the examination at the instance of the
25 employee, to deliver to the employer, or his representative, a
26 statement in writing of the condition and extent of the injury

1 to the same extent that said surgeon reports to the employee
2 and the same shall be an exact copy of that furnished to the
3 employee, said copy to be furnished the employer, or his
4 representative, as soon as practicable but not later than 48
5 hours before the time the case is set for hearing. Such
6 delivery shall be made in person either to the employer, or his
7 representative, or by registered mail to either, and the
8 receipt of either shall be proof of such delivery. If such
9 surgeon refuses to furnish the employer with such statement to
10 the same extent as that furnished the employee, said surgeon
11 shall not be permitted to testify at the hearing next
12 following said examination.

13 (Source: P.A. 94-277, eff. 7-20-05.)

14 (820 ILCS 305/19) (from Ch. 48, par. 138.19)

15 Sec. 19. Any disputed questions of law or fact shall be
16 determined as herein provided.

17 (a) It shall be the duty of the Commission upon
18 notification that the parties have failed to reach an
19 agreement, to designate an Arbitrator.

20 1. Whenever any claimant misconceives his remedy and
21 files an application for adjustment of claim under this
22 Act and it is subsequently discovered, at any time before
23 final disposition of such cause, that the claim for
24 disability or death which was the basis for such
25 application should properly have been made under the

1 Workers' Occupational Diseases Act, then the provisions of
2 Section 19, paragraph (a-1) of the Workers' Occupational
3 Diseases Act having reference to such application shall
4 apply.

5 2. Whenever any claimant misconceives his remedy and
6 files an application for adjustment of claim under the
7 Workers' Occupational Diseases Act and it is subsequently
8 discovered, at any time before final disposition of such
9 cause that the claim for injury or death which was the
10 basis for such application should properly have been made
11 under this Act, then the application so filed under the
12 Workers' Occupational Diseases Act may be amended in form,
13 substance or both to assert claim for such disability or
14 death under this Act and it shall be deemed to have been so
15 filed as amended on the date of the original filing
16 thereof, and such compensation may be awarded as is
17 warranted by the whole evidence pursuant to this Act. When
18 such amendment is submitted, further or additional
19 evidence may be heard by the Arbitrator or Commission when
20 deemed necessary. Nothing in this Section contained shall
21 be construed to be or permit a waiver of any provisions of
22 this Act with reference to notice but notice if given
23 shall be deemed to be a notice under the provisions of this
24 Act if given within the time required herein.

25 (b) The Arbitrator shall make such inquiries and
26 investigations as he or they shall deem necessary and may

1 examine and inspect all books, papers, records, places, or
2 premises relating to the questions in dispute and hear such
3 proper evidence as the parties may submit.

4 The hearings before the Arbitrator shall be held in the
5 vicinity where the injury occurred after 10 days' notice of
6 the time and place of such hearing shall have been given to
7 each of the parties or their attorneys of record.

8 The Arbitrator may find that the disabling condition is
9 temporary and has not yet reached a permanent condition and
10 may order the payment of compensation up to the date of the
11 hearing, which award shall be reviewable and enforceable in
12 the same manner as other awards, and in no instance be a bar to
13 a further hearing and determination of a further amount of
14 temporary total compensation or of compensation for permanent
15 disability, but shall be conclusive as to all other questions
16 except the nature and extent of said disability.

17 The decision of the Arbitrator shall be filed with the
18 Commission which Commission shall immediately send to each
19 party or his attorney a copy of such decision, together with a
20 notification of the time when it was filed. As of the effective
21 date of this amendatory Act of the 94th General Assembly, all
22 decisions of the Arbitrator shall set forth in writing
23 findings of fact and conclusions of law, separately stated, if
24 requested by either party. Unless a petition for review is
25 filed by either party within 30 days after the receipt by such
26 party of the copy of the decision and notification of time when

1 filed, and unless such party petitioning for a review shall
2 within 35 days after the receipt by him of the copy of the
3 decision, file with the Commission either an agreed statement
4 of the facts appearing upon the hearing before the Arbitrator,
5 or if such party shall so elect a correct transcript of
6 evidence of the proceedings at such hearings, then the
7 decision shall become the decision of the Commission and in
8 the absence of fraud shall be conclusive. The Petition for
9 Review shall contain a statement of the petitioning party's
10 specific exceptions to the decision of the arbitrator. The
11 jurisdiction of the Commission to review the decision of the
12 arbitrator shall not be limited to the exceptions stated in
13 the Petition for Review. The Commission, or any member
14 thereof, may grant further time not exceeding 30 days, in
15 which to file such agreed statement or transcript of evidence.
16 Such agreed statement of facts or correct transcript of
17 evidence, as the case may be, shall be authenticated by the
18 signatures of the parties or their attorneys, and in the event
19 they do not agree as to the correctness of the transcript of
20 evidence it shall be authenticated by the signature of the
21 Arbitrator designated by the Commission.

