

SB2448



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB2448

Introduced 1/30/2018, 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 exam with the consent of the employee and the physician. Provides for the use of the recording as evidence.

LRB100 18057 JLS 33247 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 pilot
14 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 job
9 site or to or from the job site.

10 For purposes of this Section, "labor organization" means an
11 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 bargaining
20 agreement that diminishes or increases a construction
21 employer's entitlements under this Act or an employee's
22 entitlement to benefits as otherwise set forth in this Act. For
23 the purposes of this Section, the procedural rights and dispute
24 resolution agreements under subparagraphs (1) through (6) of
25 subsection (b) of this Section are not agreements which
26 diminish or increase a construction employer's entitlements

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

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

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

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

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

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

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

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

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

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

1 an agreement as provided in this Section with its employees.

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

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

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

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

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

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

24 (2) The number of occurrences of work-related injuries
25 or diseases;

26 (3) The breakdown within the ADR program of injuries

1 and diseases treated;

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

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

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

8 (7) The disposition of all claims.

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

10 (820 ILCS 305/12) (from Ch. 48, par. 138.12)

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

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

14 In all cases where the examination is made by a surgeon
15 engaged by the employer, and the injured employee has no
16 surgeon present at such examination, it shall be the duty of
17 the surgeon making the examination at the instance of the
18 employer to deliver to the injured employee, or his
19 representative, a statement in writing of the condition and
20 extent of the injury to the same extent that said surgeon
21 reports to the employer and the same shall be an exact copy of
22 that furnished to the employer, said copy to be furnished the
23 employee, or his representative as soon as practicable but not
24 later than 48 hours before the time the case is set for
25 hearing. Such delivery shall be made in person either to the
26 employee or his representative, or by registered mail to

1 either, and the receipt of either shall be proof of such
2 delivery. If such surgeon refuses to furnish the employee with
3 such statement to the same extent as that furnished the
4 employer said surgeon shall not be permitted to testify at the
5 hearing next following said examination.

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

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

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

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

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

11 (820 ILCS 305/19) (from Ch. 48, par. 138.19)

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

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

17 1. Whenever any claimant misconceives his remedy and
18 files an application for adjustment of claim under this Act
19 and it is subsequently discovered, at any time before final
20 disposition of such cause, that the claim for disability or
21 death which was the basis for such application should
22 properly have been made under the Workers' Occupational
23 Diseases Act, then the provisions of Section 19, paragraph
24 (a-1) of the Workers' Occupational Diseases Act having
25 reference to such application shall apply.

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

21 (b) The Arbitrator shall make such inquiries and
22 investigations as he or they shall deem necessary and may
23 examine and inspect all books, papers, records, places, or
24 premises relating to the questions in dispute and hear such
25 proper evidence as the parties may submit.

26 The hearings before the Arbitrator shall be held in the

1 vicinity where the injury occurred after 10 days' notice of the
2 time and place of such hearing shall have been given to each of
3 the parties or their attorneys of record.

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

13 The decision of the Arbitrator shall be filed with the
14 Commission which Commission shall immediately send to each
15 party or his attorney a copy of such decision, together with a
16 notification of the time when it was filed. As of the effective
17 date of this amendatory Act of the 94th General Assembly, all
18 decisions of the Arbitrator shall set forth in writing findings
19 of fact and conclusions of law, separately stated, if requested
20 by either party. Unless a petition for review is filed by
21 either party within 30 days after the receipt by such party of
22 the copy of the decision and notification of time when filed,
23 and unless such party petitioning for a review shall within 35
24 days after the receipt by him of the copy of the decision, file
25 with the Commission either an agreed statement of the facts
26 appearing upon the hearing before the Arbitrator, or if such

