

As Introduced

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H. B. No. 206

Representative Henne

Cosponsors: Representatives Butler, Hambley, Hood, Sprague, Terhar, Maag

A BILL

To amend section 4121.36 of the Revised Code to
require the Industrial Commission to keep
statistics on individual hearing decisions of
contested workers' compensation claims.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4121.36 of the Revised Code be
amended to read as follows:

Sec. 4121.36. (A) The industrial commission shall adopt
rules as to the conduct of all hearings before the commission
and its staff and district hearing officers and the rendering of
a decision and shall focus such rules on managing, directing,
and otherwise ensuring a fair, equitable, and uniform hearing
process. These rules shall provide for at least the following
steps and procedures:

(1) Adequate notice to all parties and their
representatives to ensure that no hearing is conducted unless
all parties have the opportunity to be present and to present
evidence and arguments in support of their positions or in
rebuttal to the evidence or arguments of other parties;

(2) A public hearing;	19
(3) Written decisions;	20
(4) Impartial assignment of staff and district hearing officers and assignment of appeals from a decision of the administrator of workers' compensation to a district hearing officer located at the commission service office that is the closest in geographic proximity to the claimant's residence;	21 22 23 24 25
(5) Publication of a docket;	26
(6) The securing of the attendance or testimony of witnesses;	27 28
(7) Prehearing rules, including rules relative to discovery, the taking of depositions, and exchange of information relevant to a claim prior to the conduct of a hearing;	29 30 31 32
(8) The issuance of orders by the district or staff hearing officer who renders the decision.	33 34
(B) Every decision by a staff or district hearing officer or the commission shall be in writing and contain all of the following elements:	35 36 37
(1) A concise statement of the order or award;	38
(2) A notation as to notice provided and as to appearance of parties;	39 40
(3) Signatures of each commissioner or appropriate hearing officer on the original copy of the decision only, verifying the commissioner's or hearing officer's vote;	41 42 43
(4) Description of the part of the body and nature of the disability recognized in the claim.	44 45

(C) The commission shall adopt rules that require the regular rotation of district hearing officers with respect to the types of matters under consideration and that ensure that no district or staff hearing officer or the commission hears a claim unless all interested and affected parties have the opportunity to be present and to present evidence and arguments in support of their positions or in rebuttal to the evidence or arguments of other parties.

(D) All matters which, at the request of one of the parties or on the initiative of the administrator and any commissioner, are to be expedited, shall require at least forty-eight hours' notice, a public hearing, and a statement in any order of the circumstances that justified such expeditious hearings.

(E) All meetings of the commission and district and staff hearing officers shall be public with adequate notice, including if necessary, to the claimant, the employer, their representatives, and the administrator. Confidentiality of medical evidence presented at a hearing does not constitute a sufficient ground to relieve the requirement of a public hearing, but the presentation of privileged or confidential evidence shall not create any greater right of public inspection of evidence than presently exists.

(F) The commission shall compile all of its original memorandums, orders, and decisions in a journal and make the journal available to the public with sufficient indexing to allow orderly review of documents. The journal shall indicate the vote of each commissioner.

(G) (1) All original orders, rules, and memoranda, and decisions of the commission shall contain the signatures of two

of the three commissioners and state whether adopted at a 76
meeting of the commission or by circulation to individual 77
commissioners. Any facsimile or secretarial signature, initials 78
of commissioners, and delegated employees, and any printed 79
record of the "yes" and "no" vote of a commission member or of a 80
hearing officer on such original is invalid. 81

(2) Written copies of final decisions of district or staff 82
hearing officers or the commission that are mailed to the 83
administrator, employee, employer, and their respective 84
representatives need not contain the signatures of the hearing 85
officer or commission members if the hearing officer or 86
commission members have complied with divisions (B) (3) and (G) 87
(1) of this section. 88

(H) (1) The commission shall maintain statistics on 89
individual hearing decisions issued by the commission, staff 90
hearing officers, and district hearing officers, including all 91
of the following: 92

(a) The number of claims at every commission office 93
location decided in favor of an employer and the number of 94
claims decided in favor of a claimant; 95

(b) The number of claims each district or staff hearing 96
officer decided in favor of an employer and the number of claims 97
each district or staff hearing officer decided in favor of a 98
claimant. 99

(2) Not later than the thirty-first day of January 100
immediately following the date that is one year after the 101
effective date of this amendment, and not later than the thirty- 102
first day of January thereafter, the commission shall submit a 103
report to the governor and the general assembly containing the 104

statistics collected under division (H) (1) of this section for 105
the previous calendar year. 106

(I) The commission shall do both of the following: 107

(1) Appoint an individual as a hearing officer trainer who 108
is in the unclassified civil service of the state and who serves 109
at the pleasure of the commission. The trainer shall be an 110
attorney registered to practice law in this state and have 111
experience in training or education, and the ability to furnish 112
the necessary training for district and staff hearing officers. 113

