

THE HOUSE OF REPRESENTATIVES
Thursday, February 18, 2010

House Bill No. 1611

HOUSE BILL NO. 1611 - By: SULLIVAN of the House.

An Act relating to workers' compensation; amending 85 O.S. 2001, Section 22, as amended by Section 20, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2008, Section 22), which relates to schedule of compensation; modifying eligibility for extension of benefits in certain circumstances; providing for maximum time limit of temporary total compensation for soft tissue injury; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 85 O.S. 2001, Section 22, as amended by Section
2 20, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2008, Section 22), is
3 amended to read as follows:

4 Section 22. The following schedule of compensation is hereby established:

5 1. Permanent Total Disability. In case of total disability adjudged to be permanent,
6 seventy percent (70%) of the employee's average weekly wages shall be paid to the
7 employee during the continuance of such total disability.

8 2. Temporary Total Disability. (a) With respect to injuries occurring before
9 November 4, 1994, in cases of temporary total disability, seventy percent (70%) of the
10 employee's average weekly wages shall be paid to the employee during the continuance
11 thereof, but not in excess of one hundred fifty (150) weeks, except as otherwise provided
12 in the Workers' Compensation Act. Provided, after compensation has been paid for a

1 period of one hundred forty (140) weeks, the employee may request a review of the case
2 by a judge of the Workers' Compensation Court for continued temporary total disability
3 benefits provided by the Workers' Compensation Act. Upon a finding that benefits
4 should be extended beyond the initial one-hundred-fifty-week period, compensation may
5 be continued for an additional one hundred fifty (150) weeks.

6 (b) With respect to injuries occurring on or after November 4, 1994, in cases of
7 temporary total disability, seventy percent (70%) of the employee's average weekly wages
8 shall be paid to the employee during the continuance thereof, but not in excess of fifty-
9 two (52) weeks, except as otherwise provided in the Workers' Compensation Act.

10 Provided, after compensation has been paid for a period of forty-two (42) weeks, the
11 employee may request a review of the case by a judge of the Court for continued
12 temporary total disability benefits provided by the Workers' Compensation Act. Upon a
13 finding that benefits should be extended beyond the initial fifty-two-week period,
14 compensation may be continued for additional successive fifty-two-week periods,
15 provided the employee has requested review of the case at forty-two (42) weeks during
16 each period involved, and upon a finding by the Court that benefits should be extended.
17 Total payments of compensation for temporary total disability may not exceed a
18 maximum of three hundred (300) weeks in the aggregate.

19 (c) With respect to injuries occurring on or after November 1, 1997, total payments
20 of compensation for temporary total disability may not exceed a maximum of one
21 hundred fifty-six (156) weeks in the aggregate except for good cause shown, as
22 determined by the Court. Total payments of compensation for temporary total disability,

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1 inclusive of consequential injuries, may not exceed a maximum of three hundred (300)
2 weeks in the aggregate.

3 3. Permanent Partial Disability. (a) With respect to injuries occurring prior to
4 November 4, 1994, in case of disability, partial in character but permanent in quality, the
5 compensation shall be seventy percent (70%) of the employee's average weekly wages,
6 and shall be paid to the employee for the period named in the schedule, as follows:

7 Thumb: For the loss of thumb, sixty (60) weeks.

8 First Finger: For the loss of the first finger, commonly called the index finger,
9 thirty-five (35) weeks.

10 Second Finger: For the loss of a second finger, thirty (30) weeks.

11 Third Finger: For the loss of a third finger, twenty (20) weeks.

12 Fourth Finger: For the loss of a fourth finger, commonly called the little finger,
13 fifteen (15) weeks.

14 Phalange of Thumb or Finger: The loss of the first phalange of the thumb or finger
15 shall be considered equal to the loss of one-half (1/2) of such thumb or finger, and
16 compensation shall be one-half (1/2) of the amount above specified; the loss of more than
17 one phalange shall be considered as the loss of the entire thumb or finger; provided,
18 however, that in no case shall the amount received for more than one finger exceed the
19 amount provided in this schedule for the loss of a hand.

20 Great Toe: For the loss of a great toe, thirty (30) weeks.

21 Other Toes: For the loss of one of the toes other than the great toe, ten (10) weeks.

1 Phalange of Toe: The loss of the first phalange of any toe shall be considered to be
2 equal to the loss of one-half (1/2) of the amount specified. The loss of more than one
3 phalange shall be considered as the loss of the entire toe.

4 Hand: For the loss of a hand, two hundred (200) weeks.

5 Arm: For the loss of an arm, two hundred fifty (250) weeks.

6 Foot: For the loss of a foot, two hundred (200) weeks.

7 Leg: For the loss of a leg, two hundred fifty (250) weeks.

8 Eye: For the loss of an eye, two hundred fifty (250) weeks.

9 Deafness: Deafness from industrial cause, including occupations which are
10 hazardous to hearing, accident or sudden trauma, three hundred (300) weeks, and total
11 deafness of one ear from industrial cause, including occupations which are hazardous to
12 hearing, accident or sudden trauma, one hundred (100) weeks. Except as otherwise
13 provided herein, any examining physician shall only evaluate deafness or hearing
14 impairment in accordance with the latest publication of the American Medical
15 Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time
16 of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this
17 title, recommend the adoption of a method or system to evaluate permanent impairment
18 that shall be used in place of or in combination with the American Medical Association's
19 "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be
20 made to the Administrator of the Workers' Compensation Court who may adopt the
21 recommendation in part or in whole. The adopted method or system shall be submitted
22 by the Administrator to the Governor, the Speaker of the House of Representatives and

