

HB3736



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB3736

by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

820 ILCS 305/8

from Ch. 48, par. 138.8

Amends the Workers' Compensation Act. Provides that no employer shall be required to pay temporary partial disability benefits to an employee who has been discharged for cause. Provides that, following a hearing, the Illinois Workers' Compensation Commission may reinstate the temporary partial benefits and retroactively restore any benefits the employer should have paid if it finds the employer's discharge of the employee was not for cause. Makes technical changes. Effective immediately.

LRB098 14514 OMW 49262 b

A BILL FOR

1 AN ACT concerning employment.

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

4 Section 5. The Workers' Compensation Act is amended by
5 changing Section 8 as follows:

6 (820 ILCS 305/8) (from Ch. 48, par. 138.8)

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

10 (a) The employer shall provide and pay the negotiated rate,
11 if applicable, or the lesser of the health care provider's
12 actual charges or according to a fee schedule, subject to
13 Section 8.2, in effect at the time the service was rendered for
14 all the necessary first aid, medical and surgical services, and
15 all necessary medical, surgical and hospital services
16 thereafter incurred, limited, however, to that which is
17 reasonably required to cure or relieve from the effects of the
18 accidental injury, even if a health care provider sells,
19 transfers, or otherwise assigns an account receivable for
20 procedures, treatments, or services covered under this Act. If
21 the employer does not dispute payment of first aid, medical,
22 surgical, and hospital services, the employer shall make such
23 payment to the provider on behalf of the employee. The employer

1 shall also pay for treatment, instruction and training
2 necessary for the physical, mental and vocational
3 rehabilitation of the employee, including all maintenance
4 costs and expenses incidental thereto. If as a result of the
5 injury the employee is unable to be self-sufficient the
6 employer shall further pay for such maintenance or
7 institutional care as shall be required.

8 The employee may at any time elect to secure his own
9 physician, surgeon and hospital services at the employer's
10 expense, or,

11 Upon agreement between the employer and the employees, or
12 the employees' exclusive representative, and subject to the
13 approval of the Illinois Workers' Compensation Commission, the
14 employer shall maintain a list of physicians, to be known as a
15 Panel of Physicians, who are accessible to the employees. The
16 employer shall post this list in a place or places easily
17 accessible to his employees. The employee shall have the right
18 to make an alternative choice of physician from such Panel if
19 he is not satisfied with the physician first selected. If, due
20 to the nature of the injury or its occurrence away from the
21 employer's place of business, the employee is unable to make a
22 selection from the Panel, the selection process from the Panel
23 shall not apply. The physician selected from the Panel may
24 arrange for any consultation, referral or other specialized
25 medical services outside the Panel at the employer's expense.
26 Provided that, in the event the Commission shall find that a

1 doctor selected by the employee is rendering improper or
2 inadequate care, the Commission may order the employee to
3 select another doctor certified or qualified in the medical
4 field for which treatment is required. If the employee refuses
5 to make such change the Commission may relieve the employer of
6 his obligation to pay the doctor's charges from the date of
7 refusal to the date of compliance.

8 Any vocational rehabilitation counselors who provide
9 service under this Act shall have appropriate certifications
10 which designate the counselor as qualified to render opinions
11 relating to vocational rehabilitation. Vocational
12 rehabilitation may include, but is not limited to, counseling
13 for job searches, supervising a job search program, and
14 vocational retraining including education at an accredited
15 learning institution. The employee or employer may petition to
16 the Commission to decide disputes relating to vocational
17 rehabilitation and the Commission shall resolve any such
18 dispute, including payment of the vocational rehabilitation
19 program by the employer.

20 The maintenance benefit shall not be less than the
21 temporary total disability rate determined for the employee. In
22 addition, maintenance shall include costs and expenses
23 incidental to the vocational rehabilitation program.

24 When the employee is working light duty on a part-time
25 basis or full-time basis and earns less than he or she would be
26 earning if employed in the full capacity of the job or jobs,

1 then the employee shall be entitled to temporary partial
2 disability benefits. Temporary partial disability benefits
3 shall be equal to two-thirds of the difference between the
4 average amount that the employee would be able to earn in the
5 full performance of his or her duties in the occupation in
6 which he or she was engaged at the time of accident and the
7 gross amount which he or she is earning in the modified job
8 provided to the employee by the employer or in any other job
9 that the employee is working.

