



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3931

Introduced 5/26/2010, by Sen. Dale A. Righter

SYNOPSIS AS INTRODUCED:

820 ILCS 305/1	from Ch. 48, par. 138.1
820 ILCS 305/8	from Ch. 48, par. 138.8
820 ILCS 305/11	from Ch. 48, par. 138.11
820 ILCS 305/13	from Ch. 48, par. 138.13
820 ILCS 305/14	from Ch. 48, par. 138.14

Amends the Workers' Compensation Act as follows: defines "injury" as an injury that has arisen out of and in the course of employment; provides that an injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability; provides that permanent partial or total disability shall be certified by a physician and demonstrated by use of medically defined objective measurements, that subjective complaints shall not be considered unless supported by and clearly related to objective measurements, and that a specified publication shall be applied in determining the level of disability; provides that an injury is deemed to arise out of and in the course of the employment only if specified conditions are met; provides that an injury resulting directly or indirectly from idiopathic causes is not compensable; provides that no compensation is payable if an injury was caused primarily by the intoxication of the employee or by the influence of alcohol or certain drugs and contains various provisions relating to the use of alcohol and drugs; requires Illinois Workers' Compensation Commission commissioners and arbitrators to weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts. Makes other changes. Effective immediately.

LRB096 22088 WGH 40604 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Sections 1, 8, 11, 13, and 14 as follows:

6 (820 ILCS 305/1) (from Ch. 48, par. 138.1)

7 Sec. 1. This Act may be cited as the Workers' Compensation
8 Act.

9 (a) The term "employer" as used in this Act means:

10 1. The State and each county, city, town, township,
11 incorporated village, school district, body politic, or
12 municipal corporation therein.

13 2. Every person, firm, public or private corporation,
14 including hospitals, public service, eleemosynary, religious
15 or charitable corporations or associations who has any person
16 in service or under any contract for hire, express or implied,
17 oral or written, and who is engaged in any of the enterprises
18 or businesses enumerated in Section 3 of this Act, or who at or
19 prior to the time of the accident to the employee for which
20 compensation under this Act may be claimed, has in the manner
21 provided in this Act elected to become subject to the
22 provisions of this Act, and who has not, prior to such
23 accident, effected a withdrawal of such election in the manner

1 provided in this Act.

2 3. Any one engaging in any business or enterprise referred
3 to in subsections 1 and 2 of Section 3 of this Act who
4 undertakes to do any work enumerated therein, is liable to pay
5 compensation to his own immediate employees in accordance with
6 the provisions of this Act, and in addition thereto if he
7 directly or indirectly engages any contractor whether
8 principal or sub-contractor to do any such work, he is liable
9 to pay compensation to the employees of any such contractor or
10 sub-contractor unless such contractor or sub-contractor has
11 insured, in any company or association authorized under the
12 laws of this State to insure the liability to pay compensation
13 under this Act, or guaranteed his liability to pay such
14 compensation. With respect to any time limitation on the filing
15 of claims provided by this Act, the timely filing of a claim
16 against a contractor or subcontractor, as the case may be,
17 shall be deemed to be a timely filing with respect to all
18 persons upon whom liability is imposed by this paragraph.

19 In the event any such person pays compensation under this
20 subsection he may recover the amount thereof from the
21 contractor or sub-contractor, if any, and in the event the
22 contractor pays compensation under this subsection he may
23 recover the amount thereof from the sub-contractor, if any.

24 This subsection does not apply in any case where the
25 accident occurs elsewhere than on, in or about the immediate
26 premises on which the principal has contracted that the work be

1 done.

2 4. Where an employer operating under and subject to the
3 provisions of this Act loans an employee to another such
4 employer and such loaned employee sustains a compensable
5 accidental injury in the employment of such borrowing employer
6 and where such borrowing employer does not provide or pay the
7 benefits or payments due such injured employee, such loaning
8 employer is liable to provide or pay all benefits or payments
9 due such employee under this Act and as to such employee the
10 liability of such loaning and borrowing employers is joint and
11 several, provided that such loaning employer is in the absence
12 of agreement to the contrary entitled to receive from such
13 borrowing employer full reimbursement for all sums paid or
14 incurred pursuant to this paragraph together with reasonable
15 attorneys' fees and expenses in any hearings before the
16 Illinois Workers' Compensation Commission or in any action to
17 secure such reimbursement. Where any benefit is provided or
18 paid by such loaning employer the employee has the duty of
19 rendering reasonable cooperation in any hearings, trials or
20 proceedings in the case, including such proceedings for
21 reimbursement.

22 Where an employee files an Application for Adjustment of
23 Claim with the Illinois Workers' Compensation Commission
24 alleging that his claim is covered by the provisions of the
25 preceding paragraph, and joining both the alleged loaning and
26 borrowing employers, they and each of them, upon written demand

1 by the employee and within 7 days after receipt of such demand,
2 shall have the duty of filing with the Illinois Workers'
3 Compensation Commission a written admission or denial of the
4 allegation that the claim is covered by the provisions of the
5 preceding paragraph and in default of such filing or if any
6 such denial be ultimately determined not to have been bona fide
7 then the provisions of Paragraph K of Section 19 of this Act
8 shall apply.

9 An employer whose business or enterprise or a substantial
10 part thereof consists of hiring, procuring or furnishing
11 employees to or for other employers operating under and subject
12 to the provisions of this Act for the performance of the work
13 of such other employers and who pays such employees their
14 salary or wages notwithstanding that they are doing the work of
15 such other employers shall be deemed a loaning employer within
16 the meaning and provisions of this Section.

17 (b) The term "employee" as used in this Act means:

18 1. Every person in the service of the State, including
19 members of the General Assembly, members of the Commerce
20 Commission, members of the Illinois Workers' Compensation
21 Commission, and all persons in the service of the University of
22 Illinois, county, including deputy sheriffs and assistant
23 state's attorneys, city, town, township, incorporated village
24 or school district, body politic, or municipal corporation
25 therein, whether by election, under appointment or contract of
26 hire, express or implied, oral or written, including all

1 members of the Illinois National Guard while on active duty in
2 the service of the State, and all probation personnel of the
3 Juvenile Court appointed pursuant to Article VI of the Juvenile
4 Court Act of 1987, and including any official of the State, any
5 county, city, town, township, incorporated village, school
6 district, body politic or municipal corporation therein except
7 any duly appointed member of a police department in any city
8 whose population exceeds 200,000 according to the last Federal
9 or State census, and except any member of a fire insurance
10 patrol maintained by a board of underwriters in this State. A
11 duly appointed member of a fire department in any city, the
12 population of which exceeds 200,000 according to the last
13 federal or State census, is an employee under this Act only
14 with respect to claims brought under paragraph (c) of Section
15 8.

16 One employed by a contractor who has contracted with the
17 State, or a county, city, town, township, incorporated village,
18 school district, body politic or municipal corporation
19 therein, through its representatives, is not considered as an
20 employee of the State, county, city, town, township,
21 incorporated village, school district, body politic or
22 municipal corporation which made the contract.

23 2. Every person in the service of another under any
24 contract of hire, express or implied, oral or written,
25 including persons whose employment is outside of the State of
26 Illinois where the contract of hire is made within the State of

1 Illinois, persons whose employment results in fatal or
2 non-fatal injuries within the State of Illinois where the
3 contract of hire is made outside of the State of Illinois, and
4 persons whose employment is principally localized within the
5 State of Illinois, regardless of the place of the accident or
6 the place where the contract of hire was made, and including
7 aliens, and minors who, for the purpose of this Act are
8 considered the same and have the same power to contract,
9 receive payments and give quittances therefor, as adult
10 employees.

11 3. Every sole proprietor and every partner of a business
12 may elect to be covered by this Act.

13 An employee or his dependents under this Act who shall have
14 a cause of action by reason of any injury, disablement or death
15 arising out of and in the course of his employment may elect to
16 pursue his remedy in the State where injured or disabled, or in
17 the State where the contract of hire is made, or in the State
18 where the employment is principally localized.

19 However, any employer may elect to provide and pay
20 compensation to any employee other than those engaged in the
21 usual course of the trade, business, profession or occupation
22 of the employer by complying with Sections 2 and 4 of this Act.
23 Employees are not included within the provisions of this Act
24 when excluded by the laws of the United States relating to
25 liability of employers to their employees for personal injuries
26 where such laws are held to be exclusive.

1 The term "employee" does not include persons performing
2 services as real estate broker, broker-salesman, or salesman
3 when such persons are paid by commission only.

4 (c) "Commission" means the Industrial Commission created
5 by Section 5 of "The Civil Administrative Code of Illinois",
6 approved March 7, 1917, as amended, or the Illinois Workers'
7 Compensation Commission created by Section 13 of this Act.

8 (d) "Injury" means an injury that has arisen out of and in
9 the course of employment. An injury by accident is compensable
10 only if the accident was the prevailing factor in causing both
11 the resulting medical condition and disability. "Prevailing
12 factor" means the primary factor, in relation to any other
13 factor, causing both the resulting medical condition and
14 disability.