22 Whether the employee is working or not, if the employee is
23 not receiving or has not received medical, surgical, or
24 hospital services or other services or compensation as
25 provided in paragraph (a) of Section 8, or compensation as
26 provided in paragraph (b) of Section 8, the employee may at any

1 time petition for an expedited hearing by an Arbitrator on the
2 issue of whether or not he or she is entitled to receive
3 payment of the services or compensation. Provided the employer
4 continues to pay compensation pursuant to paragraph (b) of
5 Section 8, the employer may at any time petition for an
6 expedited hearing on the issue of whether or not the employee
7 is entitled to receive medical, surgical, or hospital services
8 or other services or compensation as provided in paragraph (a)
9 of Section 8, or compensation as provided in paragraph (b) of
10 Section 8. When an employer has petitioned for an expedited
11 hearing, the employer shall continue to pay compensation as
12 provided in paragraph (b) of Section 8 unless the arbitrator
13 renders a decision that the employee is not entitled to the
14 benefits that are the subject of the expedited hearing or
15 unless the employee's treating physician has released the
16 employee to return to work at his or her regular job with the
17 employer or the employee actually returns to work at any other
18 job. If the arbitrator renders a decision that the employee is
19 not entitled to the benefits that are the subject of the
20 expedited hearing, a petition for review filed by the employee
21 shall receive the same priority as if the employee had filed a
22 petition for an expedited hearing by an Arbitrator. Neither
23 party shall be entitled to an expedited hearing when the
24 employee has returned to work and the sole issue in dispute
25 amounts to less than 12 weeks of unpaid compensation pursuant
26 to paragraph (b) of Section 8.

1 Expedited hearings shall have priority over all other
2 petitions and shall be heard by the Arbitrator and Commission
3 with all convenient speed. Any party requesting an expedited
4 hearing shall give notice of a request for an expedited
5 hearing under this paragraph. A copy of the Application for
6 Adjustment of Claim shall be attached to the notice. The
7 Commission shall adopt rules and procedures under which the
8 final decision of the Commission under this paragraph is filed
9 not later than 180 days from the date that the Petition for
10 Review is filed with the Commission.

11 Where 2 or more insurance carriers, private self-insureds,
12 or a group workers' compensation pool under Article V 3/4 of
13 the Illinois Insurance Code dispute coverage for the same
14 injury, any such insurance carrier, private self-insured, or
15 group workers' compensation pool may request an expedited
16 hearing pursuant to this paragraph to determine the issue of
17 coverage, provided coverage is the only issue in dispute and
18 all other issues are stipulated and agreed to and further
19 provided that all compensation benefits including medical
20 benefits pursuant to Section 8(a) continue to be paid to or on
21 behalf of petitioner. Any insurance carrier, private
22 self-insured, or group workers' compensation pool that is
23 determined to be liable for coverage for the injury in issue
24 shall reimburse any insurance carrier, private self-insured,
25 or group workers' compensation pool that has paid benefits to
26 or on behalf of petitioner for the injury.

1 (b-1) If the employee is not receiving medical, surgical
2 or hospital services as provided in paragraph (a) of Section 8
3 or compensation as provided in paragraph (b) of Section 8, the
4 employee, in accordance with Commission Rules, may file a
5 petition for an emergency hearing by an Arbitrator on the
6 issue of whether or not he is entitled to receive payment of
7 such compensation or services as provided therein. Such
8 petition shall have priority over all other petitions and
9 shall be heard by the Arbitrator and Commission with all
10 convenient speed.

11 Such petition shall contain the following information and
12 shall be served on the employer at least 15 days before it is
13 filed:

14 (i) the date and approximate time of accident;

15 (ii) the approximate location of the accident;

16 (iii) a description of the accident;

17 (iv) the nature of the injury incurred by the
18 employee;

19 (v) the identity of the person, if known, to whom the
20 accident was reported and the date on which it was
21 reported;

22 (vi) the name and title of the person, if known,
23 representing the employer with whom the employee conferred
24 in any effort to obtain compensation pursuant to paragraph
25 (b) of Section 8 of this Act or medical, surgical or
26 hospital services pursuant to paragraph (a) of Section 8

1 of this Act and the date of such conference;

2 (vii) a statement that the employer has refused to pay
3 compensation pursuant to paragraph (b) of Section 8 of
4 this Act or for medical, surgical or hospital services
5 pursuant to paragraph (a) of Section 8 of this Act;