10 No employer shall be required to pay temporary partial
11 disability or maintenance benefits to an employee who has been
12 discharged for cause. Prior to suspension of temporary partial
13 disability or maintenance benefits, the employer shall provide
14 notice to the employee who has been discharged for cause.
15 Following a hearing, the Commission may reinstate the temporary
16 partial benefits and retroactively restore any benefits the
17 employer should have paid if it finds the employer's discharge
18 of the employee was not for cause. "Discharge for cause" means
19 a discharge resulting from the employee's voluntary violation
20 of a rule or policy of the employer not caused by the
21 employee's disability.

22 Every hospital, physician, surgeon or other person
23 rendering treatment or services in accordance with the
24 provisions of this Section shall upon written request furnish
25 full and complete reports thereof to, and permit their records
26 to be copied by, the employer, the employee or his dependents,

1 as the case may be, or any other party to any proceeding for
2 compensation before the Commission, or their attorneys.

3 Notwithstanding the foregoing, the employer's liability to
4 pay for such medical services selected by the employee shall be
5 limited to:

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

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

14 (3) all medical, surgical and hospital services
15 provided by any second physician, surgeon or hospital
16 subsequently chosen by the employee or by any other
17 physician, consultant, expert, institution or other
18 provider of services recommended by said second service
19 provider or any subsequent provider of medical services in
20 the chain of referrals from said second service provider.

21 Thereafter the employer shall select and pay for all
22 necessary medical, surgical and hospital treatment and the
23 employee may not select a provider of medical services at
24 the employer's expense unless the employer agrees to such
25 selection. At any time the employee may obtain any medical
26 treatment he or she desires at his or her own expense. This

1 paragraph shall not affect the duty to pay for
2 rehabilitation referred to above.

3 (4) The following shall apply for injuries occurring on
4 or after June 28, 2011 (the effective date of Public Act
5 97-18) and only when an employer has an approved preferred
6 provider program pursuant to Section 8.1a on the date the
7 employee sustained his or her accidental injuries:

8 (A) The employer shall, in writing, on a form
9 promulgated by the Commission, inform the employee of
10 the preferred provider program;

11 (B) Subsequent to the report of an injury by an
12 employee, the employee may choose in writing at any
13 time to decline the preferred provider program, in
14 which case that would constitute one of the two choices
15 of medical providers to which the employee is entitled
16 under subsection (a) (2) or (a) (3); and

17 (C) Prior to the report of an injury by an
18 employee, when an employee chooses non-emergency
19 treatment from a provider not within the preferred
20 provider program, that would constitute the employee's
21 one choice of medical providers to which the employee
22 is entitled under subsection (a) (2) or (a) (3).

23 When an employer and employee so agree in writing, nothing
24 in this Act prevents an employee whose injury or disability has
25 been established under this Act, from relying in good faith, on
26 treatment by prayer or spiritual means alone, in accordance

1 with the tenets and practice of a recognized church or
2 religious denomination, by a duly accredited practitioner
3 thereof, and having nursing services appropriate therewith,
4 without suffering loss or diminution of the compensation
5 benefits under this Act. However, the employee shall submit to
6 all physical examinations required by this Act. The cost of
7 such treatment and nursing care shall be paid by the employee
8 unless the employer agrees to make such payment.

9 Where the accidental injury results in the amputation of an
10 arm, hand, leg or foot, or the enucleation of an eye, or the
11 loss of any of the natural teeth, the employer shall furnish an
12 artificial of any such members lost or damaged in accidental
13 injury arising out of and in the course of employment, and
14 shall also furnish the necessary braces in all proper and
15 necessary cases. In cases of the loss of a member or members by
16 amputation, the employer shall, whenever necessary, maintain
17 in good repair, refit or replace the artificial limbs during
18 the lifetime of the employee. Where the accidental injury
19 accompanied by physical injury results in damage to a denture,
20 eye glasses or contact eye lenses, or where the accidental
21 injury results in damage to an artificial member, the employer
22 shall replace or repair such denture, glasses, lenses, or
23 artificial member.

24 The furnishing by the employer of any such services or
25 appliances is not an admission of liability on the part of the
26 employer to pay compensation.

1 The furnishing of any such services or appliances or the
2 servicing thereof by the employer is not the payment of
3 compensation.