15 (1) An injury is deemed to arise out of and in the
16 course of the employment only if:

17 (A) it is reasonably apparent, upon consideration
18 of all the circumstances, that the accident is the
19 prevailing factor in causing the injury; and

20 (B) it does not come from a hazard or risk
21 unrelated to the employment to which workers would have
22 been equally exposed outside of and unrelated to the
23 employment in normal nonemployment life.

24 (2) An injury resulting directly or indirectly from
25 idiopathic causes is not compensable.

26 (Source: P.A. 93-721, eff. 1-1-05.)

1 (820 ILCS 305/8) (from Ch. 48, par. 138.8)

2 Sec. 8. The amount of compensation which shall be paid to
3 the employee for an accidental injury not resulting in death
4 is:

5 (a) The employer shall provide and pay the negotiated rate,
6 if applicable, or the lesser of the health care provider's
7 actual charges or according to a fee schedule, subject to
8 Section 8.2, in effect at the time the service was rendered for
9 all the necessary first aid, medical and surgical services, and
10 all necessary medical, surgical and hospital services
11 thereafter incurred, limited, however, to that which is
12 reasonably required to cure or relieve from the effects of the
13 accidental injury. If the employer does not dispute payment of
14 first aid, medical, surgical, and hospital services, the
15 employer shall make such payment to the provider on behalf of
16 the employee. The employer shall also pay for treatment,
17 instruction and training necessary for the physical, mental and
18 vocational rehabilitation of the employee, including all
19 maintenance costs and expenses incidental thereto. If as a
20 result of the injury the employee is unable to be
21 self-sufficient the employer shall further pay for such
22 maintenance or institutional care as shall be required.

23 The employee may at any time elect to secure his own
24 physician, surgeon and hospital services at the employer's
25 expense, or,

1 Upon agreement between the employer and the employees, or
2 the employees' exclusive representative, and subject to the
3 approval of the Illinois Workers' Compensation Commission, the
4 employer shall maintain a list of physicians, to be known as a
5 Panel of Physicians, who are accessible to the employees. The
6 employer shall post this list in a place or places easily
7 accessible to his employees. The employee shall have the right
8 to make an alternative choice of physician from such Panel if
9 he is not satisfied with the physician first selected. If, due
10 to the nature of the injury or its occurrence away from the
11 employer's place of business, the employee is unable to make a
12 selection from the Panel, the selection process from the Panel
13 shall not apply. The physician selected from the Panel may
14 arrange for any consultation, referral or other specialized
15 medical services outside the Panel at the employer's expense.
16 Provided that, in the event the Commission shall find that a
17 doctor selected by the employee is rendering improper or
18 inadequate care, the Commission may order the employee to
19 select another doctor certified or qualified in the medical
20 field for which treatment is required. If the employee refuses
21 to make such change the Commission may relieve the employer of
22 his obligation to pay the doctor's charges from the date of
23 refusal to the date of compliance.

24 Any vocational rehabilitation counselors who provide
25 service under this Act shall have appropriate certifications
26 which designate the counselor as qualified to render opinions

1 relating to vocational rehabilitation. Vocational
2 rehabilitation may include, but is not limited to, counseling
3 for job searches, supervising a job search program, and
4 vocational retraining including education at an accredited
5 learning institution. The employee or employer may petition to
6 the Commission to decide disputes relating to vocational
7 rehabilitation and the Commission shall resolve any such
8 dispute, including payment of the vocational rehabilitation
9 program by the employer.

10 The maintenance benefit shall not be less than the
11 temporary total disability rate determined for the employee. In
12 addition, maintenance shall include costs and expenses
13 incidental to the vocational rehabilitation program.

14 When the employee is working light duty on a part-time
15 basis or full-time basis and earns less than he or she would be
16 earning if employed in the full capacity of the job or jobs,
17 then the employee shall be entitled to temporary partial
18 disability benefits. Temporary partial disability benefits
19 shall be equal to two-thirds of the difference between the
20 average amount that the employee would be able to earn in the
21 full performance of his or her duties in the occupation in
22 which he or she was engaged at the time of accident and the net
23 amount which he or she is earning in the modified job provided
24 to the employee by the employer or in any other job that the
25 employee is working.

26 Every hospital, physician, surgeon or other person

1 rendering treatment or services in accordance with the
2 provisions of this Section shall upon written request furnish
3 full and complete reports thereof to, and permit their records
4 to be copied by, the employer, the employee or his dependents,
5 as the case may be, or any other party to any proceeding for
6 compensation before the Commission, or their attorneys.

7 Notwithstanding the foregoing, the employer's liability to
8 pay for such medical services selected by the employee shall be
9 limited to:

10 (1) all first aid and emergency treatment; plus

11 (2) all medical, surgical and hospital services
12 provided by the physician, surgeon or hospital initially
13 chosen by the employee or by any other physician,
14 consultant, expert, institution or other provider of
15 services recommended by said initial service provider or
16 any subsequent provider of medical services in the chain of
17 referrals from said initial service provider; plus

18 (3) all medical, surgical and hospital services
19 provided by any second physician, surgeon or hospital
20 subsequently chosen by the employee or by any other
21 physician, consultant, expert, institution or other
22 provider of services recommended by said second service
23 provider or any subsequent provider of medical services in
24 the chain of referrals from said second service provider.
25 Thereafter the employer shall select and pay for all
26 necessary medical, surgical and hospital treatment and the

1 employee may not select a provider of medical services at
2 the employer's expense unless the employer agrees to such
3 selection. At any time the employee may obtain any medical
4 treatment he desires at his own expense. This paragraph
5 shall not affect the duty to pay for rehabilitation
6 referred to above.

7 When an employer and employee so agree in writing, nothing
8 in this Act prevents an employee whose injury or disability has
9 been established under this Act, from relying in good faith, on
10 treatment by prayer or spiritual means alone, in accordance
11 with the tenets and practice of a recognized church or
12 religious denomination, by a duly accredited practitioner
13 thereof, and having nursing services appropriate therewith,
14 without suffering loss or diminution of the compensation
15 benefits under this Act. However, the employee shall submit to
16 all physical examinations required by this Act. The cost of
17 such treatment and nursing care shall be paid by the employee
18 unless the employer agrees to make such payment.

19 Where the accidental injury results in the amputation of an
20 arm, hand, leg or foot, or the enucleation of an eye, or the
21 loss of any of the natural teeth, the employer shall furnish an
22 artificial of any such members lost or damaged in accidental
23 injury arising out of and in the course of employment, and
24 shall also furnish the necessary braces in all proper and
25 necessary cases. In cases of the loss of a member or members by
26 amputation, the employer shall, whenever necessary, maintain

1 in good repair, refit or replace the artificial limbs during
2 the lifetime of the employee. Where the accidental injury
3 accompanied by physical injury results in damage to a denture,
4 eye glasses or contact eye lenses, or where the accidental
5 injury results in damage to an artificial member, the employer
6 shall replace or repair such denture, glasses, lenses, or
7 artificial member.

8 The furnishing by the employer of any such services or
9 appliances is not an admission of liability on the part of the
10 employer to pay compensation.

11 The furnishing of any such services or appliances or the
12 servicing thereof by the employer is not the payment of
13 compensation.

14 (b) If the period of temporary total incapacity for work
15 lasts more than 3 working days, weekly compensation as
16 hereinafter provided shall be paid beginning on the 4th day of
17 such temporary total incapacity and continuing as long as the
18 total temporary incapacity lasts. In cases where the temporary
19 total incapacity for work continues for a period of 14 days or
20 more from the day of the accident compensation shall commence
21 on the day after the accident.

22 1. The compensation rate for temporary total
23 incapacity under this paragraph (b) of this Section shall
24 be equal to 66 2/3% of the employee's average weekly wage
25 computed in accordance with Section 10, provided that it
26 shall be not less than 66 2/3% of the sum of the Federal

1 minimum wage under the Fair Labor Standards Act, or the
2 Illinois minimum wage under the Minimum Wage Law, whichever
3 is more, multiplied by 40 hours. This percentage rate shall
4 be increased by 10% for each spouse and child, not to
5 exceed 100% of the total minimum wage calculation,
6 nor exceed the employee's average weekly wage computed in
7 accordance with the provisions of Section 10, whichever is
8 less.

9 2. The compensation rate in all cases other than for
10 temporary total disability under this paragraph (b), and
11 other than for serious and permanent disfigurement under
12 paragraph (c) and other than for permanent partial
13 disability under subparagraph (2) of paragraph (d) or under
14 paragraph (e), of this Section shall be equal to 66 2/3% of
15 the employee's average weekly wage computed in accordance
16 with the provisions of Section 10, provided that it shall
17 be not less than 66 2/3% of the sum of the Federal minimum
18 wage under the Fair Labor Standards Act, or the Illinois
19 minimum wage under the Minimum Wage Law, whichever is more,
20 multiplied by 40 hours. This percentage rate shall be
21 increased by 10% for each spouse and child, not to exceed
22 100% of the total minimum wage calculation,
23 nor exceed the employee's average weekly wage computed in
24 accordance with the provisions of Section 10, whichever is
25 less.