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

18 Whether the employee is working or not, if the employee is
19 not receiving or has not received medical, surgical, or
20 hospital services or other services or compensation as provided
21 in paragraph (a) of Section 8, or compensation as provided in
22 paragraph (b) of Section 8, the employee may at any time
23 petition for an expedited hearing by an Arbitrator on the issue
24 of whether or not he or she is entitled to receive payment of
25 the services or compensation. Provided the employer continues
26 to pay compensation pursuant to paragraph (b) of Section 8, the

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

22 Expedited hearings shall have priority over all other
23 petitions and shall be heard by the Arbitrator and Commission
24 with all convenient speed. Any party requesting an expedited
25 hearing shall give notice of a request for an expedited hearing
26 under this paragraph. A copy of the Application for Adjustment

1 of Claim shall be attached to the notice. The Commission shall
2 adopt rules and procedures under which the final decision of
3 the Commission under this paragraph is filed not later than 180
4 days from the date that the Petition for Review is filed with
5 the Commission.

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

22 (b-1) If the employee is not receiving medical, surgical or
23 hospital services as provided in paragraph (a) of Section 8 or
24 compensation as provided in paragraph (b) of Section 8, the
25 employee, in accordance with Commission Rules, may file a
26 petition for an emergency hearing by an Arbitrator on the issue

1 of whether or not he is entitled to receive payment of such
2 compensation or services as provided therein. Such petition
3 shall have priority over all other petitions and shall be heard
4 by the Arbitrator and Commission with all convenient speed.

5 Such petition shall contain the following information and
6 shall be served on the employer at least 15 days before it is
7 filed:

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

9 (ii) the approximate location of the accident;

10 (iii) a description of the accident;

11 (iv) the nature of the injury incurred by the employee;

12 (v) the identity of the person, if known, to whom the
13 accident was reported and the date on which it was
14 reported;

15 (vi) the name and title of the person, if known,
16 representing the employer with whom the employee conferred
17 in any effort to obtain compensation pursuant to paragraph
18 (b) of Section 8 of this Act or medical, surgical or
19 hospital services pursuant to paragraph (a) of Section 8 of
20 this Act and the date of such conference;

21 (vii) a statement that the employer has refused to pay
22 compensation pursuant to paragraph (b) of Section 8 of this
23 Act or for medical, surgical or hospital services pursuant
24 to paragraph (a) of Section 8 of this Act;

25 (viii) the name and address, if known, of each witness
26 to the accident and of each other person upon whom the

1 employee will rely to support his allegations;

2 (ix) the dates of treatment related to the accident by
3 medical practitioners, and the names and addresses of such
4 practitioners, including the dates of treatment related to
5 the accident at any hospitals and the names and addresses
6 of such hospitals, and a signed authorization permitting
7 the employer to examine all medical records of all
8 practitioners and hospitals named pursuant to this
9 paragraph;

10 (x) a copy of a signed report by a medical
11 practitioner, relating to the employee's current inability
12 to return to work because of the injuries incurred as a
13 result of the accident or such other documents or
14 affidavits which show that the employee is entitled to
15 receive compensation pursuant to paragraph (b) of Section 8
16 of this Act or medical, surgical or hospital services
17 pursuant to paragraph (a) of Section 8 of this Act. Such
18 reports, documents or affidavits shall state, if possible,
19 the history of the accident given by the employee, and
20 describe the injury and medical diagnosis, the medical
21 services for such injury which the employee has received
22 and is receiving, the physical activities which the
23 employee cannot currently perform as a result of any
24 impairment or disability due to such injury, and the
25 prognosis for recovery;

26 (xi) complete copies of any reports, records,

1 documents and affidavits in the possession of the employee
2 on which the employee will rely to support his allegations,
3 provided that the employer shall pay the reasonable cost of
4 reproduction thereof;

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

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

11 Fifteen days after receipt by the employer of the petition
12 with the required information the employee may file said
13 petition and required information and shall serve notice of the
14 filing upon the employer. The employer may file a motion
15 addressed to the sufficiency of the petition. If an objection
16 has been filed to the sufficiency of the petition, the
17 arbitrator shall rule on the objection within 2 working days.
18 If such an objection is filed, the time for filing the final
19 decision of the Commission as provided in this paragraph shall
20 be tolled until the arbitrator has determined that the petition
21 is sufficient.

