

# SB3561



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB3561

Introduced 2/14/2020, by Sen. John F. Curran

#### SYNOPSIS AS INTRODUCED:

820 ILCS 305/19

from Ch. 48, par. 138.19

Amends the Workers' Compensation Act. Provides an alternative to posting a bond with respect to the issuance of a summons in connection with a petition for review of a Commission award. Provides that if the party seeking review is the party against whom an award for payment of money was rendered, the party may file other collateral or guarantee by means of an insurance policy, certificate of self-insurance, or deposit of funds in escrow rather than a bond.

LRB101 20168 JLS 69707 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 Section 19 as follows:

6 (820 ILCS 305/19) (from Ch. 48, par. 138.19)

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

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

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

21 2. Whenever any claimant misconceives his remedy and  
22 files an application for adjustment of claim under the  
23 Workers' Occupational Diseases Act and it is subsequently

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

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

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

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

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

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

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

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

19 Expedited hearings shall have priority over all other  
20 petitions and shall be heard by the Arbitrator and Commission  
21 with all convenient speed. Any party requesting an expedited  
22 hearing shall give notice of a request for an expedited hearing  
23 under this paragraph. A copy of the Application for Adjustment  
24 of Claim shall be attached to the notice. The Commission shall  
25 adopt rules and procedures under which the final decision of  
26 the Commission under this paragraph is filed not later than 180

1 days from the date that the Petition for Review is filed with  
2 the Commission.

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

19 (b-1) If the employee is not receiving medical, surgical or  
20 hospital services as provided in paragraph (a) of Section 8 or  
21 compensation as provided in paragraph (b) of Section 8, the  
22 employee, in accordance with Commission Rules, may file a  
23 petition for an emergency hearing by an Arbitrator on the issue  
24 of whether or not he is entitled to receive payment of such  
25 compensation or services as provided therein. Such petition  
26 shall have priority over all other petitions and shall be heard

1 by the Arbitrator and Commission with all convenient speed.

2 Such petition shall contain the following information and  
3 shall be served on the employer at least 15 days before it is  
4 filed:

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

6 (ii) the approximate location of the accident;

7 (iii) a description of the accident;

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

9 (v) the identity of the person, if known, to whom the  
10 accident was reported and the date on which it was  
11 reported;

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

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

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

25 (ix) the dates of treatment related to the accident by  
26 medical practitioners, and the names and addresses of such



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

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

23 (xi) complete copies of any reports, records,  
24 documents and affidavits in the possession of the employee  
25 on which the employee will rely to support his allegations,  
26 provided that the employer shall pay the reasonable cost of

1 reproduction thereof;

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

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

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

19 The employer shall, within 15 days after receipt of the  
20 notice that such petition is filed, file with the Commission  
21 and serve on the employee or his representative a written  
22 response to each claim set forth in the petition, including the  
23 legal and factual basis for each disputed allegation and the  
24 following information: (i) complete copies of any reports,  
25 records, documents and affidavits in the possession of the  
26 employer on which the employer intends to rely in support of

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

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

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

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

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

18           (c) (1) At a reasonable time in advance of and in connection  
19 with the hearing under Section 19(e) or 19(h), the Commission  
20 may on its own motion order an impartial physical or mental  
21 examination of a petitioner whose mental or physical condition  
22 is in issue, when in the Commission's discretion it appears  
23 that such an examination will materially aid in the just  
24 determination of the case. The examination shall be made by a  
25 member or members of a panel of physicians chosen for their  
26 special qualifications by the Illinois State Medical Society.

1 The Commission shall establish procedures by which a physician  
2 shall be selected from such list.

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

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

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

12 (5) The examination shall be made, and the physician or  
13 physicians, if called, shall testify, without cost to the  
14 parties. The Commission shall determine the compensation and  
15 the pay of the physician or physicians. The compensation for  
16 this service shall not exceed the usual and customary amount  
17 for such service.

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

23 (d) If any employee shall persist in insanitary or  
24 injurious practices which tend to either imperil or retard his  
25 recovery or shall refuse to submit to such medical, surgical,  
26 or hospital treatment as is reasonably essential to promote his

1 recovery, the Commission may, in its discretion, reduce or  
2 suspend the compensation of any such injured employee. However,  
3 when an employer and employee so agree in writing, the  
4 foregoing provision shall not be construed to authorize the  
5 reduction or suspension of compensation of an employee who is  
6 relying in good faith, on treatment by prayer or spiritual  
7 means alone, in accordance with the tenets and practice of a  
8 recognized church or religious denomination, by a duly  
9 accredited practitioner thereof.