6 (viii) the name and address, if known, of each witness
7 to the accident and of each other person upon whom the
8 employee will rely to support his allegations;

9 (ix) the dates of treatment related to the accident by
10 medical practitioners, and the names and addresses of such
11 practitioners, including the dates of treatment related to
12 the accident at any hospitals and the names and addresses
13 of such hospitals, and a signed authorization permitting
14 the employer to examine all medical records of all
15 practitioners and hospitals named pursuant to this
16 paragraph;

17 (x) a copy of a signed report by a medical
18 practitioner, relating to the employee's current inability
19 to return to work because of the injuries incurred as a
20 result of the accident or such other documents or
21 affidavits which show that the employee is entitled to
22 receive compensation pursuant to paragraph (b) of Section
23 8 of this Act or medical, surgical or hospital services
24 pursuant to paragraph (a) of Section 8 of this Act. Such
25 reports, documents or affidavits shall state, if possible,
26 the history of the accident given by the employee, and

1 describe the injury and medical diagnosis, the medical
2 services for such injury which the employee has received
3 and is receiving, the physical activities which the
4 employee cannot currently perform as a result of any
5 impairment or disability due to such injury, and the
6 prognosis for recovery;

7 (xi) complete copies of any reports, records,
8 documents and affidavits in the possession of the employee
9 on which the employee will rely to support his
10 allegations, provided that the employer shall pay the
11 reasonable cost of reproduction thereof;

12 (xii) a list of any reports, records, documents and
13 affidavits which the employee has demanded by subpoena and
14 on which he intends to rely to support his allegations;

15 (xiii) a certification signed by the employee or his
16 representative that the employer has received the petition
17 with the required information 15 days before filing.

18 Fifteen days after receipt by the employer of the petition
19 with the required information the employee may file said
20 petition and required information and shall serve notice of
21 the filing upon the employer. The employer may file a motion
22 addressed to the sufficiency of the petition. If an objection
23 has been filed to the sufficiency of the petition, the
24 arbitrator shall rule on the objection within 2 working days.
25 If such an objection is filed, the time for filing the final
26 decision of the Commission as provided in this paragraph shall

1 be tolled until the arbitrator has determined that the
2 petition is sufficient.

3 The employer shall, within 15 days after receipt of the
4 notice that such petition is filed, file with the Commission
5 and serve on the employee or his representative a written
6 response to each claim set forth in the petition, including
7 the legal and factual basis for each disputed allegation and
8 the following information: (i) complete copies of any reports,
9 records, documents and affidavits in the possession of the
10 employer on which the employer intends to rely in support of
11 his response, (ii) a list of any reports, records, documents
12 and affidavits which the employer has demanded by subpoena and
13 on which the employer intends to rely in support of his
14 response, (iii) the name and address of each witness on whom
15 the employer will rely to support his response, and (iv) the
16 names and addresses of any medical practitioners selected by
17 the employer pursuant to Section 12 of this Act and the time
18 and place of any examination scheduled to be made pursuant to
19 such Section.

20 Any employer who does not timely file and serve a written
21 response without good cause may not introduce any evidence to
22 dispute any claim of the employee but may cross examine the
23 employee or any witness brought by the employee and otherwise
24 be heard.

25 No document or other evidence not previously identified by
26 either party with the petition or written response, or by any

1 other means before the hearing, may be introduced into
2 evidence without good cause. If, at the hearing, material
3 information is discovered which was not previously disclosed,
4 the Arbitrator may extend the time for closing proof on the
5 motion of a party for a reasonable period of time which may be
6 more than 30 days. No evidence may be introduced pursuant to
7 this paragraph as to permanent disability. No award may be
8 entered for permanent disability pursuant to this paragraph.
9 Either party may introduce into evidence the testimony taken
10 by deposition of any medical practitioner.

11 The Commission shall adopt rules, regulations and
12 procedures whereby the final decision of the Commission is
13 filed not later than 90 days from the date the petition for
14 review is filed but in no event later than 180 days from the
15 date the petition for an emergency hearing is filed with the
16 Illinois Workers' Compensation Commission.

17 All service required pursuant to this paragraph (b-1) must
18 be by personal service or by certified mail and with evidence
19 of receipt. In addition for the purposes of this paragraph,
20 all service on the employer must be at the premises where the
21 accident occurred if the premises are owned or operated by the
22 employer. Otherwise service must be at the employee's
23 principal place of employment by the employer. If service on
24 the employer is not possible at either of the above, then
25 service shall be at the employer's principal place of
26 business. After initial service in each case, service shall be

1 made on the employer's attorney or designated representative.