26 2.1. The compensation rate in all cases of serious and

1 permanent disfigurement under paragraph (c) and of
2 permanent partial disability under subparagraph (2) of
3 paragraph (d) or under paragraph (e) of this Section shall
4 be equal to 60% of the employee's average weekly wage
5 computed in accordance with the provisions of Section 10,
6 provided that it shall be not less than 66 2/3% of the sum
7 of the Federal minimum wage under the Fair Labor Standards
8 Act, or the Illinois minimum wage under the Minimum Wage
9 Law, whichever is more, multiplied by 40 hours. This
10 percentage rate shall be increased by 10% for each spouse
11 and child, not to exceed 100% of the total minimum wage
12 calculation,

13 nor exceed the employee's average weekly wage computed in
14 accordance with the provisions of Section 10, whichever is
15 less.

16 3. As used in this Section the term "child" means a
17 child of the employee including any child legally adopted
18 before the accident or whom at the time of the accident the
19 employee was under legal obligation to support or to whom
20 the employee stood in loco parentis, and who at the time of
21 the accident was under 18 years of age and not emancipated.
22 The term "children" means the plural of "child".

23 4. All weekly compensation rates provided under
24 subparagraphs 1, 2 and 2.1 of this paragraph (b) of this
25 Section shall be subject to the following limitations:

26 The maximum weekly compensation rate from July 1, 1975,

1 except as hereinafter provided, shall be 100% of the
2 State's average weekly wage in covered industries under the
3 Unemployment Insurance Act, that being the wage that most
4 closely approximates the State's average weekly wage.

5 The maximum weekly compensation rate, for the period
6 July 1, 1984, through June 30, 1987, except as hereinafter
7 provided, shall be \$293.61. Effective July 1, 1987 and on
8 July 1 of each year thereafter the maximum weekly
9 compensation rate, except as hereinafter provided, shall
10 be determined as follows: if during the preceding 12 month
11 period there shall have been an increase in the State's
12 average weekly wage in covered industries under the
13 Unemployment Insurance Act, the weekly compensation rate
14 shall be proportionately increased by the same percentage
15 as the percentage of increase in the State's average weekly
16 wage in covered industries under the Unemployment
17 Insurance Act during such period.

18 The maximum weekly compensation rate, for the period
19 January 1, 1981 through December 31, 1983, except as
20 hereinafter provided, shall be 100% of the State's average
21 weekly wage in covered industries under the Unemployment
22 Insurance Act in effect on January 1, 1981. Effective
23 January 1, 1984 and on January 1, of each year thereafter
24 the maximum weekly compensation rate, except as
25 hereinafter provided, shall be determined as follows: if
26 during the preceding 12 month period there shall have been

1 an increase in the State's average weekly wage in covered
2 industries under the Unemployment Insurance Act, the
3 weekly compensation rate shall be proportionately
4 increased by the same percentage as the percentage of
5 increase in the State's average weekly wage in covered
6 industries under the Unemployment Insurance Act during
7 such period.

8 From July 1, 1977 and thereafter such maximum weekly
9 compensation rate in death cases under Section 7, and
10 permanent total disability cases under paragraph (f) or
11 subparagraph 18 of paragraph (3) of this Section and for
12 temporary total disability under paragraph (b) of this
13 Section and for amputation of a member or enucleation of an
14 eye under paragraph (e) of this Section shall be increased
15 to 133-1/3% of the State's average weekly wage in covered
16 industries under the Unemployment Insurance Act.

17 For injuries occurring on or after February 1, 2006,
18 the maximum weekly benefit under paragraph (d)1 of this
19 Section shall be 100% of the State's average weekly wage in
20 covered industries under the Unemployment Insurance Act.

21 4.1. Any provision herein to the contrary
22 notwithstanding, the weekly compensation rate for
23 compensation payments under subparagraph 18 of paragraph
24 (e) of this Section and under paragraph (f) of this Section
25 and under paragraph (a) of Section 7 and for amputation of
26 a member or enucleation of an eye under paragraph (e) of

1 this Section, shall in no event be less than 50% of the
2 State's average weekly wage in covered industries under the
3 Unemployment Insurance Act.

4 4.2. Any provision to the contrary notwithstanding,
5 the total compensation payable under Section 7 shall not
6 exceed the greater of \$500,000 or 25 years.

7 5. For the purpose of this Section this State's average
8 weekly wage in covered industries under the Unemployment
9 Insurance Act on July 1, 1975 is hereby fixed at \$228.16
10 per week and the computation of compensation rates shall be
11 based on the aforesaid average weekly wage until modified
12 as hereinafter provided.

13 6. The Department of Employment Security of the State
14 shall on or before the first day of December, 1977, and on
15 or before the first day of June, 1978, and on the first day
16 of each December and June of each year thereafter, publish
17 the State's average weekly wage in covered industries under
18 the Unemployment Insurance Act and the Illinois Workers'
19 Compensation Commission shall on the 15th day of January,
20 1978 and on the 15th day of July, 1978 and on the 15th day
21 of each January and July of each year thereafter, post and
22 publish the State's average weekly wage in covered
23 industries under the Unemployment Insurance Act as last
24 determined and published by the Department of Employment
25 Security. The amount when so posted and published shall be
26 conclusive and shall be applicable as the basis of

1 computation of compensation rates until the next posting
2 and publication as aforesaid.

3 7. The payment of compensation by an employer or his
4 insurance carrier to an injured employee shall not
5 constitute an admission of the employer's liability to pay
6 compensation.

7 (c) For any serious and permanent disfigurement to the
8 hand, head, face, neck, arm, leg below the knee or the chest
9 above the axillary line, the employee is entitled to
10 compensation for such disfigurement, the amount determined by
11 agreement at any time or by arbitration under this Act, at a
12 hearing not less than 6 months after the date of the accidental
13 injury, which amount shall not exceed 150 weeks (if the
14 accidental injury occurs on or after the effective date of this
15 amendatory Act of the 94th General Assembly but before February
16 1, 2006) or 162 weeks (if the accidental injury occurs on or
17 after February 1, 2006) at the applicable rate provided in
18 subparagraph 2.1 of paragraph (b) of this Section.

19 No compensation is payable under this paragraph where
20 compensation is payable under paragraphs (d), (e) or (f) of
21 this Section.

22 A duly appointed member of a fire department in a city, the
23 population of which exceeds 200,000 according to the last
24 federal or State census, is eligible for compensation under
25 this paragraph only where such serious and permanent
26 disfigurement results from burns.

1 (d) 1. If, after the accidental injury has been sustained,
2 the employee as a result thereof becomes partially
3 incapacitated from pursuing his usual and customary line of
4 employment, he shall, except in cases compensated under the
5 specific schedule set forth in paragraph (e) of this Section,
6 receive compensation for the duration of his disability,
7 subject to the limitations as to maximum amounts fixed in
8 paragraph (b) of this Section, equal to 66-2/3% of the
9 difference between the average amount which he would be able to
10 earn in the full performance of his duties in the occupation in
11 which he was engaged at the time of the accident and the
12 average amount which he is earning or is able to earn in some
13 suitable employment or business after the accident.

14 2. If, as a result of the accident, the employee sustains
15 serious and permanent injuries not covered by paragraphs (c)
16 and (e) of this Section or having sustained injuries covered by
17 the aforesaid paragraphs (c) and (e), he shall have sustained
18 in addition thereto other injuries which injuries do not
19 incapacitate him from pursuing the duties of his employment but
20 which would disable him from pursuing other suitable
21 occupations, or which have otherwise resulted in physical
22 impairment; or if such injuries partially incapacitate him from
23 pursuing the duties of his usual and customary line of
24 employment but do not result in an impairment of earning
25 capacity, or having resulted in an impairment of earning
26 capacity, the employee elects to waive his right to recover

1 under the foregoing subparagraph 1 of paragraph (d) of this
2 Section then in any of the foregoing events, he shall receive
3 in addition to compensation for temporary total disability
4 under paragraph (b) of this Section, compensation at the rate
5 provided in subparagraph 2.1 of paragraph (b) of this Section
6 for that percentage of 500 weeks that the partial disability
7 resulting from the injuries covered by this paragraph bears to
8 total disability. If the employee shall have sustained a
9 fracture of one or more vertebra or fracture of the skull, the
10 amount of compensation allowed under this Section shall be not
11 less than 6 weeks for a fractured skull and 6 weeks for each
12 fractured vertebra, and in the event the employee shall have
13 sustained a fracture of any of the following facial bones:
14 nasal, lachrymal, vomer, zygoma, maxilla, palatine or
15 mandible, the amount of compensation allowed under this Section
16 shall be not less than 2 weeks for each such fractured bone,
17 and for a fracture of each transverse process not less than 3
18 weeks. In the event such injuries shall result in the loss of a
19 kidney, spleen or lung, the amount of compensation allowed
20 under this Section shall be not less than 10 weeks for each
21 such organ. Compensation awarded under this subparagraph 2
22 shall not take into consideration injuries covered under
23 paragraphs (c) and (e) of this Section and the compensation
24 provided in this paragraph shall not affect the employee's
25 right to compensation payable under paragraphs (b), (c) and (e)
26 of this Section for the disabilities therein covered.