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

19 In all cases in which the hearing before the arbitrator is  
20 held after December 18, 1989, no additional evidence shall be  
21 introduced by the parties before the Commission on review of  
22 the decision of the Arbitrator. In reviewing decisions of an  
23 arbitrator the Commission shall award such temporary  
24 compensation, permanent compensation and other payments as are  
25 due under this Act. The Commission shall file in its office its  
26 decision thereon, and shall immediately send to each party or

1 his attorney a copy of such decision and a notification of the  
2 time when it was filed. Decisions shall be filed within 60 days  
3 after the Statement of Exceptions and Supporting Brief and  
4 Response thereto are required to be filed or oral argument  
5 whichever is later.

6 In the event either party requests oral argument, such  
7 argument shall be had before a panel of 3 members of the  
8 Commission (or before all available members pursuant to the  
9 determination of 7 members of the Commission that such argument  
10 be held before all available members of the Commission)  
11 pursuant to the rules and regulations of the Commission. A  
12 panel of 3 members, which shall be comprised of not more than  
13 one representative citizen of the employing class and not more  
14 than one representative from a labor organization recognized  
15 under the National Labor Relations Act or an attorney who has  
16 represented labor organizations or has represented employees  
17 in workers' compensation cases, shall hear the argument;  
18 provided that if all the issues in dispute are solely the  
19 nature and extent of the permanent partial disability, if any,  
20 a majority of the panel may deny the request for such argument  
21 and such argument shall not be held; and provided further that  
22 7 members of the Commission may determine that the argument be  
23 held before all available members of the Commission. A decision  
24 of the Commission shall be approved by a majority of  
25 Commissioners present at such hearing if any; provided, if no  
26 such hearing is held, a decision of the Commission shall be

1 approved by a majority of a panel of 3 members of the  
2 Commission as described in this Section. The Commission shall  
3 give 10 days' notice to the parties or their attorneys of the  
4 time and place of such taking of testimony and of such  
5 argument.

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



1 the signature of any member of the Commission.

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

15 At the request of either party or on its own motion, the  
16 Commission shall set forth in writing the reasons for the  
17 decision, including findings of fact and conclusions of law  
18 separately stated. The Commission shall by rule adopt a format  
19 for written decisions for the Commission and arbitrators. The  
20 written decisions shall be concise and shall succinctly state  
21 the facts and reasons for the decision. The Commission may  
22 adopt in whole or in part, the decision of the arbitrator as  
23 the decision of the Commission. When the Commission does so  
24 adopt the decision of the arbitrator, it shall do so by order.  
25 Whenever the Commission adopts part of the arbitrator's  
26 decision, but not all, it shall include in the order the

1 reasons for not adopting all of the arbitrator's decision. When  
2 a majority of a panel, after deliberation, has arrived at its  
3 decision, the decision shall be filed as provided in this  
4 Section without unnecessary delay, and without regard to the  
5 fact that a member of the panel has expressed an intention to  
6 dissent. Any member of the panel may file a dissent. Any  
7 dissent shall be filed no later than 10 days after the decision  
8 of the majority has been filed.

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

14 (f) The decision of the Commission acting within its  
15 powers, according to the provisions of paragraph (e) of this  
16 Section shall, in the absence of fraud, be conclusive unless  
17 reviewed as in this paragraph hereinafter provided. However,  
18 the Arbitrator or the Commission may on his or its own motion,  
19 or on the motion of either party, correct any clerical error or  
20 errors in computation within 15 days after the date of receipt  
21 of any award by such Arbitrator or any decision on review of  
22 the Commission and shall have the power to recall the original  
23 award on arbitration or decision on review, and issue in lieu  
24 thereof such corrected award or decision. Where such correction  
25 is made the time for review herein specified shall begin to run  
26 from the date of the receipt of the corrected award or

1 decision.

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

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

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

13 The Commission shall not be required to certify the  
14 record of their proceedings to the Circuit Court, unless  
15 the party commencing the proceedings for review in the  
16 Circuit Court as above provided, shall file with the  
17 Commission notice of intent to file for review in Circuit  
18 Court. It shall be the duty of the Commission upon such  
19 filing of notice of intent to file for review in the  
20 Circuit Court to prepare a true and correct copy of such  
21 testimony and a true and correct copy of all other matters  
22 contained in such record and certified to by the Secretary  
23 or Assistant Secretary thereof. The changes made to this  
24 subdivision (f)(1) by this amendatory Act of the 98th  
25 General Assembly apply to any Commission decision entered  
26 after the effective date of this amendatory Act of the 98th

1 General Assembly.

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

11 (2) No such summons shall issue unless the one against  
12 whom the Commission shall have rendered an award for the  
13 payment of money shall upon the filing of his written  
14 request for such summons file with the clerk of the court a  
15 bond or other collateral and guarantee pursuant to  
16 subdivision (f)(3) conditioned that if he shall not  
17 successfully prosecute the review, he will pay the award  
18 and the costs of the proceedings in the courts. The amount  
19 of the bond or other collateral and guarantee pursuant to  
20 subdivision (f)(3) shall be fixed by any member of the  
21 Commission and the surety or sureties of the bond shall be  
22 approved by the clerk of the court. The acceptance of the  
23 bond or other collateral and guarantee pursuant to  
24 subdivision (f)(3) by the clerk of the court shall  
25 constitute evidence of his approval of the bond or other  
26 collateral and guarantee pursuant to subdivision (f)(3).