2 (c)(1) At a reasonable time in advance of and in
3 connection with the hearing under Section 19(e) or 19(h), the
4 Commission may on its own motion order an impartial physical
5 or mental examination of a petitioner whose mental or physical
6 condition is in issue, when in the Commission's discretion it
7 appears that such an examination will materially aid in the
8 just determination of the case. The examination shall be made
9 by a member or members of a panel of physicians chosen for
10 their special qualifications by the Illinois State Medical
11 Society. The Commission shall establish procedures by which a
12 physician shall be selected from such list.

13 (2) Should the Commission at any time during the hearing
14 find that compelling considerations make it advisable to have
15 an examination and report at that time, the commission may in
16 its discretion so order.

17 (3) A copy of the report of examination shall be given to
18 the Commission and to the attorneys for the parties.

19 (3.5) The examination may be recorded with the consent of
20 the employee and the examining physicians, and any such
21 recording shall be given to the Commission and to the
22 attorneys for the parties.

23 (4) Either party or the Commission may call the examining
24 physician or physicians to testify. Any physician so called
25 shall be subject to cross-examination.

26 (5) The examination shall be made, and the physician or

1 physicians, if called, shall testify, without cost to the
2 parties. The Commission shall determine the compensation and
3 the pay of the physician or physicians. The compensation for
4 this service shall not exceed the usual and customary amount
5 for such service.

6 (6) The fees and payment thereof of all attorneys and
7 physicians for services authorized by the Commission under
8 this Act shall, upon request of either the employer or the
9 employee or the beneficiary affected, be subject to the review
10 and decision of the Commission.

11 (d) If any employee shall persist in insanitary or
12 injurious practices which tend to either imperil or retard his
13 recovery or shall refuse to submit to such medical, surgical,
14 or hospital treatment as is reasonably essential to promote
15 his recovery, the Commission may, in its discretion, reduce or
16 suspend the compensation of any such injured employee.
17 However, when an employer and employee so agree in writing,
18 the foregoing provision shall not be construed to authorize
19 the reduction or suspension of compensation of an employee who
20 is relying in good faith, on treatment by prayer or spiritual
21 means alone, in accordance with the tenets and practice of a
22 recognized church or religious denomination, by a duly
23 accredited practitioner thereof.

24 (e) This paragraph shall apply to all hearings before the
25 Commission. Such hearings may be held in its office or
26 elsewhere as the Commission may deem advisable. The taking of

1 testimony on such hearings may be had before any member of the
2 Commission. If a petition for review and agreed statement of
3 facts or transcript of evidence is filed, as provided herein,
4 the Commission shall promptly review the decision of the
5 Arbitrator and all questions of law or fact which appear from
6 the statement of facts or transcript of evidence.

7 In all cases in which the hearing before the arbitrator is
8 held after December 18, 1989, no additional evidence shall be
9 introduced by the parties before the Commission on review of
10 the decision of the Arbitrator. In reviewing decisions of an
11 arbitrator the Commission shall award such temporary
12 compensation, permanent compensation and other payments as are
13 due under this Act. The Commission shall file in its office its
14 decision thereon, and shall immediately send to each party or
15 his attorney a copy of such decision and a notification of the
16 time when it was filed. Decisions shall be filed within 60 days
17 after the Statement of Exceptions and Supporting Brief and
18 Response thereto are required to be filed or oral argument
19 whichever is later.

20 In the event either party requests oral argument, such
21 argument shall be had before a panel of 3 members of the
22 Commission (or before all available members pursuant to the
23 determination of 7 members of the Commission that such
24 argument be held before all available members of the
25 Commission) pursuant to the rules and regulations of the
26 Commission. A panel of 3 members, which shall be comprised of

1 not more than one representative citizen of the employing
2 class and not more than one representative from a labor
3 organization recognized under the National Labor Relations Act
4 or an attorney who has represented labor organizations or has
5 represented employees in workers' compensation cases, shall
6 hear the argument; provided that if all the issues in dispute
7 are solely the nature and extent of the permanent partial
8 disability, if any, a majority of the panel may deny the
9 request for such argument and such argument shall not be held;
10 and provided further that 7 members of the Commission may
11 determine that the argument be held before all available
12 members of the Commission. A decision of the Commission shall
13 be approved by a majority of Commissioners present at such
14 hearing if any; provided, if no such hearing is held, a
15 decision of the Commission shall be approved by a majority of a
16 panel of 3 members of the Commission as described in this
17 Section. The Commission shall give 10 days' notice to the
18 parties or their attorneys of the time and place of such taking
19 of testimony and of such argument.

