

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2652

By: Sullivan

4  
5  
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending 85  
8 O.S. 2001, Sections 3, as last amended by Section 9,  
9 Chapter 1, 1st Extraordinary Session, O.S.L. 2005,  
10 and 22, as last amended by Section 1, Chapter 172,  
11 O.S.L. 2009 (85 O.S. Supp. 2009, Sections 3 and 22),  
12 which relate to definitions and schedule of  
13 compensation; adding definition of surgery; modifying  
14 eligibility for extension of benefits in certain  
15 circumstances; providing for termination of temporary  
16 total compensation for soft tissue injury in certain  
17 circumstances; and providing an effective date.

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

19 SECTION 1. AMENDATORY 85 O.S. 2001, Section 3, as last  
20 amended by Section 9, Chapter 1, 1st Extraordinary Session, O.S.L.  
21 2005 (85 O.S. Supp. 2009, Section 3), is amended to read as follows:

22 Section 3. As used in the Workers' Compensation Act:

- 23 1. "Administrator" means the Administrator of workers'  
24 compensation as provided for in the Workers' Compensation Act;
2. "Amount in dispute" means the dollar value of any permanent  
disability award granted to the employee by the Court for a

1 disability claim which is greater than the dollar amount offered by  
2 the employer to the employee for such disability claim if the  
3 employer admits compensability within twenty (20) days of the filing  
4 of the Employee's First Notice of Accidental Injury and Claim for  
5 Compensation, has not disputed medical treatment, and has made a  
6 written settlement offer within fifteen (15) days of the employee  
7 reaching maximum medical improvement;

8 3. "Case management" means the ongoing coordination, by a case  
9 manager, of health care services provided to an injured or disabled  
10 worker, including, but not limited to:

- 11 a. systematically monitoring the treatment rendered and  
12 the medical progress of the injured or disabled  
13 worker,
- 14 b. ensuring that any treatment plan follows all  
15 appropriate treatment protocols, utilization controls  
16 and practice parameters,
- 17 c. assessing whether alternative health care services are  
18 appropriate and delivered in a cost-effective manner  
19 based upon acceptable medical standards, and
- 20 d. ensuring that the injured or disabled worker is  
21 following the prescribed health care plan;

22 4. "Case manager" means a person who:  
23  
24

- 1 a. is a registered nurse with a current, active  
2 unencumbered license from the Oklahoma Board of  
3 Nursing, or
- 4 b. possesses one or more of the following certifications  
5 which indicate the individual has a minimum number of  
6 years of case management experience, has passed a  
7 national competency test and regularly obtains  
8 continuing education hours to maintain certification:
- 9 (1) Certified Disability Management Specialist  
10 (CDMS),
  - 11 (2) Certified Case Manager (CCM),
  - 12 (3) Certified Rehabilitation Registered Nurse (CRRN),
  - 13 (4) Case Manager - Certified (CMC),
  - 14 (5) Certified Occupational Health Nurse (COHN), or
  - 15 (6) Certified Occupational Health Nurse Specialist  
16 (COHN-S);

17 5. "Claimant" means a person who claims benefits for an injury  
18 pursuant to the provisions of the Workers' Compensation Act;

19 6. "Court" means the Workers' Compensation Court;

20 7. "Cumulative trauma" means a compensable injury, the major  
21 cause of which results from employment activities which are  
22 repetitive in nature and engaged in over a period of time and which  
23 is supported by objective medical evidence as defined in this  
24 section;

1       8. "Employer", except when otherwise expressly stated, means a  
2 person, partnership, association, limited liability company,  
3 corporation, and the legal representatives of a deceased employer,  
4 or the receiver or trustee of a person, partnership, association,  
5 corporation, or limited liability company, departments,  
6 instrumentalities and institutions of this state and divisions  
7 thereof, counties and divisions thereof, public trusts, boards of  
8 education and incorporated cities or towns and divisions thereof,  
9 employing a person included within the term "employee" as herein  
10 defined;

11       9. "Employee" means any person engaged in the employment of any  
12 person, firm, limited liability company or corporation covered by  
13 the terms of the Workers' Compensation Act, and shall include  
14 workers associating themselves together under an agreement for the  
15 performance of a particular piece of work, in which event such  
16 persons so associating themselves together shall be deemed employees  
17 of the person having the work executed; provided, that if such  
18 associated workers shall employ a worker in the execution of such  
19 contract, then as to such employed worker, both the associated  
20 employees and the principal employer shall at once become subject to  
21 the provisions of the Workers' Compensation Act relating to  
22 independent contractors. Sole proprietors, members of a  
23 partnership, members of a limited liability company who own at least  
24 ten percent (10%) of the capital of the limited liability company or