1 President Pro Tempore of the Senate within the first ten (10) legislative days of a regular
2 session of the Legislature. Such method or system to evaluate permanent impairment
3 that shall be used in place of or in combination with the American Medical Association's
4 "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in
5 whole or in part by joint or concurrent resolution of the Legislature during the legislative
6 session in which submitted. Such method or system shall be operative one hundred
7 twenty (120) days after the last day of the month in which the Administrator submits the
8 adopted method or system to the Legislature if the Legislature takes no action or one
9 hundred twenty (120) days after the last day of the month in which the Legislature
10 disapproves it in part. If adopted, permanent impairment shall be evaluated only in
11 accordance with the latest version of the alternative method or system in effect at the
12 time of injury. Except as otherwise provided in Section 11 of this title, all evaluations
13 shall include an apportionment of injury causation. However, revisions to the guides
14 made by the American Medical Association which are published after January 1, 1989,
15 and before January 1, 1995, shall be operative one hundred twenty (120) days after the
16 last day of the month of publication. Revisions to the guides made by the American
17 Medical Association which are published after December 31, 1994, may be adopted in
18 whole or in part by the Administrator following recommendation by the Physician
19 Advisory Committee. Revisions adopted by the Administrator shall be submitted by the
20 Administrator to the Governor, the Speaker of the House of Representatives and
21 President Pro Tempore of the Senate within the first ten (10) legislative days of a regular
22 session of the Legislature. Such revisions shall be subject to disapproval in whole or in

1 part by joint or concurrent resolution of the Legislature during the legislative session in
2 which submitted. Revisions shall be operative one hundred twenty (120) days after the
3 last day of the month in which the Administrator submits the revisions to the
4 Legislature if the Legislature takes no action or one hundred twenty (120) days after the
5 last day of the month in which the Legislature disapproves them in part. The examining
6 physician shall not follow the guides based on race or ethnic origin. The examining
7 physician shall not deviate from said guides or any alternative thereof except as may be
8 specifically provided for in the guides or modifications to the guides or except as may be
9 specifically provided for in any alternative or modifications thereto adopted by the
10 Administrator of the Workers' Compensation Court as provided for in Section 201.1 of
11 this title. The guides or modifications thereto or alternative system or method of
12 evaluating permanent impairment or modifications thereto shall be the exclusive basis
13 for testimony and conclusions with regard to deafness or hearing impairment.

14 Loss of Use: Permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg or
15 eye shall be considered as the equivalent of the loss of such thumb, finger, toe, hand,
16 arm, foot, leg or eye.

17 For the permanent partial loss of use of a member, loss of hearing or sight of an eye,
18 seventy percent (70%) of the employee's average weekly wage during that portion of the
19 number of weeks in the foregoing schedule provided for the loss of such member or sight
20 of an eye which the partial loss of use thereof bears to the total loss of use of such
21 member, loss of hearing or sight of an eye.

1 Amputations: Amputation between the elbow and the wrist shall be considered as
2 the equivalent of the loss of a hand. Amputation between the knee and the ankle shall
3 be considered as the loss of a foot. Amputation at or above the elbow shall be considered
4 as the loss of an arm. Amputation at or above the knee shall be considered as the loss of
5 a leg.

6 The compensation for the foregoing specific injuries shall be in lieu of all other
7 compensation except the benefits provided in Section 14 of this title and Section 16 of
8 this title.

9 In case of an injury resulting in serious and permanent disfigurement,
10 compensation shall be payable in an amount to be determined by the Court, but not in
11 excess of Twenty Thousand Dollars (\$20,000.00); provided, that compensation for
12 permanent disfigurement shall not be in addition to the other compensation provided for
13 in this section, but shall be taken into consideration in fixing the compensation otherwise
14 provided.

15 Hernia: In case of an injury resulting in hernia, temporary total compensation for
16 fourteen (14) weeks, and the cost of an operation shall be payable; provided, in any case
17 where the injured employee has been twice previously operated for hernia in the same
18 area and it is established by opinion of a competent surgeon that further surgery in the
19 same area will not result in full relief of the condition, the Court may then award
20 compensation for disability resulting therefrom under paragraph 1 of this section, or, if
21 not totally and permanently disabled, then under the "Other Cases" subdivision
22 following, and, after a second surgical attempt to repair hernia, the injured may not be

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1 required to submit to further surgery in an effort to relieve the disability thereafter
2 existing; provided, further, the use of any artificial reinforcement or device, with or
3 without surgery, shall not be the basis of reducing extent of disability to be awarded.

4 Other Cases: In all other classes of disabilities, excluding only those heretofore
5 referred to in paragraph 3 of this section, which disabilities result in loss of use of any
6 portion of an employee's body, and which disabilities are permanent in quality but
7 partial in character, disability shall mean the percentage of permanent impairment. The
8 compensation ordered paid shall be seventy percent (70%) of the employee's average
9 weekly wage for the number of weeks which the partial disability of the employee bears
10 to five hundred (500) weeks.

11 (b) With respect to injuries occurring after November 4, 1994, through December
12 31, 2001, in case of disability, partial in character but permanent in quality, the
13 compensation shall be seventy percent (70%) of the employee's average weekly wages,
14 and shall be paid to the employee for the period prescribed by the following schedule:

15 (1) For each percent of the first nine percent (9%) of disability, eighty percent (80%)
16 of the number of weeks of compensation provided by law prior to November 4, 1994;

17 (2) For each percent of the next eleven percent (11%) of disability, the identical
18 number of weeks of compensation provided by law prior to November 4, 1994;

19 (3) For each percent of the next thirty percent (30%) of disability, one hundred
20 twenty percent (120%) of the number of weeks of compensation provided by law prior to
21 November 4, 1994; and

1 (4) For each remaining percent of disability, the identical number of weeks of
2 compensation provided by law prior to November 4, 1994.