20 In any case the Commission in its decision may find
21 specially upon any question or questions of law or fact which
22 shall be submitted in writing by either party whether ultimate
23 or otherwise; provided that on issues other than nature and
24 extent of the disability, if any, the Commission in its
25 decision shall find specially upon any question or questions
26 of law or fact, whether ultimate or otherwise, which are

1 submitted in writing by either party; provided further that
2 not more than 5 such questions may be submitted by either
3 party. Any party may, within 20 days after receipt of notice of
4 the Commission's decision, or within such further time, not
5 exceeding 30 days, as the Commission may grant, file with the
6 Commission either an agreed statement of the facts appearing
7 upon the hearing, or, if such party shall so elect, a correct
8 transcript of evidence of the additional proceedings presented
9 before the Commission, in which report the party may embody a
10 correct statement of such other proceedings in the case as
11 such party may desire to have reviewed, such statement of
12 facts or transcript of evidence to be authenticated by the
13 signature of the parties or their attorneys, and in the event
14 that they do not agree, then the authentication of such
15 transcript of evidence shall be by the signature of any member
16 of the Commission.

17 If a reporter does not for any reason furnish a transcript
18 of the proceedings before the Arbitrator in any case for use on
19 a hearing for review before the Commission, within the
20 limitations of time as fixed in this Section, the Commission
21 may, in its discretion, order a trial de novo before the
22 Commission in such case upon application of either party. The
23 applications for adjustment of claim and other documents in
24 the nature of pleadings filed by either party, together with
25 the decisions of the Arbitrator and of the Commission and the
26 statement of facts or transcript of evidence hereinbefore

1 provided for in paragraphs (b) and (c) shall be the record of
2 the proceedings of the Commission, and shall be subject to
3 review as hereinafter provided.

4 At the request of either party or on its own motion, the
5 Commission shall set forth in writing the reasons for the
6 decision, including findings of fact and conclusions of law
7 separately stated. The Commission shall by rule adopt a format
8 for written decisions for the Commission and arbitrators. The
9 written decisions shall be concise and shall succinctly state
10 the facts and reasons for the decision. The Commission may
11 adopt in whole or in part, the decision of the arbitrator as
12 the decision of the Commission. When the Commission does so
13 adopt the decision of the arbitrator, it shall do so by order.
14 Whenever the Commission adopts part of the arbitrator's
15 decision, but not all, it shall include in the order the
16 reasons for not adopting all of the arbitrator's decision.
17 When a majority of a panel, after deliberation, has arrived at
18 its decision, the decision shall be filed as provided in this
19 Section without unnecessary delay, and without regard to the
20 fact that a member of the panel has expressed an intention to
21 dissent. Any member of the panel may file a dissent. Any
22 dissent shall be filed no later than 10 days after the decision
23 of the majority has been filed.

24 Decisions rendered by the Commission and dissents, if any,
25 shall be published together by the Commission. The conclusions
26 of law set out in such decisions shall be regarded as

1 precedents by arbitrators for the purpose of achieving a more
2 uniform administration of this Act.

3 (f) The decision of the Commission acting within its
4 powers, according to the provisions of paragraph (e) of this
5 Section shall, in the absence of fraud, be conclusive unless
6 reviewed as in this paragraph hereinafter provided. However,
7 the Arbitrator or the Commission may on his or its own motion,
8 or on the motion of either party, correct any clerical error or
9 errors in computation within 15 days after the date of receipt
10 of any award by such Arbitrator or any decision on review of
11 the Commission and shall have the power to recall the original
12 award on arbitration or decision on review, and issue in lieu
13 thereof such corrected award or decision. Where such
14 correction is made the time for review herein specified shall
15 begin to run from the date of the receipt of the corrected
16 award or decision.

17 (1) Except in cases of claims against the State of
18 Illinois other than those claims under Section 18.1, in
19 which case the decision of the Commission shall not be
20 subject to judicial review, the Circuit Court of the
21 county where any of the parties defendant may be found, or
22 if none of the parties defendant can be found in this State
23 then the Circuit Court of the county where the accident
24 occurred, shall by summons to the Commission have power to
25 review all questions of law and fact presented by such
26 record.

1 A proceeding for review shall be commenced within 20
2 days of the receipt of notice of the decision of the
3 Commission. The summons shall be issued by the clerk of
4 such court upon written request returnable on a designated
5 return day, not less than 10 or more than 60 days from the
6 date of issuance thereof, and the written request shall
7 contain the last known address of other parties in
8 interest and their attorneys of record who are to be
9 served by summons. Service upon any member of the
10 Commission or the Secretary or the Assistant Secretary
11 thereof shall be service upon the Commission, and service
12 upon other parties in interest and their attorneys of
13 record shall be by summons, and such service shall be made
14 upon the Commission and other parties in interest by
15 mailing notices of the commencement of the proceedings and
16 the return day of the summons to the office of the
17 Commission and to the last known place of residence of
18 other parties in interest or their attorney or attorneys
19 of record. The clerk of the court issuing the summons
20 shall on the day of issue mail notice of the commencement
21 of the proceedings which shall be done by mailing a copy of
22 the summons to the office of the Commission, and a copy of
23 the summons to the other parties in interest or their
24 attorney or attorneys of record and the clerk of the court
25 shall make certificate that he has so sent said notices in
26 pursuance of this Section, which shall be evidence of

1 service on the Commission and other parties in interest.