22 The employer shall, within 15 days after receipt of the
23 notice that such petition is filed, file with the Commission
24 and serve on the employee or his representative a written
25 response to each claim set forth in the petition, including the
26 legal and factual basis for each disputed allegation and the

1 following information: (i) complete copies of any reports,
2 records, documents and affidavits in the possession of the
3 employer on which the employer intends to rely in support of
4 his response, (ii) a list of any reports, records, documents
5 and affidavits which the employer has demanded by subpoena and
6 on which the employer intends to rely in support of his
7 response, (iii) the name and address of each witness on whom
8 the employer will rely to support his response, and (iv) the
9 names and addresses of any medical practitioners selected by
10 the employer pursuant to Section 12 of this Act and the time
11 and place of any examination scheduled to be made pursuant to
12 such Section.

13 Any employer who does not timely file and serve a written
14 response without good cause may not introduce any evidence to
15 dispute any claim of the employee but may cross examine the
16 employee or any witness brought by the employee and otherwise
17 be heard.

18 No document or other evidence not previously identified by
19 either party with the petition or written response, or by any
20 other means before the hearing, may be introduced into evidence
21 without good cause. If, at the hearing, material information is
22 discovered which was not previously disclosed, the Arbitrator
23 may extend the time for closing proof on the motion of a party
24 for a reasonable period of time which may be more than 30 days.
25 No evidence may be introduced pursuant to this paragraph as to
26 permanent disability. No award may be entered for permanent

1 disability pursuant to this paragraph. Either party may
2 introduce into evidence the testimony taken by deposition of
3 any medical practitioner.

4 The Commission shall adopt rules, regulations and
5 procedures whereby the final decision of the Commission is
6 filed not later than 90 days from the date the petition for
7 review is filed but in no event later than 180 days from the
8 date the petition for an emergency hearing is filed with the
9 Illinois Workers' Compensation Commission.

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

21 (c) (1) At a reasonable time in advance of and in connection
22 with the hearing under Section 19(e) or 19(h), the Commission
23 may on its own motion order an impartial physical or mental
24 examination of a petitioner whose mental or physical condition
25 is in issue, when in the Commission's discretion it appears
26 that such an examination will materially aid in the just

1 determination of the case. The examination shall be made by a
2 member or members of a panel of physicians chosen for their
3 special qualifications by the Illinois State Medical Society.
4 The Commission shall establish procedures by which a physician
5 shall be selected from such list.

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

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

12 (3.5) The examination may be recorded with the consent of
13 the employee and the examining physicians, and any such
14 recording shall be given to the Commission and to the attorneys
15 for the parties.

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

19 (5) The examination shall be made, and the physician or
20 physicians, if called, shall testify, without cost to the
21 parties. The Commission shall determine the compensation and
22 the pay of the physician or physicians. The compensation for
23 this service shall not exceed the usual and customary amount
24 for such service.

25 (6) The fees and payment thereof of all attorneys and
26 physicians for services authorized by the Commission under this

1 Act shall, upon request of either the employer or the employee
2 or the beneficiary affected, be subject to the review and
3 decision of the Commission.

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

17 (e) This paragraph shall apply to all hearings before the
18 Commission. Such hearings may be held in its office or
19 elsewhere as the Commission may deem advisable. The taking of
20 testimony on such hearings may be had before any member of the
21 Commission. If a petition for review and agreed statement of
22 facts or transcript of evidence is filed, as provided herein,
23 the Commission shall promptly review the decision of the
24 Arbitrator and all questions of law or fact which appear from
25 the statement of facts or transcript of evidence.