4 (b) If the period of temporary total incapacity for work
5 lasts more than 3 working days, weekly compensation as
6 hereinafter provided shall be paid beginning on the 4th day of
7 such temporary total incapacity and continuing as long as the
8 total temporary incapacity lasts. In cases where the temporary
9 total incapacity for work continues for a period of 14 days or
10 more from the day of the accident compensation shall commence
11 on the day after the accident.

12 1. The compensation rate for temporary total
13 incapacity under this paragraph (b) of this Section shall
14 be equal to 66 2/3% of the employee's average weekly wage
15 computed in accordance with Section 10, provided that it
16 shall be not less than 66 2/3% of the sum of the Federal
17 minimum wage under the Fair Labor Standards Act, or the
18 Illinois minimum wage under the Minimum Wage Law, whichever
19 is more, multiplied by 40 hours. This percentage rate shall
20 be increased by 10% for each spouse and child, not to
21 exceed 100% of the total minimum wage calculation,
22 nor exceed the employee's average weekly wage computed in
23 accordance with the provisions of Section 10, whichever is
24 less. No employer shall be required to pay temporary
25 partial disability or maintenance benefits to an employee
26 who has been discharged for cause. Prior to suspension of

1 temporary partial disability or maintenance benefits, the
2 employer shall provide notice to the employee who has been
3 discharged for cause. Following a hearing, the Commission
4 may reinstate the temporary partial benefits and
5 retroactively restore any benefits the employer should
6 have paid if it finds the employer's discharge of the
7 employee was not for cause. "Discharge for cause" means a
8 discharge resulting from the employee's voluntary
9 violation of a rule or policy of the employer not caused by
10 the employee's disability.

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

1 less.

2 2.1. The compensation rate in all cases of serious and
3 permanent disfigurement under paragraph (c) and of
4 permanent partial disability under subparagraph (2) of
5 paragraph (d) or under paragraph (e) of this Section shall
6 be equal to 60% of the employee's average weekly wage
7 computed in accordance with the provisions of Section 10,
8 provided that it shall be not less than 66 2/3% of the sum
9 of the Federal minimum wage under the Fair Labor Standards
10 Act, or the Illinois minimum wage under the Minimum Wage
11 Law, whichever is more, multiplied by 40 hours. This
12 percentage rate shall be increased by 10% for each spouse
13 and child, not to exceed 100% of the total minimum wage
14 calculation,
15 nor exceed the employee's average weekly wage computed in
16 accordance with the provisions of Section 10, whichever is
17 less.

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

25 4. All weekly compensation rates provided under
26 subparagraphs 1, 2 and 2.1 of this paragraph (b) of this

1 Section shall be subject to the following limitations:

2 The maximum weekly compensation rate from July 1, 1975,
3 except as hereinafter provided, shall be 100% of the
4 State's average weekly wage in covered industries under the
5 Unemployment Insurance Act, that being the wage that most
6 closely approximates the State's average weekly wage.

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

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

1 hereinafter provided, shall be determined as follows: if
2 during the preceding 12 month period there shall have been
3 an increase in the State's average weekly wage in covered
4 industries under the Unemployment Insurance Act, the
5 weekly compensation rate shall be proportionately
6 increased by the same percentage as the percentage of
7 increase in the State's average weekly wage in covered
8 industries under the Unemployment Insurance Act during
9 such period.

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

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

23 4.1. Any provision herein to the contrary
24 notwithstanding, the weekly compensation rate for
25 compensation payments under subparagraph 18 of paragraph
26 (e) of this Section and under paragraph (f) of this Section

1 and under paragraph (a) of Section 7 and for amputation of
2 a member or enucleation of an eye under paragraph (e) of
3 this Section, shall in no event be less than 50% of the
4 State's average weekly wage in covered industries under the
5 Unemployment Insurance Act.

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

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

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

1 Security. The amount when so posted and published shall be
2 conclusive and shall be applicable as the basis of
3 computation of compensation rates until the next posting
4 and publication as aforesaid.

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

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

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

24 A duly appointed member of a fire department in a city, the
25 population of which exceeds 500,000 according to the last
26 federal or State census, is eligible for compensation under

1 this paragraph only where such serious and permanent
2 disfigurement results from burns.