2 The Commission shall not be required to certify the
3 record of their proceedings to the Circuit Court, unless
4 the party commencing the proceedings for review in the
5 Circuit Court as above provided, shall file with the
6 Commission notice of intent to file for review in Circuit
7 Court. It shall be the duty of the Commission upon such
8 filing of notice of intent to file for review in the
9 Circuit Court to prepare a true and correct copy of such
10 testimony and a true and correct copy of all other matters
11 contained in such record and certified to by the Secretary
12 or Assistant Secretary thereof. The changes made to this
13 subdivision (f)(1) by this amendatory Act of the 98th
14 General Assembly apply to any Commission decision entered
15 after the effective date of this amendatory Act of the
16 98th General Assembly.

17 No request for a summons may be filed and no summons
18 shall issue unless the party seeking to review the
19 decision of the Commission shall exhibit to the clerk of
20 the Circuit Court proof of filing with the Commission of
21 the notice of the intent to file for review in the Circuit
22 Court or an affidavit of the attorney setting forth that
23 notice of intent to file for review in the Circuit Court
24 has been given in writing to the Secretary or Assistant
25 Secretary of the Commission.

26 (2) No such summons shall issue unless the one against

1 whom the Commission shall have rendered an award for the
2 payment of money shall upon the filing of his written
3 request for such summons file with the clerk of the court a
4 bond conditioned that if he shall not successfully
5 prosecute the review, he will pay the award and the costs
6 of the proceedings in the courts. The amount of the bond
7 shall be fixed by any member of the Commission and the
8 surety or sureties of the bond shall be approved by the
9 clerk of the court. The acceptance of the bond by the clerk
10 of the court shall constitute evidence of his approval of
11 the bond.

12 Every county, city, town, township, incorporated
13 village, school district, body politic or municipal
14 corporation against whom the Commission shall have
15 rendered an award for the payment of money shall not be
16 required to file a bond to secure the payment of the award
17 and the costs of the proceedings in the court to authorize
18 the court to issue such summons.

19 The court may confirm or set aside the decision of the
20 Commission. If the decision is set aside and the facts
21 found in the proceedings before the Commission are
22 sufficient, the court may enter such decision as is
23 justified by law, or may remand the cause to the
24 Commission for further proceedings and may state the
25 questions requiring further hearing, and give such other
26 instructions as may be proper. Appeals shall be taken to

1 the Appellate Court in accordance with Supreme Court Rules
2 22(g) and 303. Appeals shall be taken from the Appellate
3 Court to the Supreme Court in accordance with Supreme
4 Court Rule 315.

5 It shall be the duty of the clerk of any court
6 rendering a decision affecting or affirming an award of
7 the Commission to promptly furnish the Commission with a
8 copy of such decision, without charge.

9 The decision of a majority of the members of the panel
10 of the Commission, shall be considered the decision of the
11 Commission.

12 (g) Except in the case of a claim against the State of
13 Illinois, either party may present a certified copy of the
14 award of the Arbitrator, or a certified copy of the decision of
15 the Commission when the same has become final, when no
16 proceedings for review are pending, providing for the payment
17 of compensation according to this Act, to the Circuit Court of
18 the county in which such accident occurred or either of the
19 parties are residents, whereupon the court shall enter a
20 judgment in accordance therewith. In a case where the employer
21 refuses to pay compensation according to such final award or
22 such final decision upon which such judgment is entered the
23 court shall in entering judgment thereon, tax as costs against
24 him the reasonable costs and attorney fees in the arbitration
25 proceedings and in the court entering the judgment for the
26 person in whose favor the judgment is entered, which judgment

1 and costs taxed as therein provided shall, until and unless
2 set aside, have the same effect as though duly entered in an
3 action duly tried and determined by the court, and shall with
4 like effect, be entered and docketed. The Circuit Court shall
5 have power at any time upon application to make any such
6 judgment conform to any modification required by any
7 subsequent decision of the Supreme Court upon appeal, or as
8 the result of any subsequent proceedings for review, as
9 provided in this Act.