26 In all cases in which the hearing before the arbitrator is

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

13 In the event either party requests oral argument, such
14 argument shall be had before a panel of 3 members of the
15 Commission (or before all available members pursuant to the
16 determination of 7 members of the Commission that such argument
17 be held before all available members of the Commission)
18 pursuant to the rules and regulations of the Commission. A
19 panel of 3 members, which shall be comprised of not more than
20 one representative citizen of the employing class and not more
21 than one representative citizen of the employee class, shall
22 hear the argument; provided that if all the issues in dispute
23 are solely the nature and extent of the permanent partial
24 disability, if any, a majority of the panel may deny the
25 request for such argument and such argument shall not be held;
26 and provided further that 7 members of the Commission may

1 determine that the argument be held before all available
2 members of the Commission. A decision of the Commission shall
3 be approved by a majority of Commissioners present at such
4 hearing if any; provided, if no such hearing is held, a
5 decision of the Commission shall be approved by a majority of a
6 panel of 3 members of the Commission as described in this
7 Section. The Commission shall give 10 days' notice to the
8 parties or their attorneys of the time and place of such taking
9 of testimony and of such argument.

10 In any case the Commission in its decision may find
11 specially upon any question or questions of law or fact which
12 shall be submitted in writing by either party whether ultimate
13 or otherwise; provided that on issues other than nature and
14 extent of the disability, if any, the Commission in its
15 decision shall find specially upon any question or questions of
16 law or fact, whether ultimate or otherwise, which are submitted
17 in writing by either party; provided further that not more than
18 5 such questions may be submitted by either party. Any party
19 may, within 20 days after receipt of notice of the Commission's
20 decision, or within such further time, not exceeding 30 days,
21 as the Commission may grant, file with the Commission either an
22 agreed statement of the facts appearing upon the hearing, or,
23 if such party shall so elect, a correct transcript of evidence
24 of the additional proceedings presented before the Commission,
25 in which report the party may embody a correct statement of
26 such other proceedings in the case as such party may desire to

1 have reviewed, such statement of facts or transcript of
2 evidence to be authenticated by the signature of the parties or
3 their attorneys, and in the event that they do not agree, then
4 the authentication of such transcript of evidence shall be by
5 the signature of any member of the Commission.

6 If a reporter does not for any reason furnish a transcript
7 of the proceedings before the Arbitrator in any case for use on
8 a hearing for review before the Commission, within the
9 limitations of time as fixed in this Section, the Commission
10 may, in its discretion, order a trial de novo before the
11 Commission in such case upon application of either party. The
12 applications for adjustment of claim and other documents in the
13 nature of pleadings filed by either party, together with the
14 decisions of the Arbitrator and of the Commission and the
15 statement of facts or transcript of evidence hereinbefore
16 provided for in paragraphs (b) and (c) shall be the record of
17 the proceedings of the Commission, and shall be subject to
18 review as hereinafter provided.

19 At the request of either party or on its own motion, the
20 Commission shall set forth in writing the reasons for the
21 decision, including findings of fact and conclusions of law
22 separately stated. The Commission shall by rule adopt a format
23 for written decisions for the Commission and arbitrators. The
24 written decisions shall be concise and shall succinctly state
25 the facts and reasons for the decision. The Commission may
26 adopt in whole or in part, the decision of the arbitrator as

1 the decision of the Commission. When the Commission does so
2 adopt the decision of the arbitrator, it shall do so by order.
3 Whenever the Commission adopts part of the arbitrator's
4 decision, but not all, it shall include in the order the
5 reasons for not adopting all of the arbitrator's decision. When
6 a majority of a panel, after deliberation, has arrived at its
7 decision, the decision shall be filed as provided in this
8 Section without unnecessary delay, and without regard to the
9 fact that a member of the panel has expressed an intention to
10 dissent. Any member of the panel may file a dissent. Any
11 dissent shall be filed no later than 10 days after the decision
12 of the majority has been filed.

