

House Bill 327

By: Representatives Coan of the 101st, Fleming of the 117th, Carter of the 159th, Williams of the 4th, Teilhet of the 40th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to
2 workers' compensation, so as to authorize the State Board of Workers' Compensation to
3 issue rules relating to the electronic submission and transmission of documents; to provide
4 for schedule of hearings relating to determination of noncatastrophic injury status; to change
5 a provision relating to the designation process for a catastrophic injury by creating a
6 rebuttable presumption; to change the compensation for temporary total disability; to change
7 the compensation for temporary partial disability; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'
12 compensation, is amended by striking Code Section 34-9-40, relating to creation of the State
13 Board of Workers' Compensation, and inserting in lieu thereof a new Code Section 34-9-40
14 to read as follows:

15 "34-9-40.

16 There is created and established within the executive branch a board to be known as the
17 State Board of Workers' Compensation, composed of three members who shall be
18 appointed by the Governor for a term of four years. Each member shall hold office until
19 his or her successor shall have been appointed and qualified. An individual chosen to fill
20 a vacancy shall be appointed only for the unexpired term of the member whom he or she
21 shall succeed. The board shall have full authority, power, and the duty to promulgate
22 policies, rules, and regulations for the administration of this chapter. The board may
23 promulgate policies, rules, and regulations concerning the electronic submission to and
24 transmission from the board of documents and filings. Additionally, the board shall have
25 full authority to conduct training seminars for the purpose of educating various employers
26 as to their liability regarding workers' compensation claims. Such seminars may be paid

1 for by the board through funding provided from sources other than appropriations made by
 2 the General Assembly. Excess funds generated through seminars may be amended into the
 3 board's operating budget as approved by the Office of Planning and Budget. Excess funds
 4 generated through seminars not amended into the board's operating budget, as determined
 5 by the state auditor, shall lapse to the Office of Treasury and Fiscal Services."

6 SECTION 2.

7 Said chapter is further amended by striking Code Section 34-9-60, relating to the rule-making
 8 and subpoena powers of the State Board of Workers' Compensation, and inserting in lieu
 9 thereof a new Code Section 34-9-60 to read as follows:

10 "34-9-60.

11 (a) The board may make rules, not inconsistent with this chapter, for carrying out this
 12 chapter. Processes and procedure under this chapter shall be as summary and simple as
 13 reasonably possible; provided, however, that, in any proceeding under this chapter where
 14 the parties are represented by counsel, the board may require, by rule or regulation, on
 15 forms provided by the board, the filing of statements of contentions and points of
 16 agreement. The board may promulgate policies, rules, and regulations concerning the
 17 electronic submission to and transmission from the board of documents and filings. The
 18 board, any member of the board, or any administrative law judge shall have the power for
 19 the purposes of this chapter to issue and enforce subpoenas, to administer or cause to have
 20 administered oaths, and to examine or cause to be examined such parts of the books and
 21 records of the parties to a proceeding as relate to questions in dispute. Article 2 of Chapter
 22 10 of Title 24 shall govern the issuance and enforcement of subpoenas pursuant to this
 23 Code section, except that the board, any member of the board, or any administrative law
 24 judge shall carry out the functions of the court and the executive director shall carry out the
 25 functions of the clerk of the court. The board shall not, however, have the power to order
 26 imprisonment as a means of enforcing a subpoena. The board shall have the power to issue
 27 writs of fieri facias in order to collect fines imposed pursuant to this Code section and such
 28 writs may be enforced in the same manner as a similar writ issued by a superior court.

29 (b) In addition to the enforcement procedures provided in subsection (a) of this Code
 30 section, the superior court of the county in which the hearing is held shall, on application
 31 of the board, any member of the board, or an administrative law judge, enforce by proper
 32 proceedings the attendance and testimony of witnesses and the production and examination
 33 of books, papers, and records."

1 **SECTION 3.**

2 Said chapter is further amended by striking subsection (a) of Code Section 34-9-102, relating
3 to a hearing before an administrative law judge, and inserting in lieu thereof a new subsection
4 (a) to read as follows:

5 "(a) *Notice of hearing.* The hearing shall be held as soon as practicable; provided, however,
6 no hearing shall be scheduled less than 30 days nor more than 90 days from the date of the
7 hearing notice. With regard to any request for a determination of noncatastrophic status in
8 accordance with subparagraph (g)(6)(B) of Code Section 34-9-200.1, no hearing shall be
9 scheduled less than 90 days after the hearing is requested."