1 (e) For accidental injuries in the following schedule, the
2 employee shall receive compensation for the period of temporary
3 total incapacity for work resulting from such accidental
4 injury, under subparagraph 1 of paragraph (b) of this Section,
5 and shall receive in addition thereto compensation for a
6 further period for the specific loss herein mentioned, but
7 shall not receive any compensation under any other provisions
8 of this Act. The following listed amounts apply to either the
9 loss of or the permanent and complete loss of use of the member
10 specified, such compensation for the length of time as follows:

11 1. Thumb-

12 70 weeks if the accidental injury occurs on or
13 after the effective date of this amendatory Act of the
14 94th General Assembly but before February 1, 2006.

15 76 weeks if the accidental injury occurs on or
16 after February 1, 2006.

17 2. First, or index finger-

18 40 weeks if the accidental injury occurs on or
19 after the effective date of this amendatory Act of the
20 94th General Assembly but before February 1, 2006.

21 43 weeks if the accidental injury occurs on or
22 after February 1, 2006.

23 3. Second, or middle finger-

24 35 weeks if the accidental injury occurs on or
25 after the effective date of this amendatory Act of the
26 94th General Assembly but before February 1, 2006.

1 38 weeks if the accidental injury occurs on or
2 after February 1, 2006.

3 4. Third, or ring finger-

4 25 weeks if the accidental injury occurs on or
5 after the effective date of this amendatory Act of the
6 94th General Assembly but before February 1, 2006.

7 27 weeks if the accidental injury occurs on or
8 after February 1, 2006.

9 5. Fourth, or little finger-

10 20 weeks if the accidental injury occurs on or
11 after the effective date of this amendatory Act of the
12 94th General Assembly but before February 1, 2006.

13 22 weeks if the accidental injury occurs on or
14 after February 1, 2006.

15 6. Great toe-

16 35 weeks if the accidental injury occurs on or
17 after the effective date of this amendatory Act of the
18 94th General Assembly but before February 1, 2006.

19 38 weeks if the accidental injury occurs on or
20 after February 1, 2006.

21 7. Each toe other than great toe-

22 12 weeks if the accidental injury occurs on or
23 after the effective date of this amendatory Act of the
24 94th General Assembly but before February 1, 2006.

25 13 weeks if the accidental injury occurs on or
26 after February 1, 2006.

1 8. The loss of the first or distal phalanx of the thumb
2 or of any finger or toe shall be considered to be equal to
3 the loss of one-half of such thumb, finger or toe and the
4 compensation payable shall be one-half of the amount above
5 specified. The loss of more than one phalanx shall be
6 considered as the loss of the entire thumb, finger or toe.
7 In no case shall the amount received for more than one
8 finger exceed the amount provided in this schedule for the
9 loss of a hand.

10 9. Hand-

11 190 weeks if the accidental injury occurs on or
12 after the effective date of this amendatory Act of the
13 94th General Assembly but before February 1, 2006.

14 205 weeks if the accidental injury occurs on or
15 after February 1, 2006.

16 The loss of 2 or more digits, or one or more phalanges
17 of 2 or more digits, of a hand may be compensated on the
18 basis of partial loss of use of a hand, provided, further,
19 that the loss of 4 digits, or the loss of use of 4 digits,
20 in the same hand shall constitute the complete loss of a
21 hand.

22 10. Arm-

23 235 weeks if the accidental injury occurs on or
24 after the effective date of this amendatory Act of the
25 94th General Assembly but before February 1, 2006.

26 253 weeks if the accidental injury occurs on or

1 after February 1, 2006.

2 Where an accidental injury results in the amputation of
3 an arm below the elbow, such injury shall be compensated as
4 a loss of an arm. Where an accidental injury results in the
5 amputation of an arm above the elbow, compensation for an
6 additional 15 weeks (if the accidental injury occurs on or
7 after the effective date of this amendatory Act of the 94th
8 General Assembly but before February 1, 2006) or an
9 additional 17 weeks (if the accidental injury occurs on or
10 after February 1, 2006) shall be paid, except where the
11 accidental injury results in the amputation of an arm at
12 the shoulder joint, or so close to shoulder joint that an
13 artificial arm cannot be used, or results in the
14 disarticulation of an arm at the shoulder joint, in which
15 case compensation for an additional 65 weeks (if the
16 accidental injury occurs on or after the effective date of
17 this amendatory Act of the 94th General Assembly but before
18 February 1, 2006) or an additional 70 weeks (if the
19 accidental injury occurs on or after February 1, 2006)
20 shall be paid.

21 11. Foot-

22 155 weeks if the accidental injury occurs on or
23 after the effective date of this amendatory Act of the
24 94th General Assembly but before February 1, 2006.

25 167 weeks if the accidental injury occurs on or
26 after February 1, 2006.

1 12. Leg-

2 200 weeks if the accidental injury occurs on or
3 after the effective date of this amendatory Act of the
4 94th General Assembly but before February 1, 2006.

5 215 weeks if the accidental injury occurs on or
6 after February 1, 2006.

7 Where an accidental injury results in the amputation of
8 a leg below the knee, such injury shall be compensated as
9 loss of a leg. Where an accidental injury results in the
10 amputation of a leg above the knee, compensation for an
11 additional 25 weeks (if the accidental injury occurs on or
12 after the effective date of this amendatory Act of the 94th
13 General Assembly but before February 1, 2006) or an
14 additional 27 weeks (if the accidental injury occurs on or
15 after February 1, 2006) shall be paid, except where the
16 accidental injury results in the amputation of a leg at the
17 hip joint, or so close to the hip joint that an artificial
18 leg cannot be used, or results in the disarticulation of a
19 leg at the hip joint, in which case compensation for an
20 additional 75 weeks (if the accidental injury occurs on or
21 after the effective date of this amendatory Act of the 94th
22 General Assembly but before February 1, 2006) or an
23 additional 81 weeks (if the accidental injury occurs on or
24 after February 1, 2006) shall be paid.

25 13. Eye-

26 150 weeks if the accidental injury occurs on or

1 after the effective date of this amendatory Act of the
2 94th General Assembly but before February 1, 2006.

3 162 weeks if the accidental injury occurs on or
4 after February 1, 2006.

5 Where an accidental injury results in the enucleation
6 of an eye, compensation for an additional 10 weeks (if the
7 accidental injury occurs on or after the effective date of
8 this amendatory Act of the 94th General Assembly but before
9 February 1, 2006) or an additional 11 weeks (if the
10 accidental injury occurs on or after February 1, 2006)
11 shall be paid.

12 14. Loss of hearing of one ear-

13 50 weeks if the accidental injury occurs on or
14 after the effective date of this amendatory Act of the
15 94th General Assembly but before February 1, 2006.

16 54 weeks if the accidental injury occurs on or
17 after February 1, 2006.

18 Total and permanent loss of hearing of both ears-

19 200 weeks if the accidental injury occurs on or
20 after the effective date of this amendatory Act of the
21 94th General Assembly but before February 1, 2006.

22 215 weeks if the accidental injury occurs on or
23 after February 1, 2006.

24 15. Testicle-

25 50 weeks if the accidental injury occurs on or
26 after the effective date of this amendatory Act of the

1 94th General Assembly but before February 1, 2006.

2 54 weeks if the accidental injury occurs on or
3 after February 1, 2006.

4 Both testicles-

5 150 weeks if the accidental injury occurs on or
6 after the effective date of this amendatory Act of the
7 94th General Assembly but before February 1, 2006.

8 162 weeks if the accidental injury occurs on or
9 after February 1, 2006.

10 16. For the permanent partial loss of use of a member
11 or sight of an eye, or hearing of an ear, compensation
12 during that proportion of the number of weeks in the
13 foregoing schedule provided for the loss of such member or
14 sight of an eye, or hearing of an ear, which the partial
15 loss of use thereof bears to the total loss of use of such
16 member, or sight of eye, or hearing of an ear.

17 (a) Loss of hearing for compensation purposes
18 shall be confined to the frequencies of 1,000, 2,000
19 and 3,000 cycles per second. Loss of hearing ability
20 for frequency tones above 3,000 cycles per second are
21 not to be considered as constituting disability for
22 hearing.

23 (b) The percent of hearing loss, for purposes of
24 the determination of compensation claims for
25 occupational deafness, shall be calculated as the
26 average in decibels for the thresholds of hearing for

1 the frequencies of 1,000, 2,000 and 3,000 cycles per
2 second. Pure tone air conduction audiometric
3 instruments, approved by nationally recognized
4 authorities in this field, shall be used for measuring
5 hearing loss. If the losses of hearing average 30
6 decibels or less in the 3 frequencies, such losses of
7 hearing shall not then constitute any compensable
8 hearing disability. If the losses of hearing average 85
9 decibels or more in the 3 frequencies, then the same
10 shall constitute and be total or 100% compensable
11 hearing loss.

12 (c) In measuring hearing impairment, the lowest
13 measured losses in each of the 3 frequencies shall be
14 added together and divided by 3 to determine the
15 average decibel loss. For every decibel of loss
16 exceeding 30 decibels an allowance of 1.82% shall be
17 made up to the maximum of 100% which is reached at 85
18 decibels.