13 Decisions rendered by the Commission and dissents, if any,
14 shall be published together by the Commission. The conclusions
15 of law set out in such decisions shall be regarded as
16 precedents by arbitrators for the purpose of achieving a more
17 uniform administration of this Act.

18 (f) The decision of the Commission acting within its
19 powers, according to the provisions of paragraph (e) of this
20 Section shall, in the absence of fraud, be conclusive unless
21 reviewed as in this paragraph hereinafter provided. However,
22 the Arbitrator or the Commission may on his or its own motion,
23 or on the motion of either party, correct any clerical error or
24 errors in computation within 15 days after the date of receipt
25 of any award by such Arbitrator or any decision on review of
26 the Commission and shall have the power to recall the original

1 award on arbitration or decision on review, and issue in lieu
2 thereof such corrected award or decision. Where such correction
3 is made the time for review herein specified shall begin to run
4 from the date of the receipt of the corrected award or
5 decision.

6 (1) Except in cases of claims against the State of
7 Illinois other than those claims under Section 18.1, in
8 which case the decision of the Commission shall not be
9 subject to judicial review, the Circuit Court of the county
10 where any of the parties defendant may be found, or if none
11 of the parties defendant can be found in this State then
12 the Circuit Court of the county where the accident
13 occurred, shall by summons to the Commission have power to
14 review all questions of law and fact presented by such
15 record.

16 A proceeding for review shall be commenced within 20
17 days of the receipt of notice of the decision of the
18 Commission. The summons shall be issued by the clerk of
19 such court upon written request returnable on a designated
20 return day, not less than 10 or more than 60 days from the
21 date of issuance thereof, and the written request shall
22 contain the last known address of other parties in interest
23 and their attorneys of record who are to be served by
24 summons. Service upon any member of the Commission or the
25 Secretary or the Assistant Secretary thereof shall be
26 service upon the Commission, and service upon other parties

1 in interest and their attorneys of record shall be by
2 summons, and such service shall be made upon the Commission
3 and other parties in interest by mailing notices of the
4 commencement of the proceedings and the return day of the
5 summons to the office of the Commission and to the last
6 known place of residence of other parties in interest or
7 their attorney or attorneys of record. The clerk of the
8 court issuing the summons shall on the day of issue mail
9 notice of the commencement of the proceedings which shall
10 be done by mailing a copy of the summons to the office of
11 the Commission, and a copy of the summons to the other
12 parties in interest or their attorney or attorneys of
13 record and the clerk of the court shall make certificate
14 that he has so sent said notices in pursuance of this
15 Section, which shall be evidence of service on the
16 Commission and other parties in interest.

17 The Commission shall not be required to certify the
18 record of their proceedings to the Circuit Court, unless
19 the party commencing the proceedings for review in the
20 Circuit Court as above provided, shall file with the
21 Commission notice of intent to file for review in Circuit
22 Court. It shall be the duty of the Commission upon such
23 filing of notice of intent to file for review in the
24 Circuit Court to prepare a true and correct copy of such
25 testimony and a true and correct copy of all other matters
26 contained in such record and certified to by the Secretary

1 or Assistant Secretary thereof. The changes made to this
2 subdivision (f)(1) by this amendatory Act of the 98th
3 General Assembly apply to any Commission decision entered
4 after the effective date of this amendatory Act of the 98th
5 General Assembly.

6 No request for a summons may be filed and no summons
7 shall issue unless the party seeking to review the decision
8 of the Commission shall exhibit to the clerk of the Circuit
9 Court proof of filing with the Commission of the notice of
10 the intent to file for review in the Circuit Court or an
11 affidavit of the attorney setting forth that notice of
12 intent to file for review in the Circuit Court has been
13 given in writing to the Secretary or Assistant Secretary of
14 the Commission.