3 (c) With respect to injuries occurring on or after January 1, 2002, through
4 December 31, 2002, in case of disability, partial in character but permanent in quality,
5 the compensation shall be seventy percent (70%) of the employee's average weekly wages,
6 and shall be paid to the employee for the period prescribed by the following schedule:

7 Thumb: For the loss of thumb, sixty-three (63) weeks.

8 First Finger: For the loss of the first finger, commonly called the index finger,
9 thirty-seven (37) weeks.

10 Second Finger: For the loss of a second finger, thirty-two (32) weeks.

11 Third Finger: For the loss of a third finger, twenty-one (21) weeks.

12 Fourth Finger: For the loss of a fourth finger, commonly called the little finger,
13 sixteen (16) weeks.

14 Phalange of Thumb or Finger: The loss of the first phalange of the thumb or finger
15 shall be considered equal to the loss of one-half (1/2) of such thumb or finger, and
16 compensation shall be one-half (1/2) of the amount above specified; the loss of more than
17 one phalange shall be considered as the loss of the entire thumb or finger; provided,
18 however, that in no case shall the amount received for more than one finger exceed the
19 amount provided in this schedule for the loss of a hand.

20 Great Toe: For the loss of a great toe, thirty-two (32) weeks.

21 Other Toes: For the loss of one of the toes other than the great toe, eleven (11)
22 weeks.

1 Phalange of Toe: The loss of the first phalange of any toe shall be considered to be
2 equal to the loss of one-half (1/2) of the amount specified. The loss of more than one
3 phalange shall be considered as the loss of the entire toe.

4 Hand: For the loss of a hand, two hundred ten (210) weeks.

5 Arm: For the loss of an arm, two hundred sixty-three (263) weeks.

6 Foot: For the loss of a foot, two hundred ten (210) weeks.

7 Leg: For the loss of a leg, two hundred sixty-three (263) weeks.

8 Eye: For the loss of an eye, two hundred sixty-three (263) weeks.

9 Deafness: Deafness from industrial cause, including occupations which are
10 hazardous to hearing, accident or sudden trauma, three hundred fifteen (315) weeks, and
11 total deafness of one ear from industrial cause, including occupations which are
12 hazardous to hearing, accident or sudden trauma, one hundred five (105) weeks. Except
13 as otherwise provided herein, any examining physician shall only evaluate deafness or
14 hearing impairment in accordance with the latest publication of the American Medical
15 Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time
16 of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this
17 title, recommend the adoption of a method or system to evaluate permanent impairment
18 that shall be used in place of or in combination with the American Medical Association's
19 "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be
20 made to the Administrator of the Workers' Compensation Court who may adopt the
21 recommendation in part or in whole. The adopted method or system shall be submitted
22 by the Administrator to the Governor, the Speaker of the House of Representatives and

1 President Pro Tempore of the Senate within the first ten (10) legislative days of a regular
2 session of the Legislature. Such method or system to evaluate permanent impairment
3 that shall be used in place of or in combination with the American Medical Association's
4 "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in
5 whole or in part by joint or concurrent resolution of the Legislature during the legislative
6 session in which submitted. Such method or system shall be operative one hundred
7 twenty (120) days after the last day of the month in which the Administrator submits the
8 adopted method or system to the Legislature if the Legislature takes no action or one
9 hundred twenty (120) days after the last day of the month in which the Legislature
10 disapproves it in part. If adopted, permanent impairment shall be evaluated only in
11 accordance with the latest version of the alternative method or system in effect at the
12 time of injury. Except as otherwise provided in Section 11 of this title, all evaluations
13 shall include an apportionment of injury causation. However, revisions to the guides
14 made by the American Medical Association which are published after January 1, 1989,
15 and before January 1, 1995, shall be operative one hundred twenty (120) days after the
16 last day of the month of publication. Revisions to the guides made by the American
17 Medical Association which are published after December 31, 1994, may be adopted in
18 whole or in part by the Administrator following recommendation by the Physician
19 Advisory Committee. Revisions adopted by the Administrator shall be submitted by the
20 Administrator to the Governor, the Speaker of the House of Representatives and
21 President Pro Tempore of the Senate within the first ten (10) legislative days of a regular
22 session of the Legislature. Such revisions shall be subject to disapproval in whole or in

1 part by joint or concurrent resolution of the Legislature during the legislative session in
2 which submitted. Revisions shall be operative one hundred twenty (120) days after the
3 last day of the month in which the Administrator submits the revisions to the
4 Legislature if the Legislature takes no action or one hundred twenty (120) days after the
5 last day of the month in which the Legislature disapproves them in part. The examining
6 physician shall not follow the guides based on race or ethnic origin. The examining
7 physician shall not deviate from such guides or any alternative thereof except as may be
8 specifically provided for in the guides or modifications to the guides or except as may be
9 specifically provided for in any alternative or modifications thereto adopted by the
10 Administrator of the Workers' Compensation Court as provided in Section 201.1 of this
11 title. The guides or modifications thereto or alternative system or method of evaluating
12 permanent impairment or modifications thereto shall be the exclusive basis for testimony
13 and conclusions with regard to deafness or hearing impairment.

14 Loss of Use: Permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg or
15 eye shall be considered as the equivalent of the loss of such thumb, finger, toe, hand,
16 arm, foot, leg or eye.

17 For the permanent partial loss of use of a member, loss of hearing or sight of an eye,
18 seventy percent (70%) of the employee's average weekly wage during that portion of the
19 number of weeks in the foregoing schedule provided for the loss of such member or sight
20 of an eye which the partial loss of use thereof bears to the total loss of use of such
21 member, loss of hearing or sight of an eye.

1 Amputations: Amputation between the elbow and the wrist shall be considered as
2 the equivalent of the loss of a hand. Amputation between the knee and the ankle shall
3 be considered as the loss of a foot. Amputation at or above the elbow shall be considered
4 as the loss of an arm. Amputation at or above the knee shall be considered as the loss of
5 a leg.

6 The compensation for the foregoing specific injuries shall be in lieu of all other
7 compensation except the benefits provided in Section 14 of this title and Section 16 of
8 this title.

9 In case of an injury resulting in serious and permanent disfigurement,
10 compensation shall be payable in an amount to be determined by the Court, but not in
11 excess of Twenty Thousand Dollars (\$20,000.00); provided, that compensation for
12 permanent disfigurement shall not be in addition to the other compensation provided for
13 in this section but shall be taken into consideration in fixing the compensation otherwise
14 provided.