3 (d) 1. If, after the accidental injury has been sustained,
4 the employee as a result thereof becomes partially
5 incapacitated from pursuing his usual and customary line of
6 employment, he shall, except in cases compensated under the
7 specific schedule set forth in paragraph (e) of this Section,
8 receive compensation for the duration of his disability,
9 subject to the limitations as to maximum amounts fixed in
10 paragraph (b) of this Section, equal to 66-2/3% of the
11 difference between the average amount which he would be able to
12 earn in the full performance of his duties in the occupation in
13 which he was engaged at the time of the accident and the
14 average amount which he is earning or is able to earn in some
15 suitable employment or business after the accident. For
16 accidental injuries that occur on or after September 1, 2011,
17 an award for wage differential under this subsection shall be
18 effective only until the employee reaches the age of 67 or 5
19 years from the date the award becomes final, whichever is
20 later.

21 2. If, as a result of the accident, the employee sustains
22 serious and permanent injuries not covered by paragraphs (c)
23 and (e) of this Section or having sustained injuries covered by
24 the aforesaid paragraphs (c) and (e), he shall have sustained
25 in addition thereto other injuries which injuries do not
26 incapacitate him from pursuing the duties of his employment but

1 which would disable him from pursuing other suitable
2 occupations, or which have otherwise resulted in physical
3 impairment; or if such injuries partially incapacitate him from
4 pursuing the duties of his usual and customary line of
5 employment but do not result in an impairment of earning
6 capacity, or having resulted in an impairment of earning
7 capacity, the employee elects to waive his right to recover
8 under the foregoing subparagraph 1 of paragraph (d) of this
9 Section then in any of the foregoing events, he shall receive
10 in addition to compensation for temporary total disability
11 under paragraph (b) of this Section, compensation at the rate
12 provided in subparagraph 2.1 of paragraph (b) of this Section
13 for that percentage of 500 weeks that the partial disability
14 resulting from the injuries covered by this paragraph bears to
15 total disability.

16 If the employee shall have sustained a fracture of one or
17 more vertebra or fracture of the skull, the amount of
18 compensation allowed under this Section shall be not less than
19 6 weeks for a fractured skull and 6 weeks for each fractured
20 vertebra, and in the event the employee shall have sustained a
21 fracture of any of the following facial bones: nasal,
22 lachrymal, vomer, zygoma, maxilla, palatine or mandible, the
23 amount of compensation allowed under this Section shall be not
24 less than 2 weeks for each such fractured bone, and for a
25 fracture of each transverse process not less than 3 weeks. In
26 the event such injuries shall result in the loss of a kidney,

1 spleen or lung, the amount of compensation allowed under this
2 Section shall be not less than 10 weeks for each such organ.
3 Compensation awarded under this subparagraph 2 shall not take
4 into consideration injuries covered under paragraphs (c) and
5 (e) of this Section and the compensation provided in this
6 paragraph shall not affect the employee's right to compensation
7 payable under paragraphs (b), (c) and (e) of this Section for
8 the disabilities therein covered.

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

19 1. Thumb-

20 70 weeks if the accidental injury occurs on or
21 after the effective date of this amendatory Act of the
22 94th General Assembly but before February 1, 2006.

23 76 weeks if the accidental injury occurs on or
24 after February 1, 2006.

25 2. First, or index finger-

26 40 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 43 weeks if the accidental injury occurs on or
4 after February 1, 2006.

5 3. Second, or middle finger-

6 35 weeks if the accidental injury occurs on or
7 after the effective date of this amendatory Act of the
8 94th General Assembly but before February 1, 2006.

9 38 weeks if the accidental injury occurs on or
10 after February 1, 2006.

11 4. Third, or ring finger-

12 25 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 27 weeks if the accidental injury occurs on or
16 after February 1, 2006.

17 5. Fourth, or little finger-

18 20 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 22 weeks if the accidental injury occurs on or
22 after February 1, 2006.

23 6. Great toe-

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 7. Each toe other than great toe-

4 12 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 13 weeks if the accidental injury occurs on or
8 after February 1, 2006.

9 8. The loss of the first or distal phalanx of the thumb
10 or of any finger or toe shall be considered to be equal to
11 the loss of one-half of such thumb, finger or toe and the
12 compensation payable shall be one-half of the amount above
13 specified. The loss of more than one phalanx shall be
14 considered as the loss of the entire thumb, finger or toe.
15 In no case shall the amount received for more than one
16 finger exceed the amount provided in this schedule for the
17 loss of a hand.

18 9. Hand-

19 190 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.

22 205 weeks if the accidental injury occurs on or
23 after February 1, 2006.