15 (2) No such summons shall issue unless the one against
16 whom the Commission shall have rendered an award for the
17 payment of money shall upon the filing of his written
18 request for such summons file with the clerk of the court a
19 bond conditioned that if he shall not successfully
20 prosecute the review, he will pay the award and the costs
21 of the proceedings in the courts. The amount of the bond
22 shall be fixed by any member of the Commission and the
23 surety or sureties of the bond shall be approved by the
24 clerk of the court. The acceptance of the bond by the clerk
25 of the court shall constitute evidence of his approval of
26 the bond.

1 Every county, city, town, township, incorporated
2 village, school district, body politic or municipal
3 corporation against whom the Commission shall have
4 rendered an award for the payment of money shall not be
5 required to file a bond to secure the payment of the award
6 and the costs of the proceedings in the court to authorize
7 the court to issue such summons.

8 The court may confirm or set aside the decision of the
9 Commission. If the decision is set aside and the facts
10 found in the proceedings before the Commission are
11 sufficient, the court may enter such decision as is
12 justified by law, or may remand the cause to the Commission
13 for further proceedings and may state the questions
14 requiring further hearing, and give such other
15 instructions as may be proper. Appeals shall be taken to
16 the Appellate Court in accordance with Supreme Court Rules
17 22(g) and 303. Appeals shall be taken from the Appellate
18 Court to the Supreme Court in accordance with Supreme Court
19 Rule 315.

20 It shall be the duty of the clerk of any court
21 rendering a decision affecting or affirming an award of the
22 Commission to promptly furnish the Commission with a copy
23 of such decision, without charge.

24 The decision of a majority of the members of the panel
25 of the Commission, shall be considered the decision of the
26 Commission.

1 (g) Except in the case of a claim against the State of
2 Illinois, either party may present a certified copy of the
3 award of the Arbitrator, or a certified copy of the decision of
4 the Commission when the same has become final, when no
5 proceedings for review are pending, providing for the payment
6 of compensation according to this Act, to the Circuit Court of
7 the county in which such accident occurred or either of the
8 parties are residents, whereupon the court shall enter a
9 judgment in accordance therewith. In a case where the employer
10 refuses to pay compensation according to such final award or
11 such final decision upon which such judgment is entered the
12 court shall in entering judgment thereon, tax as costs against
13 him the reasonable costs and attorney fees in the arbitration
14 proceedings and in the court entering the judgment for the
15 person in whose favor the judgment is entered, which judgment
16 and costs taxed as therein provided shall, until and unless set
17 aside, have the same effect as though duly entered in an action
18 duly tried and determined by the court, and shall with like
19 effect, be entered and docketed. The Circuit Court shall have
20 power at any time upon application to make any such judgment
21 conform to any modification required by any subsequent decision
22 of the Supreme Court upon appeal, or as the result of any
23 subsequent proceedings for review, as provided in this Act.

24 Judgment shall not be entered until 15 days' notice of the
25 time and place of the application for the entry of judgment
26 shall be served upon the employer by filing such notice with

1 the Commission, which Commission shall, in case it has on file
2 the address of the employer or the name and address of its
3 agent upon whom notices may be served, immediately send a copy
4 of the notice to the employer or such designated agent.

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

11 However, as to accidents occurring subsequent to July 1,
12 1955, which are covered by any agreement or award under this
13 Act providing for compensation in installments made as a result
14 of such accident, such agreement or award may at any time
15 within 30 months, or 60 months in the case of an award under
16 Section 8(d)1, after such agreement or award be reviewed by the
17 Commission at the request of either the employer or the
18 employee on the ground that the disability of the employee has
19 subsequently recurred, increased, diminished or ended.