19 (d) If a hearing loss is established to have
20 existed on July 1, 1975 by audiometric testing the
21 employer shall not be liable for the previous loss so
22 established nor shall he be liable for any loss for
23 which compensation has been paid or awarded.

24 (e) No consideration shall be given to the question
25 of whether or not the ability of an employee to
26 understand speech is improved by the use of a hearing

1 aid.

2 (f) No claim for loss of hearing due to industrial
3 noise shall be brought against an employer or allowed
4 unless the employee has been exposed for a period of
5 time sufficient to cause permanent impairment to noise
6 levels in excess of the following:

7 Sound Level DBA

8 Slow Response Hours Per Day

9 90 8

10 92 6

11 95 4

12 97 3

13 100 2

14 102 1-1/2

15 105 1

16 110 1/2

17 115 1/4

18 This subparagraph (f) shall not be applied in cases of
19 hearing loss resulting from trauma or explosion.

20 17. In computing the compensation to be paid to any
21 employee who, before the accident for which he claims
22 compensation, had before that time sustained an injury
23 resulting in the loss by amputation or partial loss by
24 amputation of any member, including hand, arm, thumb or
25 fingers, leg, foot or any toes, such loss or partial loss
26 of any such member shall be deducted from any award made

1 for the subsequent injury. For the permanent loss of use or
2 the permanent partial loss of use of any such member or the
3 partial loss of sight of an eye, for which compensation has
4 been paid, then such loss shall be taken into consideration
5 and deducted from any award for the subsequent injury.

6 18. The specific case of loss of both hands, both arms,
7 or both feet, or both legs, or both eyes, or of any two
8 thereof, or the permanent and complete loss of the use
9 thereof, constitutes total and permanent disability, to be
10 compensated according to the compensation fixed by
11 paragraph (f) of this Section. These specific cases of
12 total and permanent disability do not exclude other cases.

13 Any employee who has previously suffered the loss or
14 permanent and complete loss of the use of any of such
15 members, and in a subsequent independent accident loses
16 another or suffers the permanent and complete loss of the
17 use of any one of such members the employer for whom the
18 injured employee is working at the time of the last
19 independent accident is liable to pay compensation only for
20 the loss or permanent and complete loss of the use of the
21 member occasioned by the last independent accident.

22 19. In a case of specific loss and the subsequent death
23 of such injured employee from other causes than such injury
24 leaving a widow, widower, or dependents surviving before
25 payment or payment in full for such injury, then the amount
26 due for such injury is payable to the widow or widower and,

1 if there be no widow or widower, then to such dependents,
2 in the proportion which such dependency bears to total
3 dependency.

4 Beginning July 1, 1980, and every 6 months thereafter, the
5 Commission shall examine the Second Injury Fund and when, after
6 deducting all advances or loans made to such Fund, the amount
7 therein is \$500,000 then the amount required to be paid by
8 employers pursuant to paragraph (f) of Section 7 shall be
9 reduced by one-half. When the Second Injury Fund reaches the
10 sum of \$600,000 then the payments shall cease entirely.
11 However, when the Second Injury Fund has been reduced to
12 \$400,000, payment of one-half of the amounts required by
13 paragraph (f) of Section 7 shall be resumed, in the manner
14 herein provided, and when the Second Injury Fund has been
15 reduced to \$300,000, payment of the full amounts required by
16 paragraph (f) of Section 7 shall be resumed, in the manner
17 herein provided. The Commission shall make the changes in
18 payment effective by general order, and the changes in payment
19 become immediately effective for all cases coming before the
20 Commission thereafter either by settlement agreement or final
21 order, irrespective of the date of the accidental injury.

22 On August 1, 1996 and on February 1 and August 1 of each
23 subsequent year, the Commission shall examine the special fund
24 designated as the "Rate Adjustment Fund" and when, after
25 deducting all advances or loans made to said fund, the amount
26 therein is \$4,000,000, the amount required to be paid by

1 employers pursuant to paragraph (f) of Section 7 shall be
2 reduced by one-half. When the Rate Adjustment Fund reaches the
3 sum of \$5,000,000 the payment therein shall cease entirely.
4 However, when said Rate Adjustment Fund has been reduced to
5 \$3,000,000 the amounts required by paragraph (f) of Section 7
6 shall be resumed in the manner herein provided.

7 (f) In case of complete disability, which renders the
8 employee wholly and permanently incapable of work, or in the
9 specific case of total and permanent disability as provided in
10 subparagraph 18 of paragraph (e) of this Section, compensation
11 shall be payable at the rate provided in subparagraph 2 of
12 paragraph (b) of this Section for life.

13 An employee entitled to benefits under paragraph (f) of
14 this Section shall also be entitled to receive from the Rate
15 Adjustment Fund provided in paragraph (f) of Section 7 of the
16 supplementary benefits provided in paragraph (g) of this
17 Section 8.

18 If any employee who receives an award under this paragraph
19 afterwards returns to work or is able to do so, and earns or is
20 able to earn as much as before the accident, payments under
21 such award shall cease. If such employee returns to work, or is
22 able to do so, and earns or is able to earn part but not as much
23 as before the accident, such award shall be modified so as to
24 conform to an award under paragraph (d) of this Section. If
25 such award is terminated or reduced under the provisions of
26 this paragraph, such employees have the right at any time

1 within 30 months after the date of such termination or
2 reduction to file petition with the Commission for the purpose
3 of determining whether any disability exists as a result of the
4 original accidental injury and the extent thereof.

5 Disability as enumerated in subdivision 18, paragraph (e)
6 of this Section is considered complete disability.

7 If an employee who had previously incurred loss or the
8 permanent and complete loss of use of one member, through the
9 loss or the permanent and complete loss of the use of one hand,
10 one arm, one foot, one leg, or one eye, incurs permanent and
11 complete disability through the loss or the permanent and
12 complete loss of the use of another member, he shall receive,
13 in addition to the compensation payable by the employer and
14 after such payments have ceased, an amount from the Second
15 Injury Fund provided for in paragraph (f) of Section 7, which,
16 together with the compensation payable from the employer in
17 whose employ he was when the last accidental injury was
18 incurred, will equal the amount payable for permanent and
19 complete disability as provided in this paragraph of this
20 Section.

21 The custodian of the Second Injury Fund provided for in
22 paragraph (f) of Section 7 shall be joined with the employer as
23 a party respondent in the application for adjustment of claim.
24 The application for adjustment of claim shall state briefly and
25 in general terms the approximate time and place and manner of
26 the loss of the first member.

1 In its award the Commission or the Arbitrator shall
2 specifically find the amount the injured employee shall be
3 weekly paid, the number of weeks compensation which shall be
4 paid by the employer, the date upon which payments begin out of
5 the Second Injury Fund provided for in paragraph (f) of Section
6 7 of this Act, the length of time the weekly payments continue,
7 the date upon which the pension payments commence and the
8 monthly amount of the payments. The Commission shall 30 days
9 after the date upon which payments out of the Second Injury
10 Fund have begun as provided in the award, and every month
11 thereafter, prepare and submit to the State Comptroller a
12 voucher for payment for all compensation accrued to that date
13 at the rate fixed by the Commission. The State Comptroller
14 shall draw a warrant to the injured employee along with a
15 receipt to be executed by the injured employee and returned to
16 the Commission. The endorsed warrant and receipt is a full and
17 complete acquittance to the Commission for the payment out of
18 the Second Injury Fund. No other appropriation or warrant is
19 necessary for payment out of the Second Injury Fund. The Second
20 Injury Fund is appropriated for the purpose of making payments
21 according to the terms of the awards.

22 As of July 1, 1980 to July 1, 1982, all claims against and
23 obligations of the Second Injury Fund shall become claims
24 against and obligations of the Rate Adjustment Fund to the
25 extent there is insufficient money in the Second Injury Fund to
26 pay such claims and obligations. In that case, all references

1 to "Second Injury Fund" in this Section shall also include the
2 Rate Adjustment Fund.

3 (g) Every award for permanent total disability entered by
4 the Commission on and after July 1, 1965 under which
5 compensation payments shall become due and payable after the
6 effective date of this amendatory Act, and every award for
7 death benefits or permanent total disability entered by the
8 Commission on and after the effective date of this amendatory
9 Act shall be subject to annual adjustments as to the amount of
10 the compensation rate therein provided. Such adjustments shall
11 first be made on July 15, 1977, and all awards made and entered
12 prior to July 1, 1975 and on July 15 of each year thereafter.
13 In all other cases such adjustment shall be made on July 15 of
14 the second year next following the date of the entry of the
15 award and shall further be made on July 15 annually thereafter.
16 If during the intervening period from the date of the entry of
17 the award, or the last periodic adjustment, there shall have
18 been an increase in the State's average weekly wage in covered
19 industries under the Unemployment Insurance Act, the weekly
20 compensation rate shall be proportionately increased by the
21 same percentage as the percentage of increase in the State's
22 average weekly wage in covered industries under the
23 Unemployment Insurance Act. The increase in the compensation
24 rate under this paragraph shall in no event bring the total
25 compensation rate to an amount greater than the prevailing
26 maximum rate at the time that the annual adjustment is made.