24 190 weeks if the accidental injury occurs on or
25 after June 28, 2011 (the effective date of Public Act
26 97-18) and if the accidental injury involves carpal

1 tunnel syndrome due to repetitive or cumulative
2 trauma, in which case the permanent partial disability
3 shall not exceed 15% loss of use of the hand, except
4 for cause shown by clear and convincing evidence and in
5 which case the award shall not exceed 30% loss of use
6 of the hand.

7 The loss of 2 or more digits, or one or more phalanges
8 of 2 or more digits, of a hand may be compensated on the
9 basis of partial loss of use of a hand, provided, further,
10 that the loss of 4 digits, or the loss of use of 4 digits,
11 in the same hand shall constitute the complete loss of a
12 hand.

13 10. Arm-

14 235 weeks if the accidental injury occurs on or
15 after the effective date of this amendatory Act of the
16 94th General Assembly but before February 1, 2006.

17 253 weeks if the accidental injury occurs on or
18 after February 1, 2006.

19 Where an accidental injury results in the amputation of
20 an arm below the elbow, such injury shall be compensated as
21 a loss of an arm. Where an accidental injury results in the
22 amputation of an arm above the elbow, compensation for an
23 additional 15 weeks (if the accidental injury occurs on or
24 after the effective date of this amendatory Act of the 94th
25 General Assembly but before February 1, 2006) or an
26 additional 17 weeks (if the accidental injury occurs on or

1 after February 1, 2006) shall be paid, except where the
2 accidental injury results in the amputation of an arm at
3 the shoulder joint, or so close to shoulder joint that an
4 artificial arm cannot be used, or results in the
5 disarticulation of an arm at the shoulder joint, in which
6 case compensation for an additional 65 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 70 weeks (if the
10 accidental injury occurs on or after February 1, 2006)
11 shall be paid.

12 11. Foot-

13 155 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.

16 167 weeks if the accidental injury occurs on or
17 after February 1, 2006.

18 12. Leg-

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 Where an accidental injury results in the amputation of
25 a leg below the knee, such injury shall be compensated as
26 loss of a leg. Where an accidental injury results in the

1 amputation of a leg above the knee, compensation for an
2 additional 25 weeks (if the accidental injury occurs on or
3 after the effective date of this amendatory Act of the 94th
4 General Assembly but before February 1, 2006) or an
5 additional 27 weeks (if the accidental injury occurs on or
6 after February 1, 2006) shall be paid, except where the
7 accidental injury results in the amputation of a leg at the
8 hip joint, or so close to the hip joint that an artificial
9 leg cannot be used, or results in the disarticulation of a
10 leg at the hip joint, in which case compensation for an
11 additional 75 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 81 weeks (if the accidental injury occurs on or
15 after February 1, 2006) shall be paid.

16 13. Eye-

17 150 weeks if the accidental injury occurs on or
18 after the effective date of this amendatory Act of the
19 94th General Assembly but before February 1, 2006.

20 162 weeks if the accidental injury occurs on or
21 after February 1, 2006.

22 Where an accidental injury results in the enucleation
23 of an eye, compensation for an additional 10 weeks (if the
24 accidental injury occurs on or after the effective date of
25 this amendatory Act of the 94th General Assembly but before
26 February 1, 2006) or an additional 11 weeks (if the

1 accidental injury occurs on or after February 1, 2006)
2 shall be paid.

3 14. Loss of hearing of one ear-

4 50 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 54 weeks if the accidental injury occurs on or
8 after February 1, 2006.

9 Total and permanent loss of hearing of both ears-

10 200 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.

13 215 weeks if the accidental injury occurs on or
14 after February 1, 2006.

15 15. Testicle-

16 50 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 54 weeks if the accidental injury occurs on or
20 after February 1, 2006.

21 Both testicles-

22 150 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.

25 162 weeks if the accidental injury occurs on or
26 after February 1, 2006.

1 16. For the permanent partial loss of use of a member
2 or sight of an eye, or hearing of an ear, compensation
3 during that proportion of the number of weeks in the
4 foregoing schedule provided for the loss of such member or
5 sight of an eye, or hearing of an ear, which the partial
6 loss of use thereof bears to the total loss of use of such
7 member, or sight of eye, or hearing of an ear.

8 (a) Loss of hearing for compensation purposes
9 shall be confined to the frequencies of 1,000, 2,000
10 and 3,000 cycles per second. Loss of hearing ability
11 for frequency tones above 3,000 cycles per second are
12 not to be considered as constituting disability for
13 hearing.