10 Judgment shall not be entered until 15 days' notice of the
11 time and place of the application for the entry of judgment
12 shall be served upon the employer by filing such notice with
13 the Commission, which Commission shall, in case it has on file
14 the address of the employer or the name and address of its
15 agent upon whom notices may be served, immediately send a copy
16 of the notice to the employer or such designated agent.

17 (h) An agreement or award under this Act providing for
18 compensation in installments, may at any time within 18 months
19 after such agreement or award be reviewed by the Commission at
20 the request of either the employer or the employee, on the
21 ground that the disability of the employee has subsequently
22 recurred, increased, diminished or ended.

23 However, as to accidents occurring subsequent to July 1,
24 1955, which are covered by any agreement or award under this
25 Act providing for compensation in installments made as a
26 result of such accident, such agreement or award may at any

1 time within 30 months, or 60 months in the case of an award
2 under Section 8(d)1, after such agreement or award be reviewed
3 by the Commission at the request of either the employer or the
4 employee on the ground that the disability of the employee has
5 subsequently recurred, increased, diminished or ended.

6 On such review, compensation payments may be
7 re-established, increased, diminished or ended. The Commission
8 shall give 15 days' notice to the parties of the hearing for
9 review. Any employee, upon any petition for such review being
10 filed by the employer, shall be entitled to one day's notice
11 for each 100 miles necessary to be traveled by him in attending
12 the hearing of the Commission upon the petition, and 3 days in
13 addition thereto. Such employee shall, at the discretion of
14 the Commission, also be entitled to 5 cents per mile
15 necessarily traveled by him within the State of Illinois in
16 attending such hearing, not to exceed a distance of 300 miles,
17 to be taxed by the Commission as costs and deposited with the
18 petition of the employer.

19 When compensation which is payable in accordance with an
20 award or settlement contract approved by the Commission, is
21 ordered paid in a lump sum by the Commission, no review shall
22 be had as in this paragraph mentioned.

23 (i) Each party, upon taking any proceedings or steps
24 whatsoever before any Arbitrator, Commission or court, shall
25 file with the Commission his address, or the name and address
26 of any agent upon whom all notices to be given to such party

1 shall be served, either personally or by registered mail,
2 addressed to such party or agent at the last address so filed
3 with the Commission. In the event such party has not filed his
4 address, or the name and address of an agent as above provided,
5 service of any notice may be had by filing such notice with the
6 Commission.

7 (j) Whenever in any proceeding testimony has been taken or
8 a final decision has been rendered and after the taking of such
9 testimony or after such decision has become final, the injured
10 employee dies, then in any subsequent proceedings brought by
11 the personal representative or beneficiaries of the deceased
12 employee, such testimony in the former proceeding may be
13 introduced with the same force and effect as though the
14 witness having so testified were present in person in such
15 subsequent proceedings and such final decision, if any, shall
16 be taken as final adjudication of any of the issues which are
17 the same in both proceedings.

18 (k) In case where there has been any unreasonable or
19 vexatious delay of payment or intentional underpayment of
20 compensation, or proceedings have been instituted or carried
21 on by the one liable to pay the compensation, which do not
22 present a real controversy, but are merely frivolous or for
23 delay, then the Commission may award compensation additional
24 to that otherwise payable under this Act equal to 50% of the
25 amount payable at the time of such award. Failure to pay
26 compensation in accordance with the provisions of Section 8,

1 paragraph (b) of this Act, shall be considered unreasonable
2 delay.

3 When determining whether this subsection (k) shall apply,
4 the Commission shall consider whether an Arbitrator has
5 determined that the claim is not compensable or whether the
6 employer has made payments under Section 8(j).

7 (l) If the employee has made written demand for payment of
8 benefits under Section 8(a) or Section 8(b), the employer
9 shall have 14 days after receipt of the demand to set forth in
10 writing the reason for the delay. In the case of demand for
11 payment of medical benefits under Section 8(a), the time for
12 the employer to respond shall not commence until the
13 expiration of the allotted 30 days specified under Section
14 8.2(d). In case the employer or his or her insurance carrier
15 shall without good and just cause fail, neglect, refuse, or
16 unreasonably delay the payment of benefits under Section 8(a)
17 or Section 8(b), the Arbitrator or the Commission shall allow
18 to the employee additional compensation in the sum of \$30 per
19 day for each day that the benefits under Section 8(a) or
20 Section 8(b) have been so withheld or refused, not to exceed
21 \$10,000. A delay in payment of 14 days or more shall create a
22 rebuttable presumption of unreasonable delay.