1 any stockholder-employees of a corporation who own ten percent (10%)  
2 or more stock in the corporation are specifically excluded from the  
3 foregoing definition of "employee", and shall not be deemed to be  
4 employees as respects the benefits of the Workers' Compensation Act.  
5 Provided, a sole proprietor, member of a partnership, member of a  
6 limited liability company who owns at least ten percent (10%) of the  
7 capital of the limited liability company or any stockholder-employee  
8 of a corporation who owns ten percent (10%) or more stock in the  
9 corporation who does not so elect to be covered by a policy of  
10 insurance covering benefits under the Workers' Compensation Act,  
11 when acting as a subcontractor, shall not be eligible to be covered  
12 under the prime contractor's policy of workers' compensation  
13 insurance; however, nothing herein shall relieve the entities  
14 enumerated from providing workers' compensation insurance coverage  
15 for their employees. Sole proprietors, members of a partnership,  
16 members of a limited liability company who own at least ten percent  
17 (10%) of the capital of the limited liability company or any  
18 stockholder-employees of a corporation who own ten percent (10%) or  
19 more stock in the corporation may elect to include the sole  
20 proprietors, any or all of the partnership members, any or all of  
21 the limited liability company members or any or all stockholder-  
22 employees as employees, if otherwise qualified, by endorsement to  
23 the policy specifically including them under any policy of insurance  
24 covering benefits under the Workers' Compensation Act. When so

1 included, the sole proprietors, members of a partnership, members of  
2 a limited liability company or any or all stockholder-employees  
3 shall be deemed to be employees as respects the benefits of the  
4 Workers' Compensation Act. "Employee" shall also include any person  
5 who is employed by the departments, instrumentalities and  
6 institutions of this state and divisions thereof, counties and  
7 divisions thereof, public trusts, boards of education and  
8 incorporated cities or towns and divisions thereof. "Employee"  
9 shall also include a member of the Oklahoma National Guard while in  
10 the performance of duties only while in response to state orders and  
11 any authorized voluntary or uncompensated worker, rendering services  
12 as a firefighter, peace officer or emergency management worker.  
13 Provided, "employee" shall not include any other person providing or  
14 performing voluntary service who receives no wages for the services  
15 other than meals, drug or alcohol rehabilitative therapy,  
16 transportation, lodging or reimbursement for incidental expenses.  
17 "Employee" shall also include a participant in a sheltered workshop  
18 program which is certified by the United States Department of Labor.  
19 "Employee" shall not include a person, commonly referred to as an  
20 owner-operator, who owns or leases a truck-tractor or truck for  
21 hire, if the owner-operator actually operates the truck-tractor or  
22 truck and if the person contracting with the owner-operator is not  
23 the lessor of the truck-tractor or truck. Provided, however, an  
24 owner-operator shall not be precluded from workers' compensation

1 coverage under the Workers' Compensation Act if the owner-operator  
2 elects to participate as a sole proprietor. "Employee" shall not  
3 include a person referred to as a drive-away owner-operator who  
4 privately owns and utilizes a tow vehicle in drive-away operations  
5 and operates independently for hire, if the drive-away owner-  
6 operator actually utilizes the tow vehicle and if the person  
7 contracting with the drive-away owner-operator is not the lessor of  
8 the tow vehicle. Provided, however, a drive-away owner-operator  
9 shall not be precluded from workers' compensation coverage under the  
10 Workers' Compensation Act if the drive-away owner-operator elects to  
11 participate as a sole proprietor;

12 10. "Drive-away operations" include every person engaged in the  
13 business of transporting and delivering new or used vehicles by  
14 driving, either singly or by towbar, saddle mount or full mount  
15 method, or any combination thereof, with or without towing a  
16 privately owned vehicle;

17 11. "Employment" includes work or labor in a trade, business,  
18 occupation or activity carried on by an employer or any authorized  
19 voluntary or uncompensated worker rendering services as a  
20 firefighter, peace officer or emergency management worker;

21 12. "Compensation" means the money allowance payable to an  
22 employee as provided for in the Workers' Compensation Act;

23 13. a. "Compensable injury" means any injury or occupational  
24 illness, causing internal or external harm to the

1 body, which arises out of and in the course of  
2 employment if such employment was the major cause of  
3 the specific injury or illness. An injury, other than  
4 cumulative trauma, is compensable only if it is caused  
5 by a specific incident and is identifiable by time,  
6 place and occurrence unless it is otherwise defined as  
7 compensable in this title. A compensable injury must  
8 be established by objective medical evidence, as  
9 defined in this section.

10 b. "Compensable injury" includes heart-related or  
11 vascular injury, illness or death only if an accident  
12 or the claimant's employment is the major cause of the  
13 heart-related or vascular injury. Such injury shall  
14 be compensable only if it is demonstrated that the  
15 exertion necessary to produce the harm was  
16 extraordinary and unusual in comparison to other  
17 occupations and that the occupation was the major  
18 cause of the harm. The injury must be established by  
19 objective medical evidence, as defined in this  
20 section.

21 c. "Injury" or "personal injury" shall not include mental  
22 injury that is unaccompanied by physical injury,  
23 except in the case of rape which arises out of and in  
24 the course of employment.

1           d. "Compensable injury" shall not include the ordinary,  
2           gradual deterioration or progressive degeneration  
3           caused by the aging process, unless the employment is  
4           a major cause of the deterioration or degeneration and  
5           is supported by objective medical evidence, as defined  
6           in this section; nor shall it include injury incurred  
7           while engaging in, performing or as the result of  
8           engaging in or performing any recreational or social  
9           activities;

10          14. "Wages" means the money rate at which the service rendered  
11          is recompensed under the contract of hiring in force at the time of  
12          the injury, including the reasonable value of board, rent, housing,  
13          lodging, or similar advantage received from the employer;

14          15. "Insurance carrier" shall include stock corporations,  
15          reciprocal or interinsurance associations, or mutual associations  
16          with which employers have insured, and employers permitted to pay  
17          compensation, directly under the provisions of paragraph 4 of  
18          subsection A of Section 61 of this title;

19          16. "Major cause" means the predominate cause of the resulting  
20          injury or illness;

21          17. "Objective medical evidence" means evidence which meets the  
22          criteria of Federal Rule of Evidence 702 and all U.S. Supreme Court  
23          case law applicable thereto;

1 18. "Occupational disease" means only that disease or illness  
2 which is due to causes and conditions characteristic of or peculiar  
3 to the particular trade, occupation, process or employment in which  
4 the employee is exposed to such disease. An occupational disease  
5 arises out of the employment only if the employment was the major  
6 cause of the resulting occupational disease and such is supported by  
7 objective medical evidence, as defined in this section;

8 19. "Permanent impairment" means any anatomical abnormality  
9 after maximum medical improvement has been achieved, which  
10 abnormality or loss the physician considers to be capable of being  
11 evaluated at the time the rating is made. Except as otherwise  
12 provided herein, any examining physician shall only evaluate  
13 impairment in accordance with the latest publication of the American  
14 Medical Association's "Guides to the Evaluation of Permanent  
15 Impairment" in effect at the time of the injury. The Physician  
16 Advisory Committee may, pursuant to Section 201.1 of this title,  
17 recommend the adoption of a method or system to evaluate permanent  
18 impairment that shall be used in place of or in combination with the  
19 American Medical Association's "Guides to the Evaluation of  
20 Permanent Impairment". Such recommendation shall be made to the  
21 Administrator of the Workers' Compensation Court who may adopt the  
22 recommendation in part or in whole. The adopted method or system  
23 shall be submitted by the Administrator to the Governor, the Speaker  
24 of the House of Representatives and the President Pro Tempore of the

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

1 adopted by the Administrator shall be submitted by the Administrator  
2 to the Governor, the Speaker of the House of Representatives and the  
3 President Pro Tempore of the Senate within the first ten (10)  
4 legislative days of a regular session of the Legislature. Such  
5 revisions shall be subject to disapproval in whole or in part by  
6 joint or concurrent resolution of the Legislature during the  
7 legislative session in which submitted. Revisions shall be  
8 operative one hundred twenty (120) days after the last day of the  
9 month in which the Administrator submits the revisions to the  
10 Governor and the Legislature if the Legislature takes no action or  
11 one hundred twenty (120) days after the last day of the month in  
12 which the Legislature disapproves them in part. The examining  
13 physician shall not follow the guides based on race or ethnic  
14 origin. The examining physician shall not deviate from said guides  
15 or any alternative thereto except as may be specifically provided  
16 for in the guides or modifications to the guides or except as may be  
17 specifically provided for in any alternative or modifications  
18 thereto, adopted by the Administrator of the Workers' Compensation  
19 Court as provided for in Section 201.1 of this title. These  
20 officially adopted guides or modifications thereto or alternative  
21 system or method of evaluating permanent impairment or modifications  
22 thereto shall be the exclusive basis for testimony and conclusions  
23 with regard to permanent impairment with the exception of paragraph  
24 3 of Section 22 of this title, relating to scheduled member injury

1 or loss; and impairment, including pain or loss of strength, may be  
2 awarded with respect to those injuries or areas of the body not  
3 specifically covered by said guides or alternative to said guides.  
4 All evaluations of permanent impairment must be supported by  
5 objective medical evidence;

6 20. "Permanent total disability" means incapacity because of  
7 accidental injury or occupational disease to earn any wages in any  
8 employment for which the employee may become physically suited and  
9 reasonably fitted by education, training or experience, including  
10 vocational rehabilitation; loss of both hands, or both feet, or both  
11 legs, or both eyes, or any two thereof, shall constitute permanent  
12 total disability;

13 21. "Permanent partial disability" means permanent disability  
14 which is less than total and shall be equal to or the same as  
15 permanent impairment;

16 22. "Maximum medical improvement" means that no further  
17 material improvement would reasonably be expected from medical  
18 treatment or the passage of time;

19 23. "Independent medical examiner" means a licensed physician  
20 authorized to serve as a medical examiner pursuant to Section 17 of  
21 this title;

22 24. "Certified workplace medical plan" means an organization of  
23 health care providers or any other entity, certified by the State  
24 Commissioner of Health pursuant to Section 14.3 of this title, that

1 is authorized to enter into a contractual agreement with a self-  
2 insured employer, group self-insurance association plan, an  
3 employer's workers' compensation insurance carrier or an insured,  
4 which shall include any member of an approved group self-insured  
5 association, policyholder or public entity, regardless of whether  
6 such entity is insured by CompSource Oklahoma, to provide medical  
7 care under the Workers' Compensation Act. Certified plans shall  
8 only include such plans which provide medical services and payment  
9 for services on a fee-for-service basis to medical providers and  
10 shall not include other plans which contract in some other manner,  
11 such as capitated or pre-paid plans; and

12 25. "Treating physician" means the licensed physician selected  
13 as provided in Section 14 of this title; and

14 26. "Surgery" means a medical procedure involving an incision  
15 into the skin allowing insertion of an instrument or device through  
16 the skin for treatment or diagnosis. An injection, or the forcing  
17 of fluids beneath the skin, does not constitute surgery for purposes  
18 of the Workers' Compensation Act regarding either temporary or  
19 permanent disability determinations.

20 SECTION 2. AMENDATORY 85 O.S. 2001, Section 22, as last  
21 amended by Section 1, Chapter 172, O.S.L. 2009 (85 O.S. Supp. 2009,  
22 Section 22), is amended to read as follows:

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

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

5           2. Temporary Total Disability. (a) With respect to injuries  
6 occurring before November 4, 1994, in cases of temporary total  
7 disability, seventy percent (70%) of the employee's average weekly  
8 wages shall be paid to the employee during the continuance thereof,  
9 but not in excess of one hundred fifty (150) weeks, except as  
10 otherwise provided in the Workers' Compensation Act. Provided,  
11 after compensation has been paid for a period of one hundred forty  
12 (140) weeks, the employee may request a review of the case by a  
13 judge of the Workers' Compensation Court for continued temporary  
14 total disability benefits provided by the Workers' Compensation Act.  
15 Upon a finding that benefits should be extended beyond the initial  
16 one-hundred-fifty-week period, compensation may be continued for an  
17 additional one hundred fifty (150) weeks.

18           (b) With respect to injuries occurring on or after November 4,  
19 1994, in cases of temporary total disability, seventy percent (70%)  
20 of the employee's average weekly wages shall be paid to the employee  
21 during the continuance thereof, but not in excess of fifty-two (52)  
22 weeks, except as otherwise provided in the Workers' Compensation  
23 Act. Provided, after compensation has been paid for a period of  
24 forty-two (42) weeks, the employee may request a review of the case

1 by a judge of the Court for continued temporary total disability  
2 benefits provided by the Workers' Compensation Act. Upon a finding  
3 that benefits should be extended beyond the initial fifty-two-week  
4 period, compensation may be continued for additional successive  
5 fifty-two-week periods, provided the employee has requested review  
6 of the case at forty-two (42) weeks during each period involved, and  
7 upon a finding by the Court that benefits should be extended. Total  
8 payments of compensation for temporary total disability may not  
9 exceed a maximum of three hundred (300) weeks in the aggregate.

10 (c) With respect to injuries occurring on or after November 1,  
11 1997, total payments of compensation for temporary total disability  
12 may not exceed a maximum of one hundred fifty-six (156) weeks in the  
13 aggregate except for good cause shown, as determined by the Court.  
14 Total payments of compensation for temporary total disability,  
15 inclusive of consequential injuries, may not exceed a maximum of  
16 three hundred (300) weeks in the aggregate.

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

23 Thumb: For the loss of thumb, sixty (60) weeks.  
24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 For the permanent partial loss of use of a member, loss of  
24 hearing or sight of an eye, seventy percent (70%) of the employee's

1 average weekly wage during that portion of the number of weeks in  
2 the foregoing schedule provided for the loss of such member or sight  
3 of an eye which the partial loss of use thereof bears to the total  
4 loss of use of such member, loss of hearing or sight of an eye.

5 Amputations: Amputation between the elbow and the wrist shall be  
6 considered as the equivalent of the loss of a hand. Amputation  
7 between the knee and the ankle shall be considered as the loss of a  
8 foot. Amputation at or above the elbow shall be considered as the  
9 loss of an arm. Amputation at or above the knee shall be considered  
10 as the loss of a leg.

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

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

21 Hernia: In case of an injury resulting in hernia, temporary  
22 total compensation for fourteen (14) weeks, and the cost of an  
23 operation shall be payable; provided, in any case where the injured  
24 employee has been twice previously operated for hernia in the same

1 area and it is established by opinion of a competent surgeon that  
2 further surgery in the same area will not result in full relief of  
3 the condition, the Court may then award compensation for disability  
4 resulting therefrom under paragraph 1 of this section, or, if not  
5 totally and permanently disabled, then under the "Other Cases"  
6 subdivision following, and, after a second surgical attempt to  
7 repair hernia, the injured may not be required to submit to further  
8 surgery in an effort to relieve the disability thereafter existing;  
9 provided, further, the use of any artificial reinforcement or  
10 device, with or without surgery, shall not be the basis of reducing  
11 extent of disability to be awarded.

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

21 (b) With respect to injuries occurring after November 4, 1994,  
22 through December 31, 2001, in case of disability, partial in  
23 character but permanent in quality, the compensation shall be  
24 seventy percent (70%) of the employee's average weekly wages, and

1 shall be paid to the employee for the period prescribed by the  
2 following schedule:

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

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

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

12 (4) For each remaining percent of disability, the identical  
13 number of weeks of compensation provided by law prior to November 4,  
14 1994.

15 (c) With respect to injuries occurring on or after January 1,  
16 2002, through December 31, 2002, in case of disability, partial in  
17 character but permanent in quality, the compensation shall be  
18 seventy percent (70%) of the employee's average weekly wages, and  
19 shall be paid to the employee for the period prescribed by the  
20 following schedule:

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

5 Deafness: Deafness from industrial cause, including occupations  
6 which are hazardous to hearing, accident or sudden trauma, three  
7 hundred fifteen (315) weeks, and total deafness of one ear from  
8 industrial cause, including occupations which are hazardous to  
9 hearing, accident or sudden trauma, one hundred five (105) weeks.

10 Except as otherwise provided herein, any examining physician shall  
11 only evaluate deafness or hearing impairment in accordance with the  
12 latest publication of the American Medical Association's "Guides to  
13 the Evaluation of Permanent Impairment" in effect at the time of the  
14 injury. The Physician Advisory Committee may, pursuant to Section  
15 201.1 of this title, recommend the adoption of a method or system to  
16 evaluate permanent impairment that shall be used in place of or in  
17 combination with the American Medical Association's "Guides to the  
18 Evaluation of Permanent Impairment". Such recommendation shall be  
19 made to the Administrator of the Workers' Compensation Court who may  
20 adopt the recommendation in part or in whole. The adopted method or  
21 system shall be submitted by the Administrator to the Governor, the  
22 Speaker of the House of Representatives and President Pro Tempore of  
23 the Senate within the first ten (10) legislative days of a regular  
24 session of the Legislature. Such method or system to evaluate

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

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

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

24

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

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

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

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

23 Hernia: In case of an injury resulting in hernia, temporary  
24 total compensation for six (6) weeks, and the cost of an operation

1 shall be payable, unless the employee has not been released from  
2 active medical treatment, temporary total compensation not to exceed  
3 nine (9) weeks, and the cost of an operation shall be payable;  
4 provided, in any case where the injured employee has been twice  
5 previously operated on for hernia in the same area and it is  
6 established by opinion of a competent surgeon that further surgery  
7 in the same area will not result in full relief of the condition,  
8 the Court may then award compensation for disability resulting  
9 therefrom under paragraph 1 of this section, or, if not totally and  
10 permanently disabled, then under the "Other Cases" subdivision  
11 following, and, after a second surgical attempt to repair hernia,  
12 the injured may not be required to submit to further surgery in an  
13 effort to relieve the disability thereafter existing; provided  
14 further, the use of any artificial reinforcement or device, with or  
15 without surgery, shall not be the basis of reducing extent of  
16 disability to be awarded.

17 Other Cases: In all other classes of disabilities, excluding  
18 only those heretofore referred to in this paragraph, which  
19 disabilities result in loss of use of any portion of an employee's  
20 body, and which disabilities are partial in character but permanent  
21 in quality, disability shall mean the percentage of permanent  
22 impairment. The compensation ordered paid shall be seventy percent  
23 (70%) of the employee's average weekly wage for the number of weeks  
24

1 | which the partial disability of the employee bears to five hundred  
2 | (500) weeks.

3 |       (d) With respect to injuries occurring on or after January 1,  
4 | 2003, in case of disability, partial in character but permanent in  
5 | quality, the compensation shall be seventy percent (70%) of the  
6 | employee's average weekly wages, and shall be paid to the employee  
7 | for the period prescribed by the following schedule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Deafness: Deafness from industrial cause, including occupations  
17 which are hazardous to hearing, accident or sudden trauma, three  
18 hundred thirty (330) weeks, and total deafness of one ear from  
19 industrial cause, including occupations which are hazardous to  
20 hearing, accident or sudden trauma, one hundred ten (110) weeks.

21 Except as otherwise provided herein, any examining physician shall  
22 only evaluate deafness or hearing impairment in accordance with the  
23 latest publication of the American Medical Association's "Guides to  
24 the Evaluation of Permanent Impairment" in effect at the time of the

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

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

1 to the guides or except as may be specifically provided for in any  
2 alternative or modifications thereto adopted by the Administrator of  
3 the Workers' Compensation Court as provided in Section 201.1 of this  
4 title. The guides or modifications thereto or alternative system or  
5 method of evaluating permanent impairment or modifications thereto  
6 shall be the exclusive basis for testimony and conclusions with  
7 regard to deafness or hearing impairment.

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

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

17       Amputations: Amputation between the elbow and the wrist shall be  
18 considered as the equivalent of the loss of a hand. Amputation  
19 between the knee and the ankle shall be considered as the loss of a  
20 foot. Amputation at or above the elbow shall be considered as the  
21 loss of an arm. Amputation at or above the knee shall be considered  
22 as the loss of a leg.

23

24

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

4       In case of an injury resulting in serious and permanent  
5 disfigurement, compensation shall be payable in an amount to be  
6 determined by the Court, but not in excess of Twenty Thousand  
7 Dollars (\$20,000.00) for an injury occurring before November 1,  
8 2005, and not in excess of Fifty Thousand Dollars (\$50,000.00) for  
9 an injury occurring on or after November 1, 2005; provided, that  
10 compensation for permanent disfigurement shall not be in addition to  
11 the other compensation provided for in this section but shall be  
12 taken into consideration in fixing the compensation otherwise  
13 provided.

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

22       Soft Tissue Injury: In case of a nonsurgical soft tissue injury,  
23 temporary total compensation shall not exceed eight (8) weeks. A  
24 claimant who has been recommended by a treating physician for

1 surgery for a soft tissue injury, or who has had surgery for a soft  
2 tissue injury as a result of a recommendation by a treating  
3 physician, may petition the Court for one extension of temporary  
4 total compensation and the court may order such an extension, not to  
5 exceed sixteen (16) additional weeks, if the treating physician  
6 indicates that such an extension is appropriate or as agreed to by  
7 all parties. In the event the surgery is not recommended, or is  
8 recommended but not performed within ninety (90) days after the  
9 recommendation, the benefits for the extension period shall be  
10 terminated. For purposes of this section, "soft tissue injury"  
11 means damage to one or more of the tissues that surround bones and  
12 joints. "Soft tissue injury" includes, but is not limited to:  
13 sprains, strains, contusions, tendonitis, and muscle tears.  
14 Cumulative trauma is to be considered a soft tissue injury. "Soft  
15 tissue injury" does not include any of the following:  
16 (1) Injury to or disease of the spine, spinal disks, spinal  
17 nerves or spinal cord, where corrective surgery is performed;  
18 (2) Brain or closed-head injury as evidenced by:  
19 a. sensory or motor disturbances,  
20 b. communication disturbances,  
21 c. complex integrated disturbances of cerebral function,  
22 d. episodic neurological disorders, or  
23  
24

1 e. other brain and closed-head injury conditions at least  
2 as severe in nature as any condition provided in  
3 subdivisions a through d of this division; or

4 (3) Total knee replacement.

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

14 Other Cases: In all other classes of disabilities, excluding  
15 only those heretofore referred to in this paragraph, which  
16 disabilities result in loss of use of any portion of an employee's  
17 body, and which disabilities are partial in character but permanent  
18 in quality, disability shall mean the percentage of permanent  
19 impairment. The compensation ordered paid shall be seventy percent  
20 (70%) of the employee's average weekly wage for the number of weeks  
21 which the partial disability of the employee bears to five hundred  
22 (500) weeks. No permanent disability shall be awarded unless there  
23 is objective medical evidence, as defined in Section 3 of this  
24 title, of a permanent anatomical abnormality. In determining the

1 existence of such an abnormality, the Court may consider if there is  
2 credible medical evidence that the ability of the employee to earn  
3 wages at the same level as before the injury has been permanently  
4 impaired.

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

20 (b) With respect to injuries occurring on or after November 4,  
21 1994, in case of temporary partial disability, except the particular  
22 cases mentioned in paragraph 3 of this section, an injured employee  
23 shall receive seventy percent (70%) of the difference between the  
24 employee's average weekly wages and the employee's wage-earning

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

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

22 5. Notwithstanding any other section of the Workers'  
23 Compensation Act, temporary disability shall be payable without an  
24 award by the Court. The first payment of temporary disability

1 compensation shall become due on the tenth day after the employer  
2 has received notice of injury as specified in Section 24.2 of this  
3 title. All compensation owed on that date shall be paid and  
4 thereafter payments shall be made weekly except when otherwise  
5 ordered by the Court.

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

15 6. Limitation. The compensation payments under the provisions  
16 of the Workers' Compensation Act shall not exceed the sum of  
17 seventy-five percent (75%) of the state's average weekly wage as  
18 determined by the Oklahoma Employment Security Commission, the sum  
19 of ninety percent (90%) of the state's average weekly wage beginning  
20 January 1, 1995, for injuries occurring after December 31, 1994, and  
21 the sum of one hundred percent (100%) of the state's average weekly  
22 wage beginning January 1, 1996, for injuries occurring after  
23 December 31, 1995, for temporary disability; Sixty Dollars (\$60.00)  
24 per week beginning as of the effective date of the Workers'

1 Compensation Act, and Seventy Dollars (\$70.00) per week beginning  
2 January 1, 1979, and Eighty Dollars (\$80.00) per week beginning  
3 January 1, 1980, and Ninety Dollars (\$90.00) per week beginning  
4 January 1, 1981, and to fifty percent (50%) of the state's average  
5 weekly wage beginning January 1, 1982, for permanent partial  
6 disability; Seventy-five Dollars (\$75.00) per week beginning as of  
7 the effective date of the Workers' Compensation Act, and Ninety  
8 Dollars (\$90.00) per week beginning January 1, 1979, and One Hundred  
9 Ten Dollars (\$110.00) per week beginning January 1, 1980, to sixty-  
10 six and two-thirds percent (66 2/3%) of the state's average weekly  
11 wage beginning January 1, 1981, to seventy-five percent (75%) of the  
12 state's average weekly wage beginning September 1, 1992, to ninety  
13 percent (90%) of the state's average weekly wage beginning January  
14 1, 1995, for injuries occurring after December 31, 1994, and to one  
15 hundred percent (100%) of the state's average weekly wage beginning  
16 January 1, 1996, for injuries occurring after December 31, 1995, for  
17 permanent total disability, or at any time be less than Thirty  
18 Dollars (\$30.00) per week; provided, however, that if the employee's  
19 wages at the time of the injury are less than Thirty Dollars  
20 (\$30.00) per week, the employee shall receive the employee's full  
21 weekly wages; provided further, that the compensation received, as  
22 provided for temporary partial disability, shall not, when added to  
23 the wages received by such employee after such injury, amount to a  
24

1 greater sum than eighty percent (80%) of the average weekly wages of  
2 the employee received prior to said injury.

3 The average weekly wage in this state shall be determined by the  
4 Oklahoma Employment Security Commission every year beginning July 1,  
5 1984, and shall be used to establish maximum benefits under the  
6 Workers' Compensation Act for injuries occurring during a one-year  
7 period, which period shall begin on the first day of November after  
8 publication by the Oklahoma Employment Security Commission. For the  
9 purpose of computing benefits payable under the Workers'  
10 Compensation Act, the state's average weekly wage shall be rounded  
11 to the nearest dollar amount.

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

17 7. Previous Disability. The fact that an employee has suffered  
18 previous disability or impairment or received compensation therefore  
19 shall not preclude the employee from compensation for a later  
20 accidental personal injury or occupational disease; but in  
21 determining compensation for the later accidental personal injury or  
22 occupational disease the employee's average weekly wages shall be  
23 such sum as will reasonably represent the employee's earning  
24 capacity at the time of the later accidental personal injury or

1 occupational disease. In the event there exists a previous  
2 impairment, including a previous non-work-related injury or  
3 condition which produced permanent disability and the same is  
4 aggravated or accelerated by an accidental personal injury or  
5 occupational disease, compensation for permanent disability shall be  
6 only for such amount as was caused by such accidental personal  
7 injury or occupational disease and no additional compensation shall  
8 be allowed for the pre-existing disability or impairment. The sum  
9 of all permanent partial disability awards, excluding awards against  
10 the Multiple Injury Trust Fund and awards for amputations, and  
11 surgeries, shall not exceed one hundred percent (100%) permanent  
12 partial disability for any individual. An individual may not  
13 receive more than five hundred twenty (520) weeks' compensation for  
14 permanent partial disability, but may receive other benefits under  
15 the Workers' Compensation Act if otherwise eligible as provided in  
16 the Workers' Compensation Act.

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

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

22 (1) If there is a surviving spouse, to such surviving spouse  
23 seventy percent (70%) of the average weekly wages the deceased was  
24

1 earning. In no event shall this spousal income benefit be  
2 diminished.

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

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

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

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

21 a. when the child dies, marries, or reaches the age of  
22 eighteen (18),  
23  
24

- 1           b.    when the child over eighteen (18) years of age ceases  
2                   to be physically or mentally incapable of self-  
3                   support,  
4           c.    when the actually dependent child ceases to be  
5                   actually dependent, or  
6           d.    when the child has been enrolled as a full-time  
7                   student in any accredited educational institution or  
8                   has been receiving education by other means, including  
9                   education at home pursuant to Section 4 of Article  
10                  XIII of the Oklahoma Constitution, and the child  
11                  ceases to be so enrolled or educated or reaches  
12                  twenty-three (23) years of age.  A child who  
13                  originally qualified as a dependent by virtue of being  
14                  less than eighteen (18) years of age may, upon  
15                  reaching eighteen (18) years of age, continue to  
16                  qualify if the child satisfies the tests of being  
17                  physically or mentally incapable of self-support,  
18                  actually dependent, or enrolled in an accredited  
19                  educational institution or being educated by other  
20                  means, including education at home pursuant to Section  
21                  4 of Article XIII of the Oklahoma Constitution.

22           (6) To each parent, if actually dependent, twenty-five percent  
23           (25%) of the average weekly wages the deceased was earning subject  
24           to the provisions of subparagraphs (c) and (d) of this paragraph.

1 (7) To the brothers, sisters, grandparents and grandchildren, if  
2 actually dependent, twenty-five percent (25%) of the average weekly  
3 wages the deceased was earning to each such dependent. If there  
4 should be more than one of such dependents, the total income  
5 benefits payable for the benefit of such dependents shall be divided  
6 to share and share alike subject to the provisions of subparagraphs  
7 (c) and (d) of this paragraph.

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

15 (9) A person ceases to be actually dependent when the person's  
16 income from all sources exclusive of workers' compensation income  
17 benefits is such that, if it had existed at the time the original  
18 determination of actual dependency was made, it would not have  
19 supported a finding of dependency. If the present annual income of  
20 an actually dependent person including workers' compensation income  
21 benefits at any time exceeds the total annual support received by  
22 the person from the deceased employee, the workers' compensation  
23 benefits shall be reduced so that the total annual income is no  
24 greater than such amount of annual support received from the

1 deceased employee. In all cases, a person found to be actually  
2 dependent shall be presumed to be no longer actually dependent three  
3 (3) years after the time as of which the person was found to be  
4 actually dependent. This presumption may be overcome by proof of  
5 continued actual dependency as defined in this paragraph and  
6 paragraph (1) of Section 3.1 of this title.

7 (b) Change in dependents. Upon the cessation of income benefits  
8 under this section to or for the benefit of any person, the income  
9 benefits payable to the remaining persons who continue to be  
10 entitled to income benefits for the unexpired part of the period  
11 during which their income benefits are payable shall be that which  
12 such persons would have received if they had been the only persons  
13 entitled to income benefits at the time of the decedent's death.

14 (c) Maximum income benefits for death. For the purposes of this  
15 section, the average weekly wage of the employee shall be taken as  
16 not more than the average weekly wage of the state. If the average  
17 weekly wages of the employee are equal to or greater than the  
18 average weekly wage of the state, then the aggregate weekly income  
19 benefits payable to all beneficiaries under this section shall not  
20 exceed the average weekly wage of the state. If the average weekly  
21 wages of the employee are less than the average weekly wage of the  
22 state, the aggregate weekly income benefits payable to all  
23 beneficiaries under this section shall not exceed one hundred  
24 percent (100%) of the average weekly wages of the employee.