15 Hernia: In case of an injury resulting in hernia, temporary total compensation for
16 six (6) weeks, and the cost of an operation shall be payable, unless the employee has not
17 been released from active medical treatment, temporary total compensation not to exceed
18 nine (9) weeks, and the cost of an operation shall be payable; provided, in any case where
19 the injured employee has been twice previously operated on for hernia in the same area
20 and it is established by opinion of a competent surgeon that further surgery in the same
21 area will not result in full relief of the condition, the Court may then award
22 compensation for disability resulting therefrom under paragraph 1 of this section, or, if

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1 not totally and permanently disabled, then under the “Other Cases” subdivision
2 following, and, after a second surgical attempt to repair hernia, the injured may not be
3 required to submit to further surgery in an effort to relieve the disability thereafter
4 existing; provided further, the use of any artificial reinforcement or device, with or
5 without surgery, shall not be the basis of reducing extent of disability to be awarded.

6 Other Cases: In all other classes of disabilities, excluding only those heretofore
7 referred to in this paragraph, which disabilities result in loss of use of any portion of an
8 employee’s body, and which disabilities are partial in character but permanent in
9 quality, disability shall mean the percentage of permanent impairment. The
10 compensation ordered paid shall be seventy percent (70%) of the employee’s average
11 weekly wage for the number of weeks which the partial disability of the employee bears
12 to five hundred (500) weeks.

13 (d) With respect to injuries occurring on or after January 1, 2003, in case of
14 disability, partial in character but permanent in quality, the compensation shall be
15 seventy percent (70%) of the employee’s average weekly wages, and shall be paid to the
16 employee for the period prescribed by the following schedule:

17 Thumb: For the loss of thumb, sixty-six (66) weeks.

18 First Finger: For the loss of the first finger, commonly called the index finger,
19 thirty-nine (39) weeks.

20 Second Finger: For the loss of a second finger, thirty-three (33) weeks.

21 Third Finger: For the loss of a third finger, twenty-two (22) weeks.

1 Fourth Finger: For the loss of a fourth finger, commonly called the little finger,
2 seventeen (17) weeks.

3 Phalange of Thumb or Finger: The loss of the first phalange of the thumb or finger
4 shall be considered equal to the loss of one-half (1/2) of such thumb or finger, and
5 compensation shall be one-half (1/2) of the amount above specified; the loss of more than
6 one phalange shall be considered as the loss of the entire thumb or finger; provided,
7 however, that in no case shall the amount received for more than one finger exceed the
8 amount provided in this schedule for the loss of a hand.

9 Great Toe: For the loss of a great toe, thirty-three (33) weeks.

10 Other Toes: For the loss of one of the toes other than the great toe, eleven (11)
11 weeks.

12 Phalange of Toe: The loss of the first phalange of any toe shall be considered to be
13 equal to the loss of one-half (1/2) of the amount specified. The loss of more than one
14 phalange shall be considered as the loss of the entire toe.

15 Hand: For the loss of a hand, two hundred twenty (220) weeks.

16 Arm: For the loss of an arm, two hundred seventy-five (275) weeks.

17 Foot: For the loss of a foot, two hundred twenty (220) weeks.

18 Leg: For the loss of a leg, two hundred seventy-five (275) weeks.

19 Eye: For the loss of an eye, two hundred seventy-five (275) weeks.

20 Deafness: Deafness from industrial cause, including occupations which are
21 hazardous to hearing, accident or sudden trauma, three hundred thirty (330) weeks, and
22 total deafness of one ear from industrial cause, including occupations which are

1 hazardous to hearing, accident or sudden trauma, one hundred ten (110) weeks. Except
2 as otherwise provided herein, any examining physician shall only evaluate deafness or
3 hearing impairment in accordance with the latest publication of the American Medical
4 Association’s “Guides to the Evaluation of Permanent Impairment” in effect at the time
5 of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this
6 title, recommend the adoption of a method or system to evaluate permanent impairment
7 that shall be used in place of or in combination with the American Medical Association’s
8 “Guides to the Evaluation of Permanent Impairment”. Such recommendation shall be
9 made to the Administrator of the Workers’ Compensation Court who may adopt the
10 recommendation in part or in whole. The adopted method or system shall be submitted
11 by the Administrator to the Governor, the Speaker of the House of Representatives and
12 President Pro Tempore of the Senate within the first ten (10) legislative days of a regular
13 session of the Legislature. Such method or system to evaluate permanent impairment
14 that shall be used in place of or in combination with the American Medical Association’s
15 “Guides to the Evaluation of Permanent Impairment” shall be subject to disapproval in
16 whole or in part by joint or concurrent resolution of the Legislature during the legislative
17 session in which submitted. Such method or system shall be operative one hundred
18 twenty (120) days after the last day of the month in which the Administrator submits the
19 adopted method or system to the Legislature if the Legislature takes no action or one
20 hundred twenty (120) days after the last day of the month in which the Legislature
21 disapproves it in part. If adopted, permanent impairment shall be evaluated only in
22 accordance with the latest version of the alternative method or system in effect at the