1           (3) If the party seeking judicial review is the party  
2           against whom the Commission rendered an award for payment  
3           of money, then within the time frame for the commencement  
4           of proceedings, the party shall provide to the circuit  
5           court collateral or guarantee of payment of the award if  
6           the review is not successfully prosecuted.

7           (A) Collateral or guarantee may be provided in the  
8           following ways:

9                   (i) filing an insurance policy pursuant to  
10                   Section 392.1 of the Illinois Insurance Code;

11                   (ii) filing a certificate of self-insurance;

12                   (iii) placing sufficient funds in an escrow  
13                   account; or

14                   (iv) filing a bond signed by the employer or  
15                   any duly designated representative of the  
16                   employer, and in the event the employer is insured,  
17                   any representative of the insurer.

18           (B) If an insurance policy or certificate of  
19           self-insurance is filed as collateral or guarantee,  
20           the party respondent has 20 days within which to  
21           object, and if the objection is sustained, the party so  
22           filing the insurance policy or certificate of  
23           self-insurance has 10 days to cure the defect or  
24           otherwise file another appropriate form of collateral  
25           or guarantee. If no objection is filed within the 20  
26           days, all objections are waived.

1           (C) On motion supported by good cause made within  
2           the time frame for the commencement of proceedings or  
3           within any extension granted pursuant to this  
4           subdivision, the time for filing and approval of the  
5           collateral or guarantee may be extended by the circuit  
6           court, but the total extensions of time granted by the  
7           circuit court may not aggregate more than 45 days from  
8           the original due date unless the parties otherwise  
9           stipulate in writing. The motion must be presented to  
10           the circuit court at the time of filing the judicial  
11           review and called for hearing and ruled upon by the  
12           court within 10 days thereafter.

13           (D) The State, including its constitutional  
14           officers, boards, commissions, agencies, public  
15           institutions of higher learning, and funds  
16           administered by the treasurer ex officio, and every  
17           ~~Every~~ county, city, town, township, incorporated  
18           village, school district, body politic or municipal  
19           corporation against whom the Commission shall have  
20           rendered an award for the payment of money shall not be  
21           required to file a bond or other collateral and  
22           guarantee to secure the payment of the award and the  
23           costs of the proceedings in the court to authorize the  
24           court to issue such summons.

25           (E) The Treasurer's Office shall not be required to  
26           post a bond when appealing on behalf of the Injured

1           Workers' Benefit Fund.

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

14           It shall be the duty of the clerk of any court  
15 rendering a decision affecting or affirming an award of the  
16 Commission to promptly furnish the Commission with a copy  
17 of such decision, without charge.

18           The decision of a majority of the members of the panel  
19 of the Commission, shall be considered the decision of the  
20 Commission.

21           (g) Except in the case of a claim against the State of  
22 Illinois, either party may present a certified copy of the  
23 award of the Arbitrator, or a certified copy of the decision of  
24 the Commission when the same has become final, when no  
25 proceedings for review are pending, providing for the payment  
26 of compensation according to this Act, to the Circuit Court of



1 the county in which such accident occurred or either of the  
2 parties are residents, whereupon the court shall enter a  
3 judgment in accordance therewith. In a case where the employer  
4 refuses to pay compensation according to such final award or  
5 such final decision upon which such judgment is entered the  
6 court shall in entering judgment thereon, tax as costs against  
7 him the reasonable costs and attorney fees in the arbitration  
8 proceedings and in the court entering the judgment for the  
9 person in whose favor the judgment is entered, which judgment  
10 and costs taxed as therein provided shall, until and unless set  
11 aside, have the same effect as though duly entered in an action  
12 duly tried and determined by the court, and shall with like  
13 effect, be entered and docketed. The Circuit Court shall have  
14 power at any time upon application to make any such judgment  
15 conform to any modification required by any subsequent decision  
16 of the Supreme Court upon appeal, or as the result of any  
17 subsequent proceedings for review, as provided in this Act.