23 (m) If the commission finds that an accidental injury was
24 directly and proximately caused by the employer's wilful
25 violation of a health and safety standard under the Health and
26 Safety Act or the Occupational Safety and Health Act in force

1 at the time of the accident, the arbitrator or the Commission
2 shall allow to the injured employee or his dependents, as the
3 case may be, additional compensation equal to 25% of the
4 amount which otherwise would be payable under the provisions
5 of this Act exclusive of this paragraph. The additional
6 compensation herein provided shall be allowed by an
7 appropriate increase in the applicable weekly compensation
8 rate.

9 (n) After June 30, 1984, decisions of the Illinois
10 Workers' Compensation Commission reviewing an award of an
11 arbitrator of the Commission shall draw interest at a rate
12 equal to the yield on indebtedness issued by the United States
13 Government with a 26-week maturity next previously auctioned
14 on the day on which the decision is filed. Said rate of
15 interest shall be set forth in the Arbitrator's Decision.
16 Interest shall be drawn from the date of the arbitrator's
17 award on all accrued compensation due the employee through the
18 day prior to the date of payments. However, when an employee
19 appeals an award of an Arbitrator or the Commission, and the
20 appeal results in no change or a decrease in the award,
21 interest shall not further accrue from the date of such
22 appeal.

23 The employer or his insurance carrier may tender the
24 payments due under the award to stop the further accrual of
25 interest on such award notwithstanding the prosecution by
26 either party of review, certiorari, appeal to the Supreme

1 Court or other steps to reverse, vacate or modify the award.

2 (o) By the 15th day of each month each insurer providing
3 coverage for losses under this Act shall notify each insured
4 employer of any compensable claim incurred during the
5 preceding month and the amounts paid or reserved on the claim
6 including a summary of the claim and a brief statement of the
7 reasons for compensability. A cumulative report of all claims
8 incurred during a calendar year or continued from the previous
9 year shall be furnished to the insured employer by the insurer
10 within 30 days after the end of that calendar year.

11 The insured employer may challenge, in proceeding before
12 the Commission, payments made by the insurer without
13 arbitration and payments made after a case is determined to be
14 noncompensable. If the Commission finds that the case was not
15 compensable, the insurer shall purge its records as to that
16 employer of any loss or expense associated with the claim,
17 reimburse the employer for attorneys' fees arising from the
18 challenge and for any payment required of the employer to the
19 Rate Adjustment Fund or the Second Injury Fund, and may not
20 reflect the loss or expense for rate making purposes. The
21 employee shall not be required to refund the challenged
22 payment. The decision of the Commission may be reviewed in the
23 same manner as in arbitrated cases. No challenge may be
24 initiated under this paragraph more than 3 years after the
25 payment is made. An employer may waive the right of challenge
26 under this paragraph on a case by case basis.

1 (p) After filing an application for adjustment of claim
2 but prior to the hearing on arbitration the parties may
3 voluntarily agree to submit such application for adjustment of
4 claim for decision by an arbitrator under this subsection (p)
5 where such application for adjustment of claim raises only a
6 dispute over temporary total disability, permanent partial
7 disability or medical expenses. Such agreement shall be in
8 writing in such form as provided by the Commission.
9 Applications for adjustment of claim submitted for decision by
10 an arbitrator under this subsection (p) shall proceed
11 according to rule as established by the Commission. The
12 Commission shall promulgate rules including, but not limited
13 to, rules to ensure that the parties are adequately informed
14 of their rights under this subsection (p) and of the voluntary
15 nature of proceedings under this subsection (p). The findings
16 of fact made by an arbitrator acting within his or her powers
17 under this subsection (p) in the absence of fraud shall be
18 conclusive. However, the arbitrator may on his own motion, or
19 the motion of either party, correct any clerical errors or
20 errors in computation within 15 days after the date of receipt
21 of such award of the arbitrator and shall have the power to
22 recall the original award on arbitration, and issue in lieu
23 thereof such corrected award. The decision of the arbitrator
24 under this subsection (p) shall be considered the decision of
25 the Commission and proceedings for review of questions of law
26 arising from the decision may be commenced by either party

1 pursuant to subsection (f) of Section 19. The Advisory Board
2 established under Section 13.1 shall compile a list of
3 certified Commission arbitrators, each of whom shall be
4 approved by at least 7 members of the Advisory Board. The
5 chairman shall select 5 persons from such list to serve as
6 arbitrators under this subsection (p). By agreement, the
7 parties shall select one arbitrator from among the 5 persons
8 selected by the chairman except that if the parties do not
9 agree on an arbitrator from among the 5 persons, the parties
10 may, by agreement, select an arbitrator of the American
11 Arbitration Association, whose fee shall be paid by the State
12 in accordance with rules promulgated by the Commission.
13 Arbitration under this subsection (p) shall be voluntary.
14 (Source: P.A. 101-384, eff. 1-1-20.)