1 time of injury. Except as otherwise provided in Section 11 of this title, all evaluations
2 shall include an apportionment of injury causation. However, revisions to the guides
3 made by the American Medical Association which are published after January 1, 1989,
4 and before January 1, 1995, shall be operative one hundred twenty (120) days after the
5 last day of the month of publication. Revisions to the guides made by the American
6 Medical Association which are published after December 31, 1994, may be adopted in
7 whole or in part by the Administrator following recommendation by the Physician
8 Advisory Committee. Revisions adopted by the Administrator shall be submitted by the
9 Administrator to the Governor, the Speaker of the House of Representatives and
10 President Pro Tempore of the Senate within the first ten (10) legislative days of a regular
11 session of the Legislature. Such revisions shall be subject to disapproval in whole or in
12 part by joint or concurrent resolution of the Legislature during the legislative session in
13 which submitted. Revisions shall be operative one hundred twenty (120) days after the
14 last day of the month in which the Administrator submits the revisions to the
15 Legislature if the Legislature takes no action or one hundred twenty (120) days after the
16 last day of the month in which the Legislature disapproves them in part. The examining
17 physician shall not follow the guides based on race or ethnic origin. The examining
18 physician shall not deviate from such guides or any alternative thereof except as may be
19 specifically provided for in the guides or modifications to the guides or except as may be
20 specifically provided for in any alternative or modifications thereto adopted by the
21 Administrator of the Workers' Compensation Court as provided in Section 201.1 of this
22 title. The guides or modifications thereto or alternative system or method of evaluating

1 permanent impairment or modifications thereto shall be the exclusive basis for testimony
2 and conclusions with regard to deafness or hearing impairment.

3 Loss of Use: Permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg or
4 eye shall be considered as the equivalent of the loss of such thumb, finger, toe, hand,
5 arm, foot, leg or eye.

6 For the permanent partial loss of use of a member, loss of hearing or sight of an eye,
7 seventy percent (70%) of the employee's average weekly wage during that portion of the
8 number of weeks in the foregoing schedule provided for the loss of such member or sight
9 of an eye which the partial loss of use thereof bears to the total loss of use of such
10 member, loss of hearing or sight of an eye.

11 Amputations: Amputation between the elbow and the wrist shall be considered as
12 the equivalent of the loss of a hand. Amputation between the knee and the ankle shall
13 be considered as the loss of a foot. Amputation at or above the elbow shall be considered
14 as the loss of an arm. Amputation at or above the knee shall be considered as the loss of
15 a leg.

16 The compensation for the foregoing specific injuries shall be in lieu of all other
17 compensation except the benefits provided in Section 14 of this title and Section 16 of
18 this title.

19 In case of an injury resulting in serious and permanent disfigurement,
20 compensation shall be payable in an amount to be determined by the Court, but not in
21 excess of Twenty Thousand Dollars (\$20,000.00) for an injury occurring before November
22 1, 2005, and not in excess of Fifty Thousand Dollars (\$50,000.00) for an injury occurring

1 on or after November 1, 2005; provided, that compensation for permanent disfigurement
2 shall not be in addition to the other compensation provided for in this section but shall be
3 taken into consideration in fixing the compensation otherwise provided.

4 Hernia: In case of an injury resulting in hernia, temporary total compensation for
5 six (6) weeks, and all necessary medical costs including, but not limited to, the cost of an
6 operation shall be payable. A claimant who has had surgery for a hernia may petition
7 the court for one extension of temporary total compensation and the court may order
8 such an extension, not to exceed six (6) additional weeks, if the treating physician
9 indicates such an extension is appropriate, or as agreed to by all parties.

10 Soft Tissue Injury: In case of a nonsurgical soft tissue injury, temporary total
11 compensation shall not exceed eight (8) weeks. A claimant who has been recommended
12 by a treating physician for surgery for a soft tissue injury, or who has had surgery for a
13 soft tissue injury as a result of a recommendation by a treating physician, may petition
14 the Court for one extension of temporary total compensation and the court may order
15 such an extension, not to exceed sixteen (16) additional weeks, if the treating physician
16 indicates that such an extension is appropriate or as agreed to by all parties. In the
17 event the surgery is not recommended, or is recommended but not performed, the
18 benefits for the extension period shall be terminated. For purposes of this section, “soft
19 tissue injury” means damage to one or more of the tissues that surround bones and
20 joints. “Soft tissue injury” includes, but is not limited to: sprains, strains, contusions,
21 tendonitis, and muscle tears. Cumulative trauma is to be considered a soft tissue injury.
22 “Soft tissue injury” does not include any of the following:

1 (1) Injury to or disease of the spine, spinal disks, spinal nerves or spinal cord,
2 where corrective surgery is performed;

3 (2) Brain or closed-head injury as evidenced by:

- 4 a. sensory or motor disturbances,
- 5 b. communication disturbances,
- 6 c. complex integrated disturbances of cerebral function,
- 7 d. episodic neurological disorders, or
- 8 e. other brain and closed-head injury conditions at least as severe in
9 nature as any condition provided in subdivisions a through d of this
10 division; or

11 (3) Total knee replacement.

12 In all cases of soft tissue injury, the employee shall only be entitled to appropriate
13 and necessary medical care and temporary total disability as set out in ~~paragraph 2 of~~
14 ~~this section, this subparagraph.~~ The employee shall not be entitled to permanent
15 impairment unless there is objective medical evidence of a permanent anatomical
16 abnormality. In determining the existence of such an abnormality, the Court may
17 consider if there is credible medical evidence that the ability of the employee to earn
18 wages at the same level as before the injury has been permanently impaired.

19 Other Cases: In all other classes of disabilities, excluding only those heretofore
20 referred to in this paragraph, which disabilities result in loss of use of any portion of an
21 employee's body, and which disabilities are partial in character but permanent in
22 quality, disability shall mean the percentage of permanent impairment. The

1 compensation ordered paid shall be seventy percent (70%) of the employee's average
2 weekly wage for the number of weeks which the partial disability of the employee bears
3 to five hundred (500) weeks. No permanent disability shall be awarded unless there is
4 objective medical evidence, as defined in Section 3 of this title, of a permanent
5 anatomical abnormality. In determining the existence of such an abnormality, the Court
6 may consider if there is credible medical evidence that the ability of the employee to earn
7 wages at the same level as before the injury has been permanently impaired.