18 Judgment shall not be entered until 15 days' notice of the  
19 time and place of the application for the entry of judgment  
20 shall be served upon the employer by filing such notice with  
21 the Commission, which Commission shall, in case it has on file  
22 the address of the employer or the name and address of its  
23 agent upon whom notices may be served, immediately send a copy  
24 of the notice to the employer or such designated agent.

25 (h) An agreement or award under this Act providing for  
26 compensation in installments, may at any time within 18 months

1 after such agreement or award be reviewed by the Commission at  
2 the request of either the employer or the employee, on the  
3 ground that the disability of the employee has subsequently  
4 recurred, increased, diminished or ended.

5 However, as to accidents occurring subsequent to July 1,  
6 1955, which are covered by any agreement or award under this  
7 Act providing for compensation in installments made as a result  
8 of such accident, such agreement or award may at any time  
9 within 30 months, or 60 months in the case of an award under  
10 Section 8(d)1, after such agreement or award be reviewed by the  
11 Commission at the request of either the employer or the  
12 employee on the ground that the disability of the employee has  
13 subsequently recurred, increased, diminished or ended.

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

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

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

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

26          (k) In case where there has been any unreasonable or

1 vexatious delay of payment or intentional underpayment of  
2 compensation, or proceedings have been instituted or carried on  
3 by the one liable to pay the compensation, which do not present  
4 a real controversy, but are merely frivolous or for delay, then  
5 the Commission may award compensation additional to that  
6 otherwise payable under this Act equal to 50% of the amount  
7 payable at the time of such award. Failure to pay compensation  
8 in accordance with the provisions of Section 8, paragraph (b)  
9 of this Act, shall be considered unreasonable delay.

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

14 (1) If the employee has made written demand for payment of  
15 benefits under Section 8(a) or Section 8(b), the employer shall  
16 have 14 days after receipt of the demand to set forth in  
17 writing the reason for the delay. In the case of demand for  
18 payment of medical benefits under Section 8(a), the time for  
19 the employer to respond shall not commence until the expiration  
20 of the allotted 30 days specified under Section 8.2(d). In case  
21 the employer or his or her insurance carrier shall without good  
22 and just cause fail, neglect, refuse, or unreasonably delay the  
23 payment of benefits under Section 8(a) or Section 8(b), the  
24 Arbitrator or the Commission shall allow to the employee  
25 additional compensation in the sum of \$30 per day for each day  
26 that the benefits under Section 8(a) or Section 8(b) have been

1 so withheld or refused, not to exceed \$10,000. A delay in  
2 payment of 14 days or more shall create a rebuttable  
3 presumption of unreasonable delay.

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

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

1 the date of such appeal.

2 The employer or his insurance carrier may tender the  
3 payments due under the award to stop the further accrual of  
4 interest on such award notwithstanding the prosecution by  
5 either party of review, certiorari, appeal to the Supreme Court  
6 or other steps to reverse, vacate or modify the award.

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

16 The insured employer may challenge, in proceeding before  
17 the Commission, payments made by the insurer without  
18 arbitration and payments made after a case is determined to be  
19 noncompensable. If the Commission finds that the case was not  
20 compensable, the insurer shall purge its records as to that  
21 employer of any loss or expense associated with the claim,  
22 reimburse the employer for attorneys' fees arising from the  
23 challenge and for any payment required of the employer to the  
24 Rate Adjustment Fund or the Second Injury Fund, and may not  
25 reflect the loss or expense for rate making purposes. The  
26 employee shall not be required to refund the challenged

1 payment. The decision of the Commission may be reviewed in the  
2 same manner as in arbitrated cases. No challenge may be  
3 initiated under this paragraph more than 3 years after the  
4 payment is made. An employer may waive the right of challenge  
5 under this paragraph on a case by case basis.

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

1 award on arbitration, and issue in lieu thereof such corrected  
2 award. The decision of the arbitrator under this subsection (p)  
3 shall be considered the decision of the Commission and  
4 proceedings for review of questions of law arising from the  
5 decision may be commenced by either party pursuant to  
6 subsection (f) of Section 19. The Advisory Board established  
7 under Section 13.1 shall compile a list of certified Commission  
8 arbitrators, each of whom shall be approved by at least 7  
9 members of the Advisory Board. The chairman shall select 5  
10 persons from such list to serve as arbitrators under this  
11 subsection (p). By agreement, the parties shall select one  
12 arbitrator from among the 5 persons selected by the chairman  
13 except that if the parties do not agree on an arbitrator from  
14 among the 5 persons, the parties may, by agreement, select an  
15 arbitrator of the American Arbitration Association, whose fee  
16 shall be paid by the State in accordance with rules promulgated  
17 by the Commission. Arbitration under this subsection (p) shall  
18 be voluntary.

19 (Source: P.A. 101-384, eff. 1-1-20.)