14 (b) The percent of hearing loss, for purposes of
15 the determination of compensation claims for
16 occupational deafness, shall be calculated as the
17 average in decibels for the thresholds of hearing for
18 the frequencies of 1,000, 2,000 and 3,000 cycles per
19 second. Pure tone air conduction audiometric
20 instruments, approved by nationally recognized
21 authorities in this field, shall be used for measuring
22 hearing loss. If the losses of hearing average 30
23 decibels or less in the 3 frequencies, such losses of
24 hearing shall not then constitute any compensable
25 hearing disability. If the losses of hearing average 85
26 decibels or more in the 3 frequencies, then the same

1 shall constitute and be total or 100% compensable
2 hearing loss.

3 (c) In measuring hearing impairment, the lowest
4 measured losses in each of the 3 frequencies shall be
5 added together and divided by 3 to determine the
6 average decibel loss. For every decibel of loss
7 exceeding 30 decibels an allowance of 1.82% shall be
8 made up to the maximum of 100% which is reached at 85
9 decibels.

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

15 (e) No consideration shall be given to the question
16 of whether or not the ability of an employee to
17 understand speech is improved by the use of a hearing
18 aid.

19 (f) No claim for loss of hearing due to industrial
20 noise shall be brought against an employer or allowed
21 unless the employee has been exposed for a period of
22 time sufficient to cause permanent impairment to noise
23 levels in excess of the following:

24 Sound Level DBA

25 Slow Response

Hours Per Day

26 90

8

1	92	6
2	95	4
3	97	3
4	100	2
5	102	1-1/2
6	105	1
7	110	1/2
8	115	1/4

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

11 17. In computing the compensation to be paid to any
12 employee who, before the accident for which he claims
13 compensation, had before that time sustained an injury
14 resulting in the loss by amputation or partial loss by
15 amputation of any member, including hand, arm, thumb or
16 fingers, leg, foot or any toes, such loss or partial loss
17 of any such member shall be deducted from any award made
18 for the subsequent injury. For the permanent loss of use or
19 the permanent partial loss of use of any such member or the
20 partial loss of sight of an eye, for which compensation has
21 been paid, then such loss shall be taken into consideration
22 and deducted from any award for the subsequent injury.

23 18. The specific case of loss of both hands, both arms,
24 or both feet, or both legs, or both eyes, or of any two
25 thereof, or the permanent and complete loss of the use
26 thereof, constitutes total and permanent disability, to be

1 compensated according to the compensation fixed by
2 paragraph (f) of this Section. These specific cases of
3 total and permanent disability do not exclude other cases.

4 Any employee who has previously suffered the loss or
5 permanent and complete loss of the use of any of such
6 members, and in a subsequent independent accident loses
7 another or suffers the permanent and complete loss of the
8 use of any one of such members the employer for whom the
9 injured employee is working at the time of the last
10 independent accident is liable to pay compensation only for
11 the loss or permanent and complete loss of the use of the
12 member occasioned by the last independent accident.

13 19. In a case of specific loss and the subsequent death
14 of such injured employee from other causes than such injury
15 leaving a widow, widower, or dependents surviving before
16 payment or payment in full for such injury, then the amount
17 due for such injury is payable to the widow or widower and,
18 if there be no widow or widower, then to such dependents,
19 in the proportion which such dependency bears to total
20 dependency.

21 Beginning July 1, 1980, and every 6 months thereafter, the
22 Commission shall examine the Second Injury Fund and when, after
23 deducting all advances or loans made to such Fund, the amount
24 therein is \$500,000 then the amount required to be paid by
25 employers pursuant to paragraph (f) of Section 7 shall be
26 reduced by one-half. When the Second Injury Fund reaches the

1 sum of \$600,000 then the payments shall cease entirely.
2 However, when the Second Injury Fund has been reduced to
3 \$400,000, payment of one-half of the amounts required by
4 paragraph (f) of Section 7 shall be resumed, in the manner
5 herein provided, and when the Second Injury Fund has been
6 reduced to \$300,000, payment of the full amounts required by
7 paragraph (f) of Section 7 shall be resumed, in the manner
8 herein provided. The Commission shall make the changes in
9 payment effective by general order, and the changes in payment
10 become immediately effective for all cases coming before the
11 Commission thereafter either by settlement agreement or final
12 order, irrespective of the date of the accidental injury.