8 4. Temporary Partial Disability. (a) With respect to injuries occurring before
9 November 4, 1994, in case of temporary partial disability, except the particular cases
10 mentioned in paragraph 3 of this section, an injured employee shall receive seventy
11 percent (70%) of the difference between the employee's average weekly wages and the
12 employee's wage-earning capacity thereafter in the same employment or otherwise, if
13 less than before the injury, during continuance of such partial disability, but not to
14 exceed one hundred fifty (150) weeks. Provided, after compensation has been paid for a
15 period of one hundred forty (140) weeks, the employee may request a review of the case
16 by a judge of the Court for continued temporary partial disability benefits provided by
17 the Workers' Compensation Act. Upon a finding that benefits should be extended beyond
18 the initial one-hundred-fifty-week period, compensation may be continued for an
19 additional one hundred fifty (150) weeks.

20 (b) With respect to injuries occurring on or after November 4, 1994, in case of
21 temporary partial disability, except the particular cases mentioned in paragraph 3 of this
22 section, an injured employee shall receive seventy percent (70%) of the difference

1 between the employee's average weekly wages and the employee's wage-earning capacity
2 thereafter in the same employment or otherwise, if less than before the injury, during
3 continuance of such partial disability, but not to exceed fifty-two (52) weeks. Provided,
4 after compensation has been paid for a period of forty-two (42) weeks, the employee may
5 request a review of the case by a judge of the Court for continued temporary partial
6 disability benefits provided by the Workers' Compensation Act. Upon a finding that
7 benefits should be extended beyond the initial fifty-two-week period, compensation may
8 be continued for additional successive fifty-two-week periods provided the employee has
9 requested review of the case at forty-two (42) weeks during each period involved, and
10 upon a finding by the Court that benefits should be extended. Total payments of
11 compensation for temporary partial disability may not exceed a maximum of three
12 hundred (300) weeks in the aggregate.

13 (c) With respect to injuries occurring on or after November 1, 1997, total payments
14 of compensation for temporary partial disability may not exceed a maximum of one
15 hundred fifty-six (156) weeks in the aggregate except for good cause shown, as
16 determined by the Court. Total payments of compensation for temporary partial
17 disability, inclusive of consequential injuries, may not exceed a maximum of three
18 hundred (300) weeks in the aggregate.

19 5. Notwithstanding any other section of the Workers' Compensation Act, temporary
20 disability shall be payable without an award by the Court. The first payment of
21 temporary disability compensation shall become due on the tenth day after the employer
22 has received notice of injury as specified in Section 24.2 of this title. All compensation

1 owed on that date shall be paid and thereafter payments shall be made weekly except
2 when otherwise ordered by the Court.

3 If any compensation payments owed without an award are not paid within ten (10)
4 days after becoming due, there shall be added to such owed payments an amount equal
5 to ten percent (10%) of the amount due which shall be paid at the same time in addition
6 to the owed payments unless such nonpayment is excused by the Court after a showing
7 by the employer that conditions exist over which the employer had no control in that
8 either payments were not made within the prescribed time or the employer denies
9 coverage within the time specified for the employer to respond.

10 6. Limitation. The compensation payments under the provisions of the Workers'
11 Compensation Act shall not exceed the sum of seventy-five percent (75%) of the state's
12 average weekly wage as determined by the Oklahoma Employment Security
13 Commission, the sum of ninety percent (90%) of the state's average weekly wage
14 beginning January 1, 1995, for injuries occurring after December 31, 1994, and the sum
15 of one hundred percent (100%) of the state's average weekly wage beginning January 1,
16 1996, for injuries occurring after December 31, 1995, for temporary disability; Sixty
17 Dollars (\$60.00) per week beginning as of the effective date of the Workers'
18 Compensation Act, and Seventy Dollars (\$70.00) per week beginning January 1, 1979,
19 and Eighty Dollars (\$80.00) per week beginning January 1, 1980, and Ninety Dollars
20 (\$90.00) per week beginning January 1, 1981, and to fifty percent (50%) of the state's
21 average weekly wage beginning January 1, 1982, for permanent partial disability;
22 Seventy-five Dollars (\$75.00) per week beginning as of the effective date of the Workers'

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1 Compensation Act, and Ninety Dollars (\$90.00) per week beginning January 1, 1979, and
2 One Hundred Ten Dollars (\$110.00) per week beginning January 1, 1980, to sixty-six and
3 two-thirds percent (66 2/3%) of the state's average weekly wage beginning January 1,
4 1981, to seventy-five percent (75%) of the state's average weekly wage beginning
5 September 1, 1992, to ninety percent (90%) of the state's average weekly wage beginning
6 January 1, 1995, for injuries occurring after December 31, 1994, and to one hundred
7 percent (100%) of the state's average weekly wage beginning January 1, 1996, for injuries
8 occurring after December 31, 1995, for permanent total disability, or at any time be less
9 than Thirty Dollars (\$30.00) per week; provided, however, that if the employee's wages at
10 the time of the injury are less than Thirty Dollars (\$30.00) per week, the employee shall
11 receive the employee's full weekly wages; provided further, that the compensation
12 received, as provided for temporary partial disability, shall not, when added to the wages
13 received by such employee after such injury, amount to a greater sum than eighty
14 percent (80%) of the average weekly wages of the employee received prior to said injury.

15 The average weekly wage in this state shall be determined by the Oklahoma
16 Employment Security Commission every three (3) years beginning July 1, 1984, and
17 shall be used to establish maximum benefits under the Workers' Compensation Act for
18 injuries occurring during a three-year period, which period shall begin on the first day of
19 November after publication by the Oklahoma Employment Security Commission. For
20 the purpose of computing benefits payable under the Workers' Compensation Act, the
21 state's average weekly wage shall be rounded to the nearest dollar amount.

1 The benefit level for members of the National Guard and any authorized voluntary
2 or uncompensated worker rendering services as a fire fighter, peace officer or civil
3 defense worker shall be determined by using the earnings of the individual in the
4 individual's regular occupation.