1 Such increase shall be paid in the same manner as herein
2 provided for payments under the Second Injury Fund to the
3 injured employee, or his dependents, as the case may be, out of
4 the Rate Adjustment Fund provided in paragraph (f) of Section 7
5 of this Act. Payments shall be made at the same intervals as
6 provided in the award or, at the option of the Commission, may
7 be made in quarterly payment on the 15th day of January, April,
8 July and October of each year. In the event of a decrease in
9 such average weekly wage there shall be no change in the then
10 existing compensation rate. The within paragraph shall not
11 apply to cases where there is disputed liability and in which a
12 compromise lump sum settlement between the employer and the
13 injured employee, or his dependents, as the case may be, has
14 been duly approved by the Illinois Workers' Compensation
15 Commission.

16 Provided, that in cases of awards entered by the Commission
17 for injuries occurring before July 1, 1975, the increases in
18 the compensation rate adjusted under the foregoing provision of
19 this paragraph (g) shall be limited to increases in the State's
20 average weekly wage in covered industries under the
21 Unemployment Insurance Act occurring after July 1, 1975.

22 For every accident occurring on or after July 20, 2005 but
23 before the effective date of this amendatory Act of the 94th
24 General Assembly (Senate Bill 1283 of the 94th General
25 Assembly), the annual adjustments to the compensation rate in
26 awards for death benefits or permanent total disability, as

1 provided in this Act, shall be paid by the employer. The
2 adjustment shall be made by the employer on July 15 of the
3 second year next following the date of the entry of the award
4 and shall further be made on July 15 annually thereafter. If
5 during the intervening period from the date of the entry of the
6 award, or the last periodic adjustment, there shall have been
7 an increase in the State's average weekly wage in covered
8 industries under the Unemployment Insurance Act, the employer
9 shall increase the weekly compensation rate proportionately by
10 the same percentage as the percentage of increase in the
11 State's average weekly wage in covered industries under the
12 Unemployment Insurance Act. The increase in the compensation
13 rate under this paragraph shall in no event bring the total
14 compensation rate to an amount greater than the prevailing
15 maximum rate at the time that the annual adjustment is made. In
16 the event of a decrease in such average weekly wage there shall
17 be no change in the then existing compensation rate. Such
18 increase shall be paid by the employer in the same manner and
19 at the same intervals as the payment of compensation in the
20 award. This paragraph shall not apply to cases where there is
21 disputed liability and in which a compromise lump sum
22 settlement between the employer and the injured employee, or
23 his or her dependents, as the case may be, has been duly
24 approved by the Illinois Workers' Compensation Commission.

25 The annual adjustments for every award of death benefits or
26 permanent total disability involving accidents occurring

1 before July 20, 2005 and accidents occurring on or after the
2 effective date of this amendatory Act of the 94th General
3 Assembly (Senate Bill 1283 of the 94th General Assembly) shall
4 continue to be paid from the Rate Adjustment Fund pursuant to
5 this paragraph and Section 7(f) of this Act.

6 (h) In case death occurs from any cause before the total
7 compensation to which the employee would have been entitled has
8 been paid, then in case the employee leaves any widow, widower,
9 child, parent (or any grandchild, grandparent or other lineal
10 heir or any collateral heir dependent at the time of the
11 accident upon the earnings of the employee to the extent of 50%
12 or more of total dependency) such compensation shall be paid to
13 the beneficiaries of the deceased employee and distributed as
14 provided in paragraph (g) of Section 7.

15 (h-1) In case an injured employee is under legal disability
16 at the time when any right or privilege accrues to him or her
17 under this Act, a guardian may be appointed pursuant to law,
18 and may, on behalf of such person under legal disability, claim
19 and exercise any such right or privilege with the same effect
20 as if the employee himself or herself had claimed or exercised
21 the right or privilege. No limitations of time provided by this
22 Act run so long as the employee who is under legal disability
23 is without a conservator or guardian.

24 (i) In case the injured employee is under 16 years of age
25 at the time of the accident and is illegally employed, the
26 amount of compensation payable under paragraphs (b), (c), (d),

1 (e) and (f) of this Section is increased 50%.

2 However, where an employer has on file an employment
3 certificate issued pursuant to the Child Labor Law or work
4 permit issued pursuant to the Federal Fair Labor Standards Act,
5 as amended, or a birth certificate properly and duly issued,
6 such certificate, permit or birth certificate is conclusive
7 evidence as to the age of the injured minor employee for the
8 purposes of this Section.

9 Nothing herein contained repeals or amends the provisions
10 of the Child Labor Law relating to the employment of minors
11 under the age of 16 years.

12 (j) 1. In the event the injured employee receives benefits,
13 including medical, surgical or hospital benefits under any
14 group plan covering non-occupational disabilities contributed
15 to wholly or partially by the employer, which benefits should
16 not have been payable if any rights of recovery existed under
17 this Act, then such amounts so paid to the employee from any
18 such group plan as shall be consistent with, and limited to,
19 the provisions of paragraph 2 hereof, shall be credited to or
20 against any compensation payment for temporary total
21 incapacity for work or any medical, surgical or hospital
22 benefits made or to be made under this Act. In such event, the
23 period of time for giving notice of accidental injury and
24 filing application for adjustment of claim does not commence to
25 run until the termination of such payments. This paragraph does
26 not apply to payments made under any group plan which would

1 have been payable irrespective of an accidental injury under
2 this Act. Any employer receiving such credit shall keep such
3 employee safe and harmless from any and all claims or
4 liabilities that may be made against him by reason of having
5 received such payments only to the extent of such credit.

6 Any excess benefits paid to or on behalf of a State
7 employee by the State Employees' Retirement System under
8 Article 14 of the Illinois Pension Code on a death claim or
9 disputed disability claim shall be credited against any
10 payments made or to be made by the State of Illinois to or on
11 behalf of such employee under this Act, except for payments for
12 medical expenses which have already been incurred at the time
13 of the award. The State of Illinois shall directly reimburse
14 the State Employees' Retirement System to the extent of such
15 credit.

16 2. Nothing contained in this Act shall be construed to give
17 the employer or the insurance carrier the right to credit for
18 any benefits or payments received by the employee other than
19 compensation payments provided by this Act, and where the
20 employee receives payments other than compensation payments,
21 whether as full or partial salary, group insurance benefits,
22 bonuses, annuities or any other payments, the employer or
23 insurance carrier shall receive credit for each such payment
24 only to the extent of the compensation that would have been
25 payable during the period covered by such payment.

26 3. The extension of time for the filing of an Application

1 for Adjustment of Claim as provided in paragraph 1 above shall
2 not apply to those cases where the time for such filing had
3 expired prior to the date on which payments or benefits
4 enumerated herein have been initiated or resumed. Provided
5 however that this paragraph 3 shall apply only to cases wherein
6 the payments or benefits hereinabove enumerated shall be
7 received after July 1, 1969.

8 (k) For accidental injuries that occur on or after the
9 effective date of this amendatory Act of the 96th General
10 Assembly, permanent partial or total disability shall be
11 certified by a physician and demonstrated by use of medically
12 defined objective measurements that include, but are not
13 limited to: loss of range of motion; loss of strength; and
14 measured atrophy of tissue mass consistent with the injury. In
15 determining the impairment, subjective complaints shall not be
16 considered unless supported by and clearly related to objective
17 measurements. The then-current edition of the American Medical
18 Association's "Guides to the Evaluation of Permanent
19 Impairment" shall be applied in determining the level of
20 disability under this Act.

21 (Source: P.A. 93-721, eff. 1-1-05; 94-277, eff. 7-20-05;
22 94-695, eff. 11-16-05.)

23 (820 ILCS 305/11) (from Ch. 48, par. 138.11)

24 Sec. 11. The compensation herein provided, together with
25 the provisions of this Act, shall be the measure of the

1 responsibility of any employer engaged in any of the
2 enterprises or businesses enumerated in Section 3 of this Act,
3 or of any employer who is not engaged in any such enterprises
4 or businesses, but who has elected to provide and pay
5 compensation for accidental injuries sustained by any employee
6 arising out of and in the course of the employment according to
7 the provisions of this Act, and whose election to continue
8 under this Act, has not been nullified by any action of his
9 employees as provided for in this Act.

10 Accidental injuries incurred while participating in
11 voluntary recreational programs including but not limited to
12 athletic events, parties and picnics do not arise out of and in
13 the course of the employment even though the employer pays some
14 or all of the cost thereof. This exclusion shall not apply in
15 the event that the injured employee was ordered or assigned by
16 his employer to participate in the program.

17 Accidental injuries incurred while participating as a
18 patient in a drug or alcohol rehabilitation program do not
19 arise out of and in the course of employment even though the
20 employer pays some or all of the costs thereof.

