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LABOR AND INDUSTRIAL RELATIONS
Workers' Compensation: Provide Penalties for Fraudulently Received Benefits; Provide for the Admission of Lab Results in Administrative Law Hearings; Provide Method of Determining Temporary Partial Benefits; Eliminate Time Restrictions on Changing Doctors Without Board Approval; Deny Compensation for Subsequent Nonwork Related Injury; Provide Assembly Intent to Codify Existing Law; Change Provisions Relating to Income Benefit Payments; Provide Reimbursement to Insurer or Self-Insurer Under Certain Conditions; Provide Benefits for

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Permanent Partial Disability from Hernia Surgery; Change Provisions Relating to the Self-Insurers Guaranty Trust Fund

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LABOR AND INDUSTRIAL RELATIONS

Workers' Compensation: Provide Penalties for Fraudulently Received Benefits; Provide for the Admission of Lab Results in Administrative Law Hearings; Provide Method of Determining Temporary Partial Benefits; Eliminate Time Restrictions on Changing Doctors Without Board Approval; Deny Compensation for Subsequent Nonwork Related Injury; Provide Assembly Intent to Codify Existing Law; Change Provisions Relating to Income Benefit Payments; Provide Reimbursement to Insurer or Self-Insurer Under Certain Conditions; Provide Benefits for Permanent Partial Disability from Hernia Surgery; Change Provisions Relating to the Self-Insurers Guaranty Trust Fund

CODE SECTIONS:	O.C.G.A. §§ 34-9-21, -102, -104, -201, -204, -221, -243, -265 to -266, -385 (amended)
BILL NUMBER:	HB 1327
ACT NUMBER:	972
GEORGIA LAWS:	1998 Ga. Laws 1508
SUMMARY:	The Act makes a variety of changes to Georgia's workers' compensation law. First, the Act increases the penalties to be paid by employees who fraudulently retain income benefits to which they are not entitled. The Act also amends the workers' compensation law as it applies to administrative hearings by: (1) allowing the admission of laboratory reports when accompanied by an affidavit from the laboratory, which eases the authenticity requirements, and (2) making the time requirements set forth in title 24 of the Code inapplicable to workers' compensation proceedings. Further, the Act provides for a specified means of determining temporary partial benefits. Additionally, the Act eliminates time restrictions on when an employee may change physicians without authorization from the Workers' Compensation Board. Next, the Act adds "her" to its language in

order to make the statute gender-neutral. The Act disallows compensation payments for death or disabilities caused by a subsequent nonwork related injury. The Act also clarifies the legislative intent under Code section 34-9-204 to codify existing case law, strikes Code section 34-9-127, and corrects a typographical error in Code section 34-9-243. Additionally, the Act allows insurers and self-insurers, who are required to pay into a general state fund on behalf of recipients without dependants, a means of recovering money paid to the state fund if dependants are thereafter located. The Act also allows the payment of permanent, partial disability benefits to employees who sustain hernia injuries in the course of employment. Finally, the Act gives the Workers' Compensation Board the discretion to pay a claimant's attorney's fees directly from a trust fund, as opposed to forcing an attorney to collect fees from the claimant.

EFFECTIVE DATE:

July 1, 1998

History

The workers' compensation system was developed to provide benefits to employees injured on the job and to protect employers from large tort damages.¹ In its efforts to refine the system, the Georgia General Assembly amends the law annually by setting forth what it deems "general housekeeping" legislation.² Each year, a committee appointed by the chairperson of the Workers' Compensation Board (the Board) meets and proposes changes to the existing law.³ The committee consists of attorneys from the claimants' bar, attorneys from the Board, defense attorneys representing

1. *See Review of Selected 1996 Georgia Legislation*, 13 GA. ST. U. L. REV. 233, 234 (1996).

2. Telephone Interview with Rep. Larry Smith, House District No. 109 (May 28, 1998) [hereinafter Smith Interview].

3. *See id.*

employers, labor representatives, and a medical doctor.⁴ This thirteen-member advisory committee attempts to effect a “fine-tuning” of the law by clarifying specific provisions.⁵ Each change that is proposed to the Georgia General Assembly is supported by a unanimous vote of the Board’s advisory committee.⁶ Then, a House Representative is asked to present the changes in the form of a bill to the General Assembly.⁷ This year, Representative Larry Smith of the 109th District agreed to sponsor the legislation.⁸

HB 1327

Benefits Fraud

The Act amends Code section 34-9-21 to increase the penalty paid by employees who fraudulently retain undeserved benefits: violators are now subject to fines, which were increased from a range between \$20 and \$200 to a range between \$1000 and \$10,000, imprisonment for a maximum of one year, or both fines and imprisonment.⁹ The Board’s advisory committee wanted Code section 34-9-21 to resemble Code section 34-9-19, which imposes fraud penalties against persons who provide false or misleading statements when obtaining or denying workers’ compensation benefits.¹⁰ The maximum amount of the penalty was increased to \$10,000 by the House, which mirrors the

4. See Telephone Interview with Melinda Bright, Administrative Attorney for the Workers’ Compensation Board and the Board’s Legislative Liaison (June 19, 1998) [hereinafter Bright Interview].

5. Smith Interview, *supra* note 2.

6. See Bright Interview, *supra* note 4.

7. See Smith interview, *supra* note 2.

8. See *id.*; see also HB 1327, as introduced, 1998 Ga. Gen. Assem.

9. Compare O.C.G.A. § 34-9-21 (1998), with 1975 Ga. Laws 198, § 13, at 209-10 (formerly found at O.C.G.A. § 34-9-21).

10. See Bright Interview, *supra* note 4.

fraud penalty found in Code section 34-9-19.¹¹ The purpose of the increased fine is to strengthen the Code.¹²

Administrative Law Judge Hearings

The Act makes two changes to the workers' compensation law as it pertains to hearings before administrative law judges.¹³ The first change eases the authenticity process for laboratory test results by admitting the results when they are accompanied by an affidavit from the laboratory personnel confirming authenticity.¹⁴ According to Melinda Bright, the Board's legislative liaison, laboratory tests are often conducted at out-of-state facilities, and admissibility requirements under prior law required a person from that facility to attend the hearing to authenticate the test results.¹⁵ The Act streamlines the adjudicatory process by accomplishing authenticity via an affidavit from lab personnel.¹⁶

Second, the Act amends Code section 34-9-102 by making Code section 24-3-18 inapplicable to workers' compensation claims.¹⁷ Code section 24-3-18 states that if certain medical reports will be introduced in a civil trial involving injury or disease, the party tendering the reports must provide the opposing party with at least sixty days notice.¹⁸ The Act makes these time requirements inapplicable because they are incompatible with the workers' compensation system, which moves more quickly than the civil court system.¹⁹

11. See HB 1327 (HCS), 1998 Ga. Gen. Assem.; 1996 Ga. Laws 1291, § 6, at 1294 (codified at O.C.G.A. § 34-9-19 (1998)). The Code section states:

Any person, firm, or corporation who willfully makes any false or misleading statement or representation for the purpose of obtaining or denying any benefit or payment under this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$1,000.00 or more than \$10,000.00 or by imprisonment not to exceed 12 months, or by both such fine and imprisonment.

Id.; see Interview with Julie John, Administrative Law Judge for the Workers' Compensation Board and Former Legislative Committee Member (June 26, 1998) [hereinafter John Interview].

12. See Smith Interview, *supra* note 2.

13. Compare O.C.G.A. § 34-9-102(e) (1998), with 1994 Ga. Laws 887, § 7, at 892 (formerly found at O.C.G.A. § 34-9-102(e)).

14. See O.C.G.A. § 34-9-102(c)(4) (1998); Bright Interview, *supra* note 4.

15. See Bright Interview, *supra* note 4.

16. See *id.*

17. See O.C.G.A. § 34-9-102(e) (1998); John Interview, *supra* note 11.

18. See 1997 Ga. Laws 945, § 1, at 946 (codified at O.C.G.A. § 24-3-18 (Supp. 1998)).

19. See Bright Interview, *supra* note 4.

Calculating Temporary Partial Benefits

The Act codifies Board Rule 262, which concerns the calculation of temporary partial benefits.²⁰ The Board rule evolved as the result of a 1997 Georgia Court of Appeals decision²¹ that allowed an employer to “guess” the earning capacity of an employee when converting the employee from total to partial disability benefits.²² In *Mountainside Medical Center/Pickens Healthcare v. Tanner*,²³ an employer converted a claimant from total disability benefits to partial disability benefits because the employer assumed that the claimant was able to earn the minimum wage at twenty hours per week and, thus, reduced her benefits accordingly.²⁴ However, the Board, the administrative law judge, and the Superior Court rejected the employer’s theory because it lacked statutory foundation.²⁵ The court assessed the claimant’s wage at \$0 because she was not working.²⁶ The Court of Appeals disagreed and held that, absent further legislative guidance, an “employer may reasonably theorize, based upon proof of available jobs for which the claimant is qualified, what the employee is ‘able to earn.’”²⁷

The Act changes Code section 34-9-104(a) to codify Board Rule 262 and remove “speculation” from the calculation of temporary partial benefits.²⁸ First, Code section 34-9-104(a)(3)(A) states that when an employee is receiving the maximum amount of total disability benefits allowed under Code section 34-9-261, the employer shall pay the employee, upon conversion, the maximum amount of partial disability benefits available under Code section 34-9-262.²⁹ Second, Code section 34-9-104(a)(3)(B) states that if an employee is receiving less than the amount of total disability benefits allowed under Code section 34-9-261, the employer shall continue to pay the employee, upon conversion, those same benefits as long as they do not exceed

20. *See id.*; O.C.G.A. § 34-9-104(a) (1998); John Interview, *supra* note 11.

21. *See* *Mountainside Med. Ctr./Pickens Healthcare v. Tanner*, 225 Ga. App. 722, 484 S.E.2d 706 (1997).

22. *See* Bright Interview, *supra* note 4; John Interview, *supra* note 11.

23. 225 Ga. App. 722, 484 S.E.2d 706 (1997).

24. *See id.* at 722, 484 S.E.2d at 707.

25. *See id.*

26. *See id.*

27. *Id.* at 723, 484 S.E.2d at 708.

28. Bright Interview, *supra* note 4.

29. *See* O.C.G.A. § 34-9-104(a)(3)(A) (1998).

the maximum amount of partial disability benefits provided for by Code section 34-9-262.³⁰

Conformed Panel of Physicians

Code section 34-9-201 provides for three types of physician panels from which an employee may select a physician for medical services.³¹ The three different panels are: (1) the traditional "Panel of Physicians"; (2) the "Conformed Panel of Physicians"; and (3) the "Managed Care Organization Procedures."³² The Act amends the Code section concerning the Conformed Panel by eliminating a time restriction that required employees to act within sixty days of initial treatment of their injury when they sought to change physicians without Board authorization.³³ Prior law did not place time restrictions on an employee's ability to change physicians within the other two panels, and the Board wanted to make the requirements consistent among all of the panels.³⁴

Employee's Refusal to Submit to or Neglect to Follow Surgical Treatment

The Act amends Code section 34-9-204, which concerns the payment of benefits "for death or disability resulting from an employee's refusal to submit to or neglect to follow surgical treatment,"³⁵ by adding "or her"³⁶ to make the statutory language gender-neutral.³⁷

The Act further amends Code section 34-9-204 by striking language that denied benefits to anyone who refused to undergo surgery or neglected to follow surgical treatment of an injury.³⁸ According to Julie John, an administrative law judge with the Board, the Board has never suspended benefits because someone refused surgery.³⁹

30. See *id.* § 34-9-104(a)(3)(B).

31. See *id.* § 34-9-201.

32. See *id.* § 34-9-201(b)(1)-(3); Bright Interview, *supra* note 4.

33. Compare O.C.G.A. § 34-9-201(b)(2) (1998), with 1994 Ga. Laws 887, § 11, at 896 (formerly found at O.C.G.A. § 34-9-201(b)(2)).

34. See Bright Interview, *supra* note 4.

35. 1998 Ga. Laws 1508, § 5, at 1511 (codified at O.C.G.A. § 34-9-204 (1998)).

36. Compare O.C.G.A. § 34-9-204 (1988), with 1920 Ga. Laws 167, § 28, at 182 (formerly found at O.C.G.A. § 34-9-204).

37. See Bright Interview, *supra* note 4.

38. Compare O.C.G.A. § 34-9-204 (1998), with 1920 Ga. Laws 167, § 28, at 182 (formerly found at O.C.G.A. § 34-9-204).

39. See John Interview, *supra* note 11.

In codifying another Board rule, the General Assembly added language in Code section 34-9-204(a) that places the burden on the insurer to establish that an injury is no longer disabling to an employee.⁴⁰ In order to stop the benefits, the insurer must show that the employee's "death is caused by or, insofar as his or her disability, may be aggravated, caused, or continued by a subsequent nonwork related injury which breaks the chain of causation between the compensable injury and the employee's disability."⁴¹

Additionally, Code section 34-9-204(b) expressly states that the General Assembly's intent in enacting this Code section was to "codify existing case law."⁴² According to Representative Jim Martin of the 47th District, codifying the case law was the only major source of concern with the Act.⁴³ The claimants' bar feared that the amendment would change current case law, predicated upon *Hallisey v. Fort Howard Paper Co.*⁴⁴ In *Hallisey*, the Georgia Supreme Court allowed an award of benefits to a claimant who injured his back at work and then aggravated the injury playing golf.⁴⁵ The court concluded that the claimant's negligent aggravation of the work-related injury did not break the chain of causation between the initial injury and the resulting disability.⁴⁶ In *Hallisey*, the court invited the General Assembly to make changes to the law.⁴⁷ The claimants' bar wanted lawmakers to include subsection (b) to ensure that the changes to Code section 34-9-204 would not be interpreted as the General Assembly having acted upon the court's invitation.⁴⁸

Procedure for Payment of Benefits

The Act amends Code section 34-9-221, which governs the procedure for paying income benefits, by striking references to

40. See Bright Interview, *supra* note 4; O.C.G.A. § 34-9-204(a) (1998).

41. O.C.G.A. § 34-9-204(a) (1998).

42. *Id.* § 34-9-204(b).