13 On August 1, 1996 and on February 1 and August 1 of each
14 subsequent year, the Commission shall examine the special fund
15 designated as the "Rate Adjustment Fund" and when, after
16 deducting all advances or loans made to said fund, the amount
17 therein is \$4,000,000, the amount required to be paid by
18 employers pursuant to paragraph (f) of Section 7 shall be
19 reduced by one-half. When the Rate Adjustment Fund reaches the
20 sum of \$5,000,000 the payment therein shall cease entirely.
21 However, when said Rate Adjustment Fund has been reduced to
22 \$3,000,000 the amounts required by paragraph (f) of Section 7
23 shall be resumed in the manner herein provided.

24 (f) In case of complete disability, which renders the
25 employee wholly and permanently incapable of work, or in the
26 specific case of total and permanent disability as provided in

1 subparagraph 18 of paragraph (e) of this Section, compensation
2 shall be payable at the rate provided in subparagraph 2 of
3 paragraph (b) of this Section for life.

4 An employee entitled to benefits under paragraph (f) of
5 this Section shall also be entitled to receive from the Rate
6 Adjustment Fund provided in paragraph (f) of Section 7 of the
7 supplementary benefits provided in paragraph (g) of this
8 Section 8.

9 If any employee who receives an award under this paragraph
10 afterwards returns to work or is able to do so, and earns or is
11 able to earn as much as before the accident, payments under
12 such award shall cease. If such employee returns to work, or is
13 able to do so, and earns or is able to earn part but not as much
14 as before the accident, such award shall be modified so as to
15 conform to an award under paragraph (d) of this Section. If
16 such award is terminated or reduced under the provisions of
17 this paragraph, such employees have the right at any time
18 within 30 months after the date of such termination or
19 reduction to file petition with the Commission for the purpose
20 of determining whether any disability exists as a result of the
21 original accidental injury and the extent thereof.

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

24 If an employee who had previously incurred loss or the
25 permanent and complete loss of use of one member, through the
26 loss or the permanent and complete loss of the use of one hand,

1 one arm, one foot, one leg, or one eye, incurs permanent and
2 complete disability through the loss or the permanent and
3 complete loss of the use of another member, he shall receive,
4 in addition to the compensation payable by the employer and
5 after such payments have ceased, an amount from the Second
6 Injury Fund provided for in paragraph (f) of Section 7, which,
7 together with the compensation payable from the employer in
8 whose employ he was when the last accidental injury was
9 incurred, will equal the amount payable for permanent and
10 complete disability as provided in this paragraph of this
11 Section.

12 The custodian of the Second Injury Fund provided for in
13 paragraph (f) of Section 7 shall be joined with the employer as
14 a party respondent in the application for adjustment of claim.
15 The application for adjustment of claim shall state briefly and
16 in general terms the approximate time and place and manner of
17 the loss of the first member.

18 In its award the Commission or the Arbitrator shall
19 specifically find the amount the injured employee shall be
20 weekly paid, the number of weeks compensation which shall be
21 paid by the employer, the date upon which payments begin out of
22 the Second Injury Fund provided for in paragraph (f) of Section
23 7 of this Act, the length of time the weekly payments continue,
24 the date upon which the pension payments commence and the
25 monthly amount of the payments. The Commission shall 30 days
26 after the date upon which payments out of the Second Injury

1 Fund have begun as provided in the award, and every month
2 thereafter, prepare and submit to the State Comptroller a
3 voucher for payment for all compensation accrued to that date
4 at the rate fixed by the Commission. The State Comptroller
5 shall draw a warrant to the injured employee along with a
6 receipt to be executed by the injured employee and returned to
7 the Commission. The endorsed warrant and receipt is a full and
8 complete acquittance to the Commission for the payment out of
9 the Second Injury Fund. No other appropriation or warrant is
10 necessary for payment out of the Second Injury Fund. The Second
11 Injury Fund is appropriated for the purpose of making payments
12 according to the terms of the awards.

13 As of July 1, 1980 to July 1, 1982, all claims against and
14 obligations of the Second Injury Fund shall become claims
15 against and obligations of the Rate Adjustment Fund to the
16 extent there is insufficient money in the Second Injury Fund to
17 pay such claims and obligations. In that case, all references
18 to "Second Injury Fund" in this Section shall also include the
19 Rate Adjustment Fund.

20 (g) Every award for permanent total disability entