

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1680

By: David

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5
6 AS INTRODUCED

7 An Act relating to workers' compensation death
8 benefits; amending Sections 32 and 47, Chapter 208,
9 O.S.L. 2013, as amended by Sections 61 and 19,
10 Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019,
11 Sections 32 and 47), which relate to permanent total
12 disability awards and beneficiaries; establishing
13 exception for death benefit awards to surviving
14 spouses of law enforcement officers or firefighters;
15 and providing an effective date.

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

17 SECTION 1. AMENDATORY Section 32, Chapter 208, O.S.L.
18 2013, as amended by Section 61, Chapter 476, O.S.L. 2019 (85A O.S.
19 Supp. 2019, Section 32), is amended to read as follows:

20 Section 32. A. If an employee who is a "physically impaired
21 person" receives an accidental personal injury compensable under the
22 Administrative Workers' Compensation Act which results in additional
23 permanent disability so that the degree of disability caused by the
24 combination of both disabilities results in disability materially
25 greater than that which would have resulted from the subsequent
26 injury alone, the employee may proceed against the Multiple Injury

1 Trust Fund for permanent total disability. Only disability due to
2 an injury to the body as a whole at a subsequent employer shall be
3 combinable with a prior body disability, except that disability to a
4 member may be combined with disability to the body as a whole. If
5 such combined disabilities constitute permanent total disability, as
6 defined in Section 2 of this title, the employee shall receive full
7 compensation as provided by law for the disability resulting
8 directly and specifically from the subsequent injury. In addition,
9 the employee shall receive compensation for permanent total
10 disability if the combination of injuries renders the employee
11 permanently and totally disabled. The employer shall be liable only
12 for the degree of percent of disability which would have resulted
13 from the subsequent injury if there had been no preexisting
14 impairment. The compensation rate for permanent total disability
15 awards from the Multiple Injury Trust Fund shall be the compensation
16 rate for permanent partial disability paid by the employer in the
17 last combinable compensable injury.

18 B. Permanent total disability awards from the Multiple Injury
19 Trust Fund shall be payable in periodic installments for a period of
20 eight (8) years or until the employee reaches sixty-five (65) years
21 of age, whichever period is longer.

22 C. Permanent total disability awards from the Multiple Injury
23 Trust Fund shall accrue from the file date of the order of the
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1 Workers' Compensation Commission finding the claimant to be
2 permanently and totally disabled.

3 D. Before a physically impaired person can proceed against the
4 Multiple Injury Trust Fund, the previously adjudicated compensable
5 permanent partial disability adjudged and determined by the Workers'
6 Compensation Court, the Workers' Compensation Court of Existing
7 Claims or the Workers' Compensation Commission and the permanent
8 partial disability from the last injury must exceed fifty percent
9 (50%) to the body as a whole. However, amputations and loss of use
10 of a scheduled member qualifying as previous impairment under
11 paragraph 2 of subsection A of Section 30 of this title shall be
12 considered in lieu of previously adjudicated compensable permanent
13 partial disability.

14 E. Awards under this section shall abate upon the death, from
15 any cause, of the employee.

16 F. Reopening any prior claim other than the last injury claim
17 against the employer shall not give a claimant the right to
18 additional Multiple Injury Trust Fund benefits.

19 G. The Multiple Injury Trust Fund shall have authority to
20 compromise a claim for less than the indicated amount of permanent
21 total disability. Orders shall be paid in periodic installments
22 beginning on the date of the award, unless commuted to a lump-sum
23 payment or payments, by agreement of the claimant and the Multiple
24 Injury Trust Fund. All offers made by the Multiple Injury Trust

1 Fund pursuant to this section shall be conveyed by the claimant's
2 attorney to the claimant within five (5) days of receipt of the
3 offer.

4 H. If an order is entered finding an employee to be permanently
5 totally disabled as a result of combined disability, and such order
6 is the result of a compromised settlement, the employee is
7 thereafter prohibited from making an additional claim against the
8 Multiple Injury Trust Fund. An attorney for a claimant against the
9 Multiple Injury Trust Fund shall be entitled to a fee equal to
10 twenty percent (20%) of permanent disability benefits awarded. The
11 attorney fee shall be paid in periodic installments by the attorney
12 receiving every fifth check. All benefits awarded to the attorney
13 shall be vested at the time the award becomes final.

14 I. In the event a claimant receiving benefits for permanent and
15 total disability from the Multiple Injury Trust Fund dies as a
16 result of his or her injury before the award has been fully paid,
17 payments shall continue to the surviving spouse for five (5) years
18 or upon remarriage, whichever occurs first. However, a surviving
19 spouse eligible for benefits under this section shall remain
20 eligible upon remarriage if the death of the decedent occurred in
21 the course and scope of employment as a state or local law
22 enforcement officer or firefighter. In no event shall payments to
23 the surviving spouse extend beyond the period of benefits awarded to
24 the claimant.

1 SECTION 2. AMENDATORY Section 47, Chapter 208, O.S.L.

2 2013, as amended by Section 19, Chapter 476, O.S.L. 2019 (85A O.S.
3 Supp. 2019, Section 47), is amended to read as follows:

4 Section 47. A. Time of death. If death does not result within
5 one (1) year from the date of the accident or within the first three
6 (3) years of the period for compensation payments fixed by the
7 compensation judgment, a rebuttable presumption shall arise that the
8 death did not result from the injury.

9 B. Common law spouse. A common law spouse shall not be
10 entitled to benefits under this section unless he or she obtains an
11 order from the Workers' Compensation Commission ruling that a common
12 law marriage existed between the decedent and the surviving spouse.
13 The ruling by the Commission shall be exclusive in regard to
14 benefits under this section regardless of any district court
15 decision regarding the probate of the decedent's estate.

16 C. Beneficiaries - Amounts. If an injury or occupational
17 illness causes death, weekly income benefits shall be payable as
18 follows:

19 1. If there is a surviving spouse, a lump-sum payment of One
20 Hundred Thousand Dollars (\$100,000.00) and seventy percent (70%) of
21 the lesser of the deceased employee's average weekly wage and the
22 state average weekly wage. In addition to the benefits theretofore
23 paid or due, two (2) years' indemnity benefit in one lump sum shall
24 be payable to a surviving spouse upon remarriage;

1 2. If there is a surviving spouse and a child or children, a
2 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
3 fifteen percent (15%) of the lesser of the deceased employee's
4 average weekly wage and the state average weekly wage to each child.
5 If there are more than two children, each child shall receive a pro
6 rata share of Fifty Thousand Dollars (\$50,000.00) and thirty percent
7 (30%) of the deceased employee's average weekly wage;

8 3. If there is a child or children and no surviving spouse, a
9 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
10 fifty percent (50%) of the lesser of the deceased employee's average
11 weekly wage and the state average weekly wage to each child. If
12 there are more than two children, each child shall receive a pro
13 rata share of one hundred percent (100%) of the lesser of the
14 deceased employee's average weekly wage and the state average weekly
15 wage. With respect to the lump-sum payment, if there are more than
16 six children, each child shall receive a pro rata share of One
17 Hundred Fifty Thousand Dollars (\$150,000.00);

18 4. If there is no surviving spouse or children, each legal
19 guardian, if financially dependent on the employee at the time of
20 death, shall receive twenty-five percent (25%) of the lesser of the
21 deceased employee's average weekly wage and the state average weekly
22 wage until the earlier of death, becoming eligible for Social
23 Security, obtaining full-time employment, or five (5) years from the
24 date benefits under this section begin; and

1 5. The employer shall pay the actual funeral expenses, not
2 exceeding the sum of Ten Thousand Dollars (\$10,000.00).

3 D. The weekly income benefits payable to the surviving spouse
4 under this section shall continue while the surviving spouse remains
5 unmarried; provided, however, a surviving spouse eligible for
6 benefits under this section shall remain eligible upon remarriage if
7 the death of the decedent occurred in the course and scope of
8 employment as a state or local law enforcement officer or
9 firefighter. In no event shall this spousal weekly income benefit
10 be diminished by the award to other beneficiaries. The weekly
11 income benefits payable to any child under this section shall
12 terminate on the earlier of death, marriage, or reaching the age of
13 eighteen (18). However, if the child turns eighteen (18) and is:

14 1. Enrolled as a full-time student in high school or is being
15 schooled by other means pursuant to the Oklahoma Constitution;

16 2. Enrolled as a full-time student in any accredited
17 institution of higher education or vocational or technology
18 education; or

19 3. Physically or mentally incapable of self-support,
20 then he or she may continue to receive weekly income benefits under
21 this section until the earlier of reaching the age of twenty-three
22 (23) or, with respect to paragraphs 1 and 2 of this subsection, no
23 longer being enrolled as a student, and with respect to paragraph 3
24 of this subsection, becoming capable of self-support.

1 E. If any member of the class of beneficiaries who receive a
2 pro rata share of weekly income benefits becomes ineligible to
3 continue to receive benefits, the remaining members of the class
4 shall receive adjusted weekly income benefits equal to the new class
5 size.

6 F. To receive benefits under this section, a beneficiary or his
7 or her guardian, if applicable, shall file a proof of loss form with
8 the Commission. All questions of dependency shall be determined as
9 of the time of the injury. The employer shall initiate payment of
10 benefits within fifteen (15) days of the Commission's determination
11 of the proper beneficiaries. The Commission shall appoint a
12 guardian ad litem to represent known and unknown minor children and
13 the guardian ad litem shall be paid a reasonable fee for his or her
14 services.

15 SECTION 3. This act shall become effective November 1, 2020.

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