5 7. Previous Disability. The fact that an employee has suffered previous disability
6 or impairment or received compensation therefor shall not preclude the employee from
7 compensation for a later accidental personal injury or occupational disease; but in
8 determining compensation for the later accidental personal injury or occupational
9 disease the employee's average weekly wages shall be such sum as will reasonably
10 represent the employee's earning capacity at the time of the later accidental personal
11 injury or occupational disease. In the event there exists a previous impairment,
12 including a previous non-work-related injury or condition which produced permanent
13 disability and the same is aggravated or accelerated by an accidental personal injury or
14 occupational disease, compensation for permanent disability shall be only for such
15 amount as was caused by such accidental personal injury or occupational disease and no
16 additional compensation shall be allowed for the pre-existing disability or impairment.
17 The sum of all permanent partial disability awards, excluding awards against the
18 Multiple Injury Trust Fund and awards for amputations, and surgeries, shall not exceed
19 one hundred percent (100%) permanent partial disability for any individual. An
20 individual may not receive more than five hundred twenty (520) weeks' compensation for
21 permanent partial disability, but may receive other benefits under the Workers'
22 Compensation Act if otherwise eligible as provided in the Workers' Compensation Act.

1 8. Income benefits for death. If the injury or occupational disease causes death,
2 income benefits shall be payable in the amount and for the benefit of the persons
3 following, subject to the maximum limits specified hereafter:

4 (a) Benefit amounts for particular classes of dependents.

5 (1) If there is a surviving spouse, to such surviving spouse seventy percent (70%) of
6 the average weekly wages the deceased was earning. In no event shall this spousal
7 income benefit be diminished.

8 (2) If there is a child or children, to such child or children fifteen percent (15%) of
9 the average weekly wages the deceased was earning for each child. Where there are
10 more than two such children, the income benefits payable for the benefit of all children
11 shall be divided among all children, to share and share alike, subject to the provisions of
12 subparagraphs (c) and (d) of this paragraph.

13 (3) In addition to the benefits theretofore paid or due, two (2) years' indemnity
14 benefit in one lump sum shall be payable to a surviving spouse upon remarriage.

15 (4) To the children, if there is no surviving spouse, fifty percent (50%) of the
16 average weekly wages the deceased was earning for one child, and twenty percent (20%)
17 of such wage for each additional child, divided among all children, to share and share
18 alike, subject to the provisions of subparagraphs (c) and (d) of this paragraph.

19 (5) The income benefits payable for the benefit of any child under this section shall
20 cease:

21 a. when the child dies, marries, or reaches the age of eighteen (18),

- 1 b. when the child over eighteen (18) years of age ceases to be physically
2 or mentally incapable of self-support,
- 3 c. when the actually dependent child ceases to be actually dependent, or
4 d. when the child has been enrolled as a full-time student in any
5 accredited educational institution or has been receiving education by
6 other means, including education at home pursuant to Section 4 of
7 Article XIII of the Oklahoma Constitution, and the child ceases to be so
8 enrolled or educated or reaches twenty-three (23) years of age. A child
9 who originally qualified as a dependent by virtue of being less than
10 eighteen (18) years of age may, upon reaching eighteen (18) years of
11 age, continue to qualify if the child satisfies the tests of being
12 physically or mentally incapable of self-support, actually dependent, or
13 enrolled in an accredited educational institution or being educated by
14 other means, including education at home pursuant to Section 4 of
15 Article XIII of the Oklahoma Constitution.

16 (6) To each parent, if actually dependent, twenty-five percent (25%) of the average
17 weekly wages the deceased was earning subject to the provisions of subparagraphs (c)
18 and (d) of this paragraph.

19 (7) To the brothers, sisters, grandparents and grandchildren, if actually dependent,
20 twenty-five percent (25%) of the average weekly wages the deceased was earning to each
21 such dependent. If there should be more than one of such dependents, the total income

1 benefits payable for the benefit of such dependents shall be divided to share and share
2 alike subject to the provisions of subparagraphs (c) and (d) of this paragraph.

3 (8) The income benefits of each beneficiary under divisions (6) and (7) above shall
4 be paid until the beneficiary, if a parent or grandparent, dies, marries or ceases to be
5 actually dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age
6 of eighteen (18), is over the age of eighteen (18) and ceases to be physically or mentally
7 incapable of self-support or ceases to be actually dependent.

8 (9) A person ceases to be actually dependent when the person's income from all
9 sources exclusive of workers' compensation income benefits is such that, if it had existed
10 at the time the original determination of actual dependency was made, it would not have
11 supported a finding of dependency. If the present annual income of an actually
12 dependent person including workers' compensation income benefits at any time exceeds
13 the total annual support received by the person from the deceased employee, the workers'
14 compensation benefits shall be reduced so that the total annual income is no greater than
15 such amount of annual support received from the deceased employee. In all cases, a
16 person found to be actually dependent shall be presumed to be no longer actually
17 dependent three (3) years after the time as of which the person was found to be actually
18 dependent. This presumption may be overcome by proof of continued actual dependency
19 as defined in this paragraph and paragraph (1) of Section 3.1 of this title.

20 (b) Change in dependents. Upon the cessation of income benefits under this section
21 to or for the benefit of any person, the income benefits payable to the remaining persons
22 who continue to be entitled to income benefits for the unexpired part of the period during

1 which their income benefits are payable shall be that which such persons would have
2 received if they had been the only persons entitled to income benefits at the time of the
3 decedent's death.

4 (c) Maximum income benefits for death. For the purposes of this section, the
5 average weekly wage of the employee shall be taken as not more than the average weekly
6 wage of the state. If the average weekly wages of the employee are equal to or greater
7 than the average weekly wage of the state, then the aggregate weekly income benefits
8 payable to all beneficiaries under this section shall not exceed the average weekly wage
9 of the state. If the average weekly wages of the employee are less than the average
10 weekly wage of the state, the aggregate weekly income benefits payable to all
11 beneficiaries under this section shall not exceed one hundred percent (100%) of the
12 average weekly wages of the employee.