10 **SECTION 4.**

11 Said chapter is further amended by striking subsection (g) of Code Section 34-9-200.1,
12 relating to rehabilitation benefits, and inserting in lieu thereof a new subsection (g) to read
13 as follows:

14 "(g) 'Catastrophic injury' means any injury which is one of the following:

- 15 (1) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;
16 (2) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of
17 that appendage;
18 (3) Severe brain or closed head injury as evidenced by:
19 (A) Severe sensory or motor disturbances;
20 (B) Severe communication disturbances;
21 (C) Severe complex integrated disturbances of cerebral function;
22 (D) Severe disturbances of consciousness;
23 (E) Severe episodic neurological disorders; or
24 (F) Other conditions at least as severe in nature as any condition provided in
25 subparagraphs (A) through (E) of this paragraph;
26 (4) Second or third degree burns over 25 percent of the body as a whole or third degree
27 burns to 5 percent or more of the face or hands;
28 (5) Total or industrial blindness; or
29 (6)(A) Any other injury of a nature and severity that prevents the employee from being
30 able to perform his or her prior work and any work available in substantial numbers
31 within the national economy for which such employee is otherwise qualified; provided,
32 however, if the injury has not already been accepted as a catastrophic injury by the
33 employer and the authorized treating physician has released the employee to return to
34 work with restrictions, there shall be a rebuttable presumption, during a period not to
35 exceed 130 weeks from the date of injury, that the injury is not a catastrophic injury.
36 During such period, in determining whether an injury is catastrophic, the board shall

1 give consideration to all relevant factors including, but not limited to, the number of
 2 hours for which an employee has been released. A decision granting or denying
 3 disability income benefits under Title II or supplemental security income benefits under
 4 Title XVI of the Social Security Act shall be admissible in evidence and the board shall
 5 give the evidence the consideration and deference due under the circumstances
 6 regarding the issue of whether the injury is a catastrophic injury; provided, however,
 7 that no presumption shall be created by any decision granting or denying disability
 8 income benefits under Title II or ~~supplementary~~ supplemental security income benefits
 9 under Title XVI of the Social Security Act.

10 (B) Once an employee who is designated as having a catastrophic injury under this
 11 subsection has reached the age of eligibility for retirement benefits as defined in 42
 12 U.S.C. Section 416(l), as amended March 2, 2004, there shall arise a rebuttable
 13 presumption that the injury is no longer a catastrophic injury; provided, however, that
 14 this presumption shall not arise upon reaching early retirement age as defined in 42
 15 U.S.C. Section 416(1), as amended March 2, 2004. When using this presumption, a
 16 determination that the injury is no longer catastrophic can only be made by the board
 17 after it has conducted an evidentiary hearing.

18 The rehabilitation supplier appointed to a catastrophic injury case shall have the expertise
 19 which, in the judgment of the board, is necessary to provide rehabilitation services in such
 20 case."

21 SECTION 5.

22 Said chapter is further amended in Code Section 34-9-200.1, relating to rehabilitation
 23 benefits, by inserting at the end thereof a new subsection (i) to read as follows:

24 "(i) Subsequent to either an employer's designating an employee's injury as catastrophic
 25 or a board determination as to the catastrophic or noncatastrophic nature of an employee's
 26 injury, either party may request a new determination, based on reasonable grounds, as to
 27 the catastrophic or noncatastrophic nature of the employee's injury."

28 SECTION 6.

29 Said chapter is further amended by striking Code Section 34-9-261, relating to compensation
 30 for total disability, and inserting in lieu thereof a new Code Section 34-9-261 to read as
 31 follows:

32 "34-9-261.

33 While the disability to work resulting from an injury is temporarily total, the employer shall
 34 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the
 35 employee's average weekly wage but not more than ~~\$425.00~~ \$450.00 per week nor less

1 than ~~\$42.50~~ \$45.00 per week, except that when the weekly wage is below ~~\$42.50~~ \$45.00
2 the employer shall pay a weekly benefit equal to the average weekly wage. The weekly
3 benefit under this Code section shall be payable for a maximum period of 400 weeks from
4 the date of injury; provided, however, in the event of a catastrophic injury as defined in
5 subsection (g) of Code Section 34-9-200.1, the weekly benefit under this Code section shall
6 be paid until such time as the employee undergoes a change in condition for the better as
7 provided in paragraph (1) of subsection (a) of Code Section 34-9-104."

8 **SECTION 7.**

9 Said chapter is further amended by striking Code Section 34-9-262, relating to compensation
10 for temporary partial disability, and inserting in lieu thereof a new Code Section 34-9-262
11 to read as follows:

12 "34-9-262.

13 Except as otherwise provided in Code Section 34-9-263, where the disability to work
14 resulting from the injury is partial in character but temporary in quality, the employer shall
15 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the
16 difference between the average weekly wage before the injury and the average weekly
17 wage the employee is able to earn thereafter, but not more than ~~\$284.00~~ \$300.00 per week
18 for a period not exceeding 350 weeks from the date of injury."

19 **SECTION 8.**

20 All laws and parts of laws in conflict with this Act are repealed.