20 On such review, compensation payments may be
21 re-established, increased, diminished or ended. The Commission
22 shall give 15 days' notice to the parties of the hearing for
23 review. Any employee, upon any petition for such review being
24 filed by the employer, shall be entitled to one day's notice
25 for each 100 miles necessary to be traveled by him in attending
26 the hearing of the Commission upon the petition, and 3 days in

1 addition thereto. Such employee shall, at the discretion of the
2 Commission, also be entitled to 5 cents per mile necessarily
3 traveled by him within the State of Illinois in attending such
4 hearing, not to exceed a distance of 300 miles, to be taxed by
5 the Commission as costs and deposited with the petition of the
6 employer.

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

11 (i) Each party, upon taking any proceedings or steps
12 whatsoever before any Arbitrator, Commission or court, shall
13 file with the Commission his address, or the name and address
14 of any agent upon whom all notices to be given to such party
15 shall be served, either personally or by registered mail,
16 addressed to such party or agent at the last address so filed
17 with the Commission. In the event such party has not filed his
18 address, or the name and address of an agent as above provided,
19 service of any notice may be had by filing such notice with the
20 Commission.

21 (j) Whenever in any proceeding testimony has been taken or
22 a final decision has been rendered and after the taking of such
23 testimony or after such decision has become final, the injured
24 employee dies, then in any subsequent proceedings brought by
25 the personal representative or beneficiaries of the deceased
26 employee, such testimony in the former proceeding may be

1 introduced with the same force and effect as though the witness
2 having so testified were present in person in such subsequent
3 proceedings and such final decision, if any, shall be taken as
4 final adjudication of any of the issues which are the same in
5 both proceedings.

6 (k) In case where there has been any unreasonable or
7 vexatious delay of payment or intentional underpayment of
8 compensation, or proceedings have been instituted or carried on
9 by the one liable to pay the compensation, which do not present
10 a real controversy, but are merely frivolous or for delay, then
11 the Commission may award compensation additional to that
12 otherwise payable under this Act equal to 50% of the amount
13 payable at the time of such award. Failure to pay compensation
14 in accordance with the provisions of Section 8, paragraph (b)
15 of this Act, shall be considered unreasonable delay.

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

20 (l) If the employee has made written demand for payment of
21 benefits under Section 8(a) or Section 8(b), the employer shall
22 have 14 days after receipt of the demand to set forth in
23 writing the reason for the delay. In the case of demand for
24 payment of medical benefits under Section 8(a), the time for
25 the employer to respond shall not commence until the expiration
26 of the allotted 30 days specified under Section 8.2(d). In case

1 the employer or his or her insurance carrier shall without good
2 and just cause fail, neglect, refuse, or unreasonably delay the
3 payment of benefits under Section 8(a) or Section 8(b), the
4 Arbitrator or the Commission shall allow to the employee
5 additional compensation in the sum of \$30 per day for each day
6 that the benefits under Section 8(a) or Section 8(b) have been
7 so withheld or refused, not to exceed \$10,000. A delay in
8 payment of 14 days or more shall create a rebuttable
9 presumption of unreasonable delay.

10 (m) If the commission finds that an accidental injury was
11 directly and proximately caused by the employer's wilful
12 violation of a health and safety standard under the Health and
13 Safety Act or the Occupational Safety and Health Act in force
14 at the time of the accident, the arbitrator or the Commission
15 shall allow to the injured employee or his dependents, as the
16 case may be, additional compensation equal to 25% of the amount
17 which otherwise would be payable under the provisions of this
18 Act exclusive of this paragraph. The additional compensation
19 herein provided shall be allowed by an appropriate increase in
20 the applicable weekly compensation rate.

21 (n) After June 30, 1984, decisions of the Illinois Workers'
22 Compensation Commission reviewing an award of an arbitrator of
23 the Commission shall draw interest at a rate equal to the yield
24 on indebtedness issued by the United States Government with a
25 26-week maturity next previously auctioned on the day on which
26 the decision is filed. Said rate of interest shall be set forth

1 in the Arbitrator's Decision. Interest shall be drawn from the
2 date of the arbitrator's award on all accrued compensation due
3 the employee through the day prior to the date of payments.
4 However, when an employee appeals an award of an Arbitrator or
5 the Commission, and the appeal results in no change or a
6 decrease in the award, interest shall not further accrue from
7 the date of such appeal.