21 Any injury to or disease or death of an employee arising
22 from the administration of a vaccine, including without
23 limitation smallpox vaccine, to prepare for, or as a response
24 to, a threatened or potential bioterrorist incident to the
25 employee as part of a voluntary inoculation program in
26 connection with the person's employment or in connection with

1 any governmental program or recommendation for the inoculation
2 of workers in the employee's occupation, geographical area, or
3 other category that includes the employee is deemed to arise
4 out of and in the course of the employment for all purposes
5 under this Act. This paragraph added by this amendatory Act of
6 the 93rd General Assembly is declarative of existing law and is
7 not a new enactment.

8 No compensation shall be payable if the injury was caused
9 primarily by the intoxication of the employee, or if the injury
10 was caused by the influence of alcohol or any narcotic drugs,
11 barbiturates, or other stimulants not prescribed by a
12 physician, or by the combined influence of alcohol and any
13 other drug or drugs that affected the employee to such an
14 extent that the intoxication constituted a departure from
15 employment. Evidence of the concentration of alcohol or a drug
16 or combination thereof in a person's blood or breath at the
17 time alleged, as determined by analysis of the person's blood,
18 urine, breath, or other bodily substance, shall be admissible
19 in any hearing to determine compensability. If the employee
20 refuses to submit to such analysis, it shall be presumed, in
21 the absence of substantial evidence to the contrary, that the
22 accident was caused by the intoxication of the employee. If
23 there was at the time of the injury 0.08% or more by weight of
24 alcohol in the employee's blood or breath or there is any
25 amount of a drug, substance or compound in the person's breath,
26 blood, or urine resulting from the unlawful use or consumption

1 of cannabis listed in the Cannabis Control Act, a controlled
2 substance listed in the Illinois Controlled Substances Act, or
3 an intoxicating compound listed in the Use of Intoxicating
4 Compounds Act, it shall be presumed, in the absence of
5 substantial evidence to the contrary, that the injury was
6 caused by the intoxication of the employee. Percentage by
7 weight of alcohol in the blood shall be based upon grams of
8 alcohol per 100 milliliters of blood. Percentage by weight of
9 alcohol in the breath shall be based upon grams of alcohol per
10 210 liters of breath.

11 The employee shall notify the employer of the prescription
12 of any narcotic drug that may adversely affect the employee's
13 ability to safely perform his or her job duties prior to the
14 start of any job duties.

15 (Source: P.A. 93-829, eff. 7-28-04.)

16 (820 ILCS 305/13) (from Ch. 48, par. 138.13)

17 Sec. 13. There is created an Illinois Workers' Compensation
18 Commission consisting of 10 members to be appointed by the
19 Governor, by and with the consent of the Senate, 3 of whom
20 shall be representative citizens of the employing class
21 operating under this Act and 3 of whom shall be representative
22 citizens of the class of employees covered under this Act, and
23 4 of whom shall be representative citizens not identified with
24 either the employing or employee classes. Not more than 6
25 members of the Commission shall be of the same political party.

1 One of the members not identified with either the employing
2 or employee classes shall be designated by the Governor as
3 Chairman. The Chairman shall be the chief administrative and
4 executive officer of the Commission; and he or she shall have
5 general supervisory authority over all personnel of the
6 Commission, including arbitrators and Commissioners, and the
7 final authority in all administrative matters relating to the
8 Commissioners, including but not limited to the assignment and
9 distribution of cases and assignment of Commissioners to the
10 panels, except in the promulgation of procedural rules and
11 orders under Section 16 and in the determination of cases under
12 this Act.

13 Notwithstanding the general supervisory authority of the
14 Chairman, each Commissioner, except those assigned to the
15 temporary panel, shall have the authority to hire and supervise
16 2 staff attorneys each. Such staff attorneys shall report
17 directly to the individual Commissioner.

18 A formal training program for newly-appointed
19 Commissioners shall be implemented. The training program shall
20 include the following:

21 (a) substantive and procedural aspects of the office of
22 Commissioner;

23 (b) current issues in workers' compensation law and
24 practice;

25 (c) medical lectures by specialists in areas such as
26 orthopedics, ophthalmology, psychiatry, rehabilitation

1 counseling;

2 (d) orientation to each operational unit of the
3 Illinois Workers' Compensation Commission;

4 (e) observation of experienced arbitrators and
5 Commissioners conducting hearings of cases, combined with
6 the opportunity to discuss evidence presented and rulings
7 made;

8 (f) the use of hypothetical cases requiring the
9 newly-appointed Commissioner to issue judgments as a means
10 to evaluating knowledge and writing ability;

11 (g) writing skills.

12 A formal and ongoing professional development program
13 including, but not limited to, the above-noted areas shall be
14 implemented to keep Commissioners informed of recent
15 developments and issues and to assist them in maintaining and
16 enhancing their professional competence.

17 The Commissioner candidates, other than the Chairman, must
18 meet one of the following qualifications: (a) licensed to
19 practice law in the State of Illinois; or (b) served as an
20 arbitrator at the Illinois Workers' Compensation Commission
21 for at least 3 years; or (c) has at least 4 years of
22 professional labor relations experience. The Chairman
23 candidate must have public or private sector management and
24 budget experience, as determined by the Governor.

25 Each Commissioner shall devote full time to his duties and
26 any Commissioner who is an attorney-at-law shall not engage in

1 the practice of law, nor shall any Commissioner hold any other
2 office or position of profit under the United States or this
3 State or any municipal corporation or political subdivision of
4 this State, nor engage in any other business, employment, or
5 vocation.

6 Commissioners shall weigh the evidence impartially without
7 giving the benefit of the doubt to any party when weighing
8 evidence and resolving factual conflicts.

9 The term of office of each member of the Commission holding
10 office on the effective date of this amendatory Act of 1989 is
11 abolished, but the incumbents shall continue to exercise all of
12 the powers and be subject to all of the duties of Commissioners
13 until their respective successors are appointed and qualified.

14 The Illinois Workers' Compensation Commission shall
15 administer this Act.

16 In the promulgation of procedural rules, the determination
17 of cases heard en banc, and other matters determined by the
18 full Commission, the Chairman's vote shall break a tie in the
19 event of a tie vote.

20 The members shall be appointed by the Governor, with the
21 advice and consent of the Senate, as follows:

22 (a) After the effective date of this amendatory Act of
23 1989, 3 members, at least one of each political party, and
24 one of whom shall be a representative citizen of the
25 employing class operating under this Act, one of whom shall
26 be a representative citizen of the class of employees

1 covered under this Act, and one of whom shall be a
2 representative citizen not identified with either the
3 employing or employee classes, shall be appointed to hold
4 office until the third Monday in January of 1993, and until
5 their successors are appointed and qualified, and 4
6 members, one of whom shall be a representative citizen of
7 the employing class operating under this Act, one of whom
8 shall be a representative citizen of the class of employees
9 covered in this Act, and two of whom shall be
10 representative citizens not identified with either the
11 employing or employee classes, one of whom shall be
12 designated by the Governor as Chairman (at least one of
13 each of the two major political parties) shall be appointed
14 to hold office until the third Monday of January in 1991,
15 and until their successors are appointed and qualified.

16 (a-5) Notwithstanding any other provision of this
17 Section, the term of each member of the Commission who was
18 appointed by the Governor and is in office on June 30, 2003
19 shall terminate at the close of business on that date or
20 when all of the successor members to be appointed pursuant
21 to this amendatory Act of the 93rd General Assembly have
22 been appointed by the Governor, whichever occurs later. As
23 soon as possible, the Governor shall appoint persons to
24 fill the vacancies created by this amendatory Act. Of the
25 initial commissioners appointed pursuant to this
26 amendatory Act of the 93rd General Assembly, 3 shall be

1 appointed for terms ending on the third Monday in January,
2 2005, and 4 shall be appointed for terms ending on the
3 third Monday in January, 2007.

4 (a-10) After the effective date of this amendatory Act
5 of the 94th General Assembly, the Commission shall be
6 increased to 10 members. As soon as possible after the
7 effective date of this amendatory Act of the 94th General
8 Assembly, the Governor shall appoint, by and with the
9 consent of the Senate, the 3 members added to the
10 Commission under this amendatory Act of the 94th General
11 Assembly, one of whom shall be a representative citizen of
12 the employing class operating under this Act, one of whom
13 shall be a representative of the class of employees covered
14 under this Act, and one of whom shall be a representative
15 citizen not identified with either the employing or
16 employee classes. Of the members appointed under this
17 amendatory Act of the 94th General Assembly, one shall be
18 appointed for a term ending on the third Monday in January,
19 2007, and 2 shall be appointed for terms ending on the
20 third Monday in January, 2009, and until their successors
21 are appointed and qualified.

22 (b) Members shall thereafter be appointed to hold
23 office for terms of 4 years from the third Monday in
24 January of the year of their appointment, and until their
25 successors are appointed and qualified. All such
26 appointments shall be made so that the composition of the

1 Commission is in accordance with the provisions of the
2 first paragraph of this Section.

3 The Chairman shall receive an annual salary of \$42,500, or
4 a salary set by the Compensation Review Board, whichever is
5 greater, and each other member shall receive an annual salary
6 of \$38,000, or a salary set by the Compensation Review Board,
7 whichever is greater.