The hearing officer trainer shall develop and periodically 114
update a training manual and such other training materials and 115
courses as will adequately prepare district and staff hearing 116
officers for their duties under this chapter and Chapter 4123. 117
of the Revised Code. All district and staff hearing officers 118
shall undergo the training courses developed by the hearing 119
officer trainer, the cost of which the commission shall pay. The 120
commission shall make the hearing officer manual and all 121
revisions thereto available to the public at cost. 122

The commission shall have the final right of approval over 123
all training manuals, courses, and other materials the hearing 124
officer trainer develops and updates. 125

(2) Appoint a hearing administrator, who shall be in the 126
classified civil service of the state, for each bureau service 127
office, and sufficient support personnel for each hearing 128
administrator, which support personnel shall be under the direct 129
supervision of the hearing administrator. The hearing 130
administrator shall do all of the following: 131

(a) Assist the commission in ensuring that district 132
hearing officers comply with the time limitations for the 133

holding of hearings and issuance of orders under section 134
4123.511 of the Revised Code. For that purpose, each hearing 135
administrator shall prepare a monthly report identifying the 136
status of all claims in its office and identifying specifically 137
the claims which have not been decided within the time limits 138
set forth in section 4123.511 of the Revised Code. The 139
commission shall submit an annual report of all such reports to 140
the standing committees of the house of representatives and of 141
the state to which matters concerning workers' compensation are 142
normally referred. 143

(b) Provide information to requesting parties or their 144
representatives on the status of their claim; 145

(c) Issue compliance letters, upon a finding of good cause 146
and without a formal hearing in all of the following areas: 147

(i) Divisions (B) and (C) of section 4123.651 of the 148
Revised Code; 149

(ii) Requests for the taking of depositions of bureau and 150
commission physicians; 151

(iii) The issuance of subpoenas; 152

(iv) The granting or denying of requests for continuances; 153

(v) Matters involving section 4123.522 of the Revised 154
Code; 155

(vi) Requests for conducting telephone pre-hearing 156
conferences; 157

(vii) Any other matter that will cause a free exchange of 158
information prior to the formal hearing. 159

(d) Ensure that claim files are reviewed by the district 160

hearing officer prior to the hearing to ensure that there is 161
sufficient information to proceed to a hearing; 162

(e) Ensure that for occupational disease claims under 163
section 4123.68 of the Revised Code that require a medical 164
examination the medical examination is conducted prior to the 165
hearing; 166

(f) Take the necessary steps to prepare a claim to proceed 167
to a hearing where the parties agree and advise the hearing 168
administrator that the claim is not ready for a hearing. 169

~~(I)~~(J) The commission shall permit any person direct 170
access to information contained in electronic data processing 171
equipment regarding the status of a claim in the hearing 172
process. The information shall indicate the number of days that 173
the claim has been in process, the number of days the claim has 174
been in its current location, and the number of days in the 175
current point of the process within that location. 176

~~(J)~~(K) (1) The industrial commission may establish an 177
alternative dispute resolution process for workers' compensation 178
claims that are within the commission's jurisdiction under 179
Chapters 4121., 4123., 4127., and 4131. of the Revised Code when 180
the commission determines that such a process is necessary. 181
Notwithstanding sections 4121.34 and 4121.35 of the Revised 182
Code, the commission may enter into personal service contracts 183
with individuals who are qualified because of their education 184
and experience to act as facilitators in the commission's 185
alternative dispute resolution process. 186

(2) The parties' use of the alternative dispute resolution 187
process is voluntary, and requires the agreement of all 188
necessary parties. The use of the alternative dispute resolution 189

process does not alter the rights or obligations of the parties, 190
nor does it delay the timelines set forth in section 4123.511 of 191
the Revised Code. 192

(3) The commission shall prepare monthly reports and 193
submit those reports to the governor, the president of the 194
senate, and the speaker of the house of representatives 195
describing all of the following: 196

(a) The names of each facilitator employed under a 197
personal service contract; 198

(b) The hourly amount of money and the total amount of 199
money paid to each facilitator; 200

(c) The number of disputed issues resolved during that 201
month by each facilitator; 202

(d) The number of decisions of each facilitator that were 203
appealed by a party; 204

(e) A certification by the commission that the alternative 205
dispute resolution process did not delay any hearing timelines 206
as set forth in section 4123.511 of the Revised Code for any 207
disputed issue. 208

(4) The commission may adopt rules in accordance with 209
Chapter 119. of the Revised Code for the administration of any 210
alternative dispute resolution process that the commission 211
establishes. 212

Section 2. That existing section 4121.36 of the Revised 213
Code is hereby repealed. 214