13 (d) Maximum total payment. The maximum weekly income benefits payable for all
14 beneficiaries in case of death shall not exceed one hundred percent (100%) of the average
15 weekly wages the deceased was earning, subject to the maximum limits in subparagraph
16 (c) of this paragraph. The maximum aggregate limitation shall not apply in case of
17 payment of two (2) years' income benefits to the surviving spouse upon remarriage, as
18 provided under division (3) of subparagraph (a) of this paragraph, to prevent the
19 immediate recalculation and payments of benefits to the remaining beneficiaries as
20 provided under subparagraph (b) of this paragraph. The weekly income benefits as
21 recalculated to the remaining beneficiaries shall not exceed the weekly benefit that was
22 or would have been payable for total permanent disability to the deceased. The classes of

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1 entitled to an immediate lump-sum payment of Ten Thousand Dollars (\$10,000.00) to the
2 spouse and Two Thousand Five Hundred Dollars (\$2,500.00) to each surviving child not
3 to exceed two children. For deaths occurring after December 31, 1994, if there is a
4 surviving spouse and surviving children entitled to receive death benefits herein, such
5 survivors shall be entitled to an immediate lump-sum payment of Twenty Thousand
6 Dollars (\$20,000.00) to the spouse and Five Thousand Dollars (\$5,000.00) to each
7 surviving child not to exceed two children. For deaths occurring on or after November 1,
8 2005, if there is a surviving spouse and surviving children entitled to receive death
9 benefits herein, such survivors shall be entitled to an immediate lump-sum payment of
10 One Hundred Thousand Dollars (\$100,000.00) to the spouse and Twenty-five Thousand
11 Dollars (\$25,000.00) to each surviving child not to exceed two children. In addition, the
12 survivors shall be entitled to receive funeral benefits in an amount not to exceed Ten
13 Thousand Dollars (\$10,000.00).

14 (b) For deaths occurring before November 1, 2005, if there is no surviving spouse
15 but there are surviving children entitled to receive death benefits herein, such surviving
16 children shall be entitled to a lump-sum payment of Ten Thousand Dollars (\$10,000.00)
17 to be divided among all the children to share and share alike. For deaths occurring on or
18 after November 1, 2005, if there is no surviving spouse but there are surviving children
19 entitled to receive death benefits herein, each surviving child shall be entitled to a lump-
20 sum payment of Twenty-five Thousand Dollars (\$25,000.00), provided the total amount of
21 lump-sum payments shall not exceed One Hundred Fifty Thousand Dollars
22 (\$150,000.00), to be divided among all the children to share and share alike. The

1 survivors shall also be entitled to receive funeral benefits in an amount not to exceed Ten
2 Thousand Dollars (\$10,000.00).

3 (c) Any claim under this paragraph shall be substantiated by the filing of a
4 properly executed and authenticated proof of loss, which form shall be prescribed by the
5 Administrator, and payment of such sum shall be made within fifteen (15) days after
6 adjudication of entitlement by the Court. Such sum shall not be subject to any award of
7 attorney fees in uncontested cases, except the Court shall appoint a guardian ad litem to
8 represent known and unknown minor children and said guardian ad litem shall be paid a
9 reasonable fee for the services.

10 Provided, that all judgments rendered awarding lump-sum death benefits, except
11 lump-sum attorney fee awards, may, at the discretion of the Court, provide that said
12 benefits be paid in trust to an interest-bearing account in a federally insured banking
13 institution in the county wherein the judgment was rendered. The banking institution
14 may make appropriate charges to the beneficiary for costs of trust management. These
15 charges shall be fixed by agreement of such institution and the judge rendering the
16 judgment. The judgment awarding lump-sum death benefits shall contain instructions
17 for regularly scheduled disbursements to be fixed by the Court which may be modified by
18 the Court upon a proper showing of change of circumstance. The banking institution
19 shall issue a numbered receipt to the person paying the benefits into trust and deliver a
20 copy of the receipt to the Administrator. Each banking institution receiving trust funds
21 for deposit shall receive a schedule of disbursements and shall monthly pay said
22 disbursements to the beneficiary as ordered by the Court. An annual accounting of all

1 such trust funds received and deposited shall be rendered by each banking institution to
2 the Court granting the judgment.

3 12. No payments on any permanent impairment order shall start until payments
4 on any pre-existing permanent impairment orders have been completed.

5 13. (a) Any employee convicted of a misdemeanor or felony and sentenced to a term
6 of incarceration of at least ninety (90) days in this state or in any other jurisdiction shall
7 have all benefits for temporary total disability awarded by the Workers' Compensation
8 Court forfeited by order of the Court on motion of the employer or the employer's insurer
9 after confirmation of the employee's incarceration. The Court also may order the
10 forfeiture of such benefits on its own motion upon receipt of notice from the Director of
11 the Department of Corrections that the person awarded the benefits is incarcerated as an
12 inmate in a facility operated by or under contract with the Department. The provisions
13 of this subparagraph shall not apply to any benefits awarded to an inmate for
14 compensable injuries sustained by the inmate while in the employ of a private for-profit
15 employer or while employed in private prison industries, involving a for-profit employer,
16 which deal in interstate commerce or which sell products or services to the federal
17 government.

18 (b) Any employee convicted of a misdemeanor or felony and sentenced to a term of
19 incarceration of at least ninety (90) days in this state shall have all benefits for
20 permanent total disability or temporary partial disability awarded by the Workers'
21 Compensation Court and paid during the period of incarceration deposited to the credit
22 of an account established pursuant to Section 549 of Title 57 of the Oklahoma Statutes

1 for distribution in full to the Department of Corrections for costs of incarceration. The
2 State Board of Corrections shall have the power to collect workers' compensation benefits
3 on behalf of the prisoner as provided in this subparagraph and to distribute the benefits
4 as provided by law.

5 SECTION 2. This act shall become effective November 1, 2009.

6 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
7 FINANCIAL SERVICES, dated 02-17-10 - DO PASS.