8 In case of a vacancy in the office of a Commissioner during
9 the recess of the Senate, the Governor shall make a temporary
10 appointment until the next meeting of the Senate, when he shall
11 nominate some person to fill such office. Any person so
12 nominated who is confirmed by the Senate shall hold office
13 during the remainder of the term and until his successor is
14 appointed and qualified.

15 The Illinois Workers' Compensation Commission created by
16 this amendatory Act of 1989 shall succeed to all the rights,
17 powers, duties, obligations, records and other property and
18 employees of the Industrial Commission which it replaces as
19 modified by this amendatory Act of 1989 and all applications
20 and reports to actions and proceedings of such prior Industrial
21 Commission shall be considered as applications and reports to
22 actions and proceedings of the Illinois Workers' Compensation
23 Commission created by this amendatory Act of 1989.

24 Notwithstanding any other provision of this Act, in the
25 event the Chairman shall make a finding that a member is or
26 will be unavailable to fulfill the responsibilities of his or

1 her office, the Chairman shall advise the Governor and the
2 member in writing and shall designate a certified arbitrator to
3 serve as acting Commissioner. The certified arbitrator shall
4 act as a Commissioner until the member resumes the duties of
5 his or her office or until a new member is appointed by the
6 Governor, by and with the consent of the Senate, if a vacancy
7 occurs in the office of the Commissioner, but in no event shall
8 a certified arbitrator serve in the capacity of Commissioner
9 for more than 6 months from the date of appointment by the
10 Chairman. A finding by the Chairman that a member is or will be
11 unavailable to fulfill the responsibilities of his or her
12 office shall be based upon notice to the Chairman by a member
13 that he or she will be unavailable or facts and circumstances
14 made known to the Chairman which lead him to reasonably find
15 that a member is unavailable to fulfill the responsibilities of
16 his or her office. The designation of a certified arbitrator to
17 act as a Commissioner shall be considered representative of
18 citizens not identified with either the employing or employee
19 classes and the arbitrator shall serve regardless of his or her
20 political affiliation. A certified arbitrator who serves as an
21 acting Commissioner shall have all the rights and powers of a
22 Commissioner, including salary.

23 Notwithstanding any other provision of this Act, the
24 Governor shall appoint a special panel of Commissioners
25 comprised of 3 members who shall be chosen by the Governor, by
26 and with the consent of the Senate, from among the current

1 ranks of certified arbitrators. Three members shall hold office
2 until the Commission in consultation with the Governor
3 determines that the caseload on review has been reduced
4 sufficiently to allow cases to proceed in a timely manner or
5 for a term of 18 months from the effective date of their
6 appointment by the Governor, whichever shall be earlier. The 3
7 members shall be considered representative of citizens not
8 identified with either the employing or employee classes and
9 shall serve regardless of political affiliation. Each of the 3
10 members shall have only such rights and powers of a
11 Commissioner necessary to dispose of those cases assigned to
12 the special panel. Each of the 3 members appointed to the
13 special panel shall receive the same salary as other
14 Commissioners for the duration of the panel.

15 The Commission may have an Executive Director; if so, the
16 Executive Director shall be appointed by the Governor with the
17 advice and consent of the Senate. The salary and duties of the
18 Executive Director shall be fixed by the Commission.

19 On the effective date of this amendatory Act of the 93rd
20 General Assembly, the name of the Industrial Commission is
21 changed to the Illinois Workers' Compensation Commission.
22 References in any law, appropriation, rule, form, or other
23 document: (i) to the Industrial Commission are deemed, in
24 appropriate contexts, to be references to the Illinois Workers'
25 Compensation Commission for all purposes; (ii) to the
26 Industrial Commission Operations Fund are deemed, in

1 appropriate contexts, to be references to the Illinois Workers'
2 Compensation Commission Operations Fund for all purposes;
3 (iii) to the Industrial Commission Operations Fund Fee are
4 deemed, in appropriate contexts, to be references to the
5 Illinois Workers' Compensation Commission Operations Fund Fee
6 for all purposes; and (iv) to the Industrial Commission
7 Operations Fund Surcharge are deemed, in appropriate contexts,
8 to be references to the Illinois Workers' Compensation
9 Commission Operations Fund Surcharge for all purposes.

10 (Source: P.A. 93-509, eff. 8-11-03; 93-721, eff. 1-1-05;
11 94-277, eff. 7-20-05.)

12 (820 ILCS 305/14) (from Ch. 48, par. 138.14)

13 Sec. 14. The Commission shall appoint a secretary, an
14 assistant secretary, and arbitrators and shall employ such
15 assistants and clerical help as may be necessary.

16 Each arbitrator appointed after November 22, 1977 shall be
17 required to demonstrate in writing and in accordance with the
18 rules and regulations of the Illinois Department of Central
19 Management Services his or her knowledge of and expertise in
20 the law of and judicial processes of the Workers' Compensation
21 Act and the Occupational Diseases Act.

22 A formal training program for newly-hired arbitrators
23 shall be implemented. The training program shall include the
24 following:

25 (a) substantive and procedural aspects of the

1 arbitrator position;

2 (b) current issues in workers' compensation law and
3 practice;

4 (c) medical lectures by specialists in areas such as
5 orthopedics, ophthalmology, psychiatry, rehabilitation
6 counseling;

7 (d) orientation to each operational unit of the
8 Illinois Workers' Compensation Commission;

9 (e) observation of experienced arbitrators conducting
10 hearings of cases, combined with the opportunity to discuss
11 evidence presented and rulings made;

12 (f) the use of hypothetical cases requiring the trainee
13 to issue judgments as a means to evaluating knowledge and
14 writing ability;

15 (g) writing skills.

16 A formal and ongoing professional development program
17 including, but not limited to, the above-noted areas shall be
18 implemented to keep arbitrators informed of recent
19 developments and issues and to assist them in maintaining and
20 enhancing their professional competence.

21 Each arbitrator shall devote full time to his or her duties
22 and shall serve when assigned as an acting Commissioner when a
23 Commissioner is unavailable in accordance with the provisions
24 of Section 13 of this Act. Any arbitrator who is an
25 attorney-at-law shall not engage in the practice of law, nor
26 shall any arbitrator hold any other office or position of

1 profit under the United States or this State or any municipal
2 corporation or political subdivision of this State.
3 Notwithstanding any other provision of this Act to the
4 contrary, an arbitrator who serves as an acting Commissioner in
5 accordance with the provisions of Section 13 of this Act shall
6 continue to serve in the capacity of Commissioner until a
7 decision is reached in every case heard by that arbitrator
8 while serving as an acting Commissioner.

9 Arbitrators shall weigh the evidence impartially without
10 giving the benefit of the doubt to any party when weighing
11 evidence and resolving factual conflicts.

12 Each arbitrator appointed after the effective date of this
13 amendatory Act of 1989 shall be appointed for a term of 6
14 years. Each arbitrator shall be appointed for a subsequent term
15 unless the Chairman makes a recommendation to the Commission,
16 no later than 60 days prior to the expiration of the term, not
17 to reappoint the arbitrator. Notice of such a recommendation
18 shall also be given to the arbitrator no later than 60 days
19 prior to the expiration of the term. Upon such recommendation
20 by the Chairman, the arbitrator shall be appointed for a
21 subsequent term unless 8 of 10 members of the Commission,
22 including the Chairman, vote not to reappoint the arbitrator.

23 All arbitrators shall be subject to the provisions of the
24 Personnel Code, and the performance of all arbitrators shall be
25 reviewed by the Chairman on an annual basis. The Chairman shall
26 allow input from the Commissioners in all such reviews.

1 The Secretary and each arbitrator shall receive a per annum
2 salary of \$4,000 less than the per annum salary of members of
3 The Illinois Workers' Compensation Commission as provided in
4 Section 13 of this Act, payable in equal monthly installments.

5 The members of the Commission, Arbitrators and other
6 employees whose duties require them to travel, shall have
7 reimbursed to them their actual traveling expenses and
8 disbursements made or incurred by them in the discharge of
9 their official duties while away from their place of residence
10 in the performance of their duties.

11 The Commission shall provide itself with a seal for the
12 authentication of its orders, awards and proceedings upon which
13 shall be inscribed the name of the Commission and the words
14 "Illinois--Seal".

15 The Secretary or Assistant Secretary, under the direction
16 of the Commission, shall have charge and custody of the seal of
17 the Commission and also have charge and custody of all records,
18 files, orders, proceedings, decisions, awards and other
19 documents on file with the Commission. He shall furnish
20 certified copies, under the seal of the Commission, of any such
21 records, files, orders, proceedings, decisions, awards and
22 other documents on file with the Commission as may be required.
23 Certified copies so furnished by the Secretary or Assistant
24 Secretary shall be received in evidence before the Commission
25 or any Arbitrator thereof, and in all courts, provided that the
26 original of such certified copy is otherwise competent and

1 admissible in evidence. The Secretary or Assistant Secretary
2 shall perform such other duties as may be prescribed from time
3 to time by the Commission.

4 (Source: P.A. 93-721, eff. 1-1-05; 94-277, eff. 7-20-05.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.