1 (d) Maximum total payment. The maximum weekly income benefits  
2 payable for all beneficiaries in case of death shall not exceed one  
3 hundred percent (100%) of the average weekly wages the deceased was  
4 earning, subject to the maximum limits in subparagraph (c) of this  
5 paragraph. The maximum aggregate limitation shall not apply in case  
6 of payment of two (2) years' income benefits to the surviving spouse  
7 upon remarriage, as provided under division (3) of subparagraph (a)  
8 of this paragraph, to prevent the immediate recalculation and  
9 payments of benefits to the remaining beneficiaries as provided  
10 under subparagraph (b) of this paragraph. The weekly income  
11 benefits as recalculated to the remaining beneficiaries shall not  
12 exceed the weekly benefit that was or would have been payable for  
13 total permanent disability to the deceased. The classes of  
14 beneficiaries specified in divisions (1), (2) and (4) of  
15 subparagraph (a) of this paragraph shall have priority over all  
16 other beneficiaries in the apportionment of income benefits. If the  
17 provisions of this subparagraph should prevent payments to other  
18 beneficiaries of the income benefits to the full extent otherwise  
19 provided for by this section, the gross remaining amount of income  
20 benefits payable to such other beneficiaries shall be apportioned by  
21 class, proportionate to the interest of each class in the remaining  
22 amount. Parents shall be considered to be in one class and those  
23 specified in division (7) of subparagraph (a) of this paragraph in a  
24 separate class.

1       9. Where some pecuniary loss may be shown by heirs-at-law of  
2 the deceased, as defined by the descent and distribution statutes of  
3 Oklahoma, who are otherwise not entitled to receive benefits under  
4 other provisions of this section, such heirs-at-law shall receive  
5 compensation for their pecuniary loss not to exceed an aggregate of  
6 Five Thousand Dollars (\$5,000.00).

7       10. For deaths occurring before November 1, 2005, in the event  
8 that no benefits under other provisions of this section are paid to  
9 the dependents or the heirs-at-law of the deceased, an amount not to  
10 exceed Five Thousand Dollars (\$5,000.00) shall be paid for funeral  
11 expenses. For deaths occurring on or after November 1, 2005, in the  
12 event that no benefits under other provisions of this section are  
13 paid to the dependents or the heirs-at-law of the deceased, an  
14 amount not to exceed Eight Thousand Dollars (\$8,000.00) shall be  
15 paid for funeral expenses.

16       11. (a) For deaths occurring before January 1, 1995, if there  
17 is a surviving spouse and surviving children entitled to receive  
18 death benefits herein, such survivors shall be entitled to an  
19 immediate lump-sum payment of Ten Thousand Dollars (\$10,000.00) to  
20 the spouse and Two Thousand Five Hundred Dollars (\$2,500.00) to each  
21 surviving child not to exceed two children. For deaths occurring  
22 after December 31, 1994, if there is a surviving spouse and  
23 surviving children entitled to receive death benefits herein, such  
24 survivors shall be entitled to an immediate lump-sum payment of

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

12 (b) For deaths occurring before November 1, 2005, if there is no  
13 surviving spouse but there are surviving children entitled to  
14 receive death benefits herein, such surviving children shall be  
15 entitled to a lump-sum payment of Ten Thousand Dollars (\$10,000.00)  
16 to be divided among all the children to share and share alike. For  
17 deaths occurring on or after November 1, 2005, if there is no  
18 surviving spouse but there are surviving children entitled to  
19 receive death benefits herein, each surviving child shall be  
20 entitled to a lump-sum payment of Twenty-five Thousand Dollars  
21 (\$25,000.00), provided the total amount of lump-sum payments shall  
22 not exceed One Hundred Fifty Thousand Dollars (\$150,000.00), to be  
23 divided among all the children to share and share alike. The  
24

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

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

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

1 deliver a copy of the receipt to the Administrator. Each banking  
2 institution receiving trust funds for deposit shall receive a  
3 schedule of disbursements and shall monthly pay said disbursements  
4 to the beneficiary as ordered by the Court. An annual accounting of  
5 all such trust funds received and deposited shall be rendered by  
6 each banking institution to the Court granting the judgment.

7 12. No payments on any permanent impairment order shall start  
8 until payments on any pre-existing permanent impairment orders have  
9 been completed.

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

1 interstate commerce or which sell products or services to the  
2 federal government.

3 (b) Any employee convicted of a misdemeanor or felony and  
4 sentenced to a term of incarceration of at least ninety (90) days in  
5 this state shall have all benefits for permanent total disability or  
6 temporary partial disability awarded by the Workers' Compensation  
7 Court and paid during the period of incarceration deposited to the  
8 credit of an account established pursuant to Section 549 of Title 57  
9 of the Oklahoma Statutes for distribution in full to the Department  
10 of Corrections for costs of incarceration. The State Board of  
11 Corrections shall have the power to collect workers' compensation  
12 benefits on behalf of the prisoner as provided in this subparagraph  
13 and to distribute the benefits as provided by law.

14 SECTION 3. This act shall become effective November 1, 2010.

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16 52-2-8348 SDR 12/29/09

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