8 The employer or his insurance carrier may tender the
9 payments due under the award to stop the further accrual of
10 interest on such award notwithstanding the prosecution by
11 either party of review, certiorari, appeal to the Supreme Court
12 or other steps to reverse, vacate or modify the award.

13 (o) By the 15th day of each month each insurer providing
14 coverage for losses under this Act shall notify each insured
15 employer of any compensable claim incurred during the preceding
16 month and the amounts paid or reserved on the claim including a
17 summary of the claim and a brief statement of the reasons for
18 compensability. A cumulative report of all claims incurred
19 during a calendar year or continued from the previous year
20 shall be furnished to the insured employer by the insurer
21 within 30 days after the end of that calendar year.

22 The insured employer may challenge, in proceeding before
23 the Commission, payments made by the insurer without
24 arbitration and payments made after a case is determined to be
25 noncompensable. If the Commission finds that the case was not
26 compensable, the insurer shall purge its records as to that

1 employer of any loss or expense associated with the claim,
2 reimburse the employer for attorneys' fees arising from the
3 challenge and for any payment required of the employer to the
4 Rate Adjustment Fund or the Second Injury Fund, and may not
5 reflect the loss or expense for rate making purposes. The
6 employee shall not be required to refund the challenged
7 payment. The decision of the Commission may be reviewed in the
8 same manner as in arbitrated cases. No challenge may be
9 initiated under this paragraph more than 3 years after the
10 payment is made. An employer may waive the right of challenge
11 under this paragraph on a case by case basis.

12 (p) After filing an application for adjustment of claim but
13 prior to the hearing on arbitration the parties may voluntarily
14 agree to submit such application for adjustment of claim for
15 decision by an arbitrator under this subsection (p) where such
16 application for adjustment of claim raises only a dispute over
17 temporary total disability, permanent partial disability or
18 medical expenses. Such agreement shall be in writing in such
19 form as provided by the Commission. Applications for adjustment
20 of claim submitted for decision by an arbitrator under this
21 subsection (p) shall proceed according to rule as established
22 by the Commission. The Commission shall promulgate rules
23 including, but not limited to, rules to ensure that the parties
24 are adequately informed of their rights under this subsection
25 (p) and of the voluntary nature of proceedings under this
26 subsection (p). The findings of fact made by an arbitrator

1 acting within his or her powers under this subsection (p) in
2 the absence of fraud shall be conclusive. However, the
3 arbitrator may on his own motion, or the motion of either
4 party, correct any clerical errors or errors in computation
5 within 15 days after the date of receipt of such award of the
6 arbitrator and shall have the power to recall the original
7 award on arbitration, and issue in lieu thereof such corrected
8 award. The decision of the arbitrator under this subsection (p)
9 shall be considered the decision of the Commission and
10 proceedings for review of questions of law arising from the
11 decision may be commenced by either party pursuant to
12 subsection (f) of Section 19. The Advisory Board established
13 under Section 13.1 shall compile a list of certified Commission
14 arbitrators, each of whom shall be approved by at least 7
15 members of the Advisory Board. The chairman shall select 5
16 persons from such list to serve as arbitrators under this
17 subsection (p). By agreement, the parties shall select one
18 arbitrator from among the 5 persons selected by the chairman
19 except that if the parties do not agree on an arbitrator from
20 among the 5 persons, the parties may, by agreement, select an
21 arbitrator of the American Arbitration Association, whose fee
22 shall be paid by the State in accordance with rules promulgated
23 by the Commission. Arbitration under this subsection (p) shall
24 be voluntary.

25 (Source: P.A. 97-18, eff. 6-28-11; 98-40, eff. 6-28-13; 98-874,
26 eff. 1-1-15.)