43. See Telephone Interview with Rep. Jim Martin, House District No. 47 (May 28, 1998) [hereinafter Martin Interview].

44. 268 Ga. 57, 484 S.E.2d 653 (1997); see Martin Interview, *supra* note 43.

45. See *Hallisey*, 268 Ga. at 58, 484 S.E.2d at 653-54.

46. See *id.* at 59-60, 484 S.E.2d at 654-55.

47. See *id.* at 59, 484 S.E.2d at 654-55.

48. See John Interview, *supra* note 11.

subsection (b) of Code section 34-9-127,⁴⁹ a Code section that no longer exists.⁵⁰

Effect of Payments Made When Not Due

The Act amends Code section 34-9-243, which relates to the effect of payments made when they are not due, to change the word "employee" to "employer," correcting a typographical error in subsection (b).⁵¹

Money Paid to General State Fund Recoverable if Dependents Subsequently Located

Code section 34-9-265 provides that in a compensable death case an insurer or self-insurer, upon finding "no dependent or dependents qualifying to receive dependency benefits," shall pay either \$10,000 or one-half of the benefits that would have been payable, whichever is less, to the Workers' Compensation Board, which will deposit the money in a general state fund.⁵² Under prior law, the State's general practice was to return the money to the insurer or self-insurer from the general state fund when dependents qualified to receive benefits were later located.⁵³ However, some insurers or self-insurers encountered difficulty in recovering this money from the State.⁵⁴ By amending Code section 34-9-265, the General Assembly provides the insurer or self-insurer with statutory support in retrieving the money.⁵⁵ The Treasury Department added the language, "by refund for moneys collected in error," for clarification about which funds were being designated as retrievable.⁵⁶

Hernia Injury Compensable as Permanent Partial Disability

The Act amends Code section 34-9-266 by striking language that required compensation for a hernia injury to be paid in accordance

49. Compare O.C.G.A. § 34-9-221 (1998), with 1987 Ga. Laws 806, § 6, at 809 (formerly found at O.C.G.A. § 34-9-221).

50. See Bright Interview, *supra* note 4.

51. Compare O.C.G.A. § 34-9-243 (1998), with 1992 Ga. Laws 1942, § 20, at 1960 (formerly found at O.C.G.A. § 34-9-243).

52. O.C.G.A. § 34-9-265(f) (1998).

53. See Bright Interview, *supra* note 4.

54. See *id.*

55. See John Interview, *supra* note 11.

56. O.C.G.A. § 34-9-265(f) (1998); see John Interview, *supra* note 11.

with Code section 34-9-262,⁵⁷ which governs payments for *temporary* partial disabilities.⁵⁸ The Act states that such payments must now be made in accordance with Code section 34-9-263, which governs payments for *permanent* partial disabilities.⁵⁹ This was actually a typographical error the Board wanted to correct.⁶⁰

Board Discretion to Direct Payment of Attorney's Fees of Insolvent Claimants

The Act amends Code section 34-9-385 by adding subsection (h), which provides the Board with the discretion to direct the Self-Insurers Guaranty Trust Fund (Trust Fund) to pay directly to an attorney any fees generated from the representation of an insolvent claimant.⁶¹ The amount attorneys receive is typically twenty-five percent of the amount awarded.⁶² Prior to the amendment of this Code section, the Trust Fund had statutory authority to award the claimants all of the money, leaving the claimant to pay the attorney's fees.⁶³ Although the Trust Fund usually directed payment to the attorneys first, the Act now gives the Board statutory discretion to do so.⁶⁴ The fees to be paid are only those payable pursuant to an attorney contract approved by the Board and do not include assessed attorney's fees.⁶⁵

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57. Compare O.C.G.A. § 34-9-266 (1998), with 1975 Ga. Laws 198, § 4, at 200 (formerly found at O.C.G.A. § 34-9-204).

58. See 1997 Ga. Laws 1367, § 9, at 1375 (codified at O.C.G.A. § 34-9-262 (1998)).

59. See O.C.G.A. §§ 34-9-263, -266 (1998).

60. See Bright Interview, *supra* note 4.

61. See 1998 Ga. Laws 1508, § 10, at 1513 (codified at O.C.G.A. § 34-9-385(h) (1998)).

62. See Bright Interview, *supra* note 4.

63. See *id.*

64. See *id.*

65. See John Interview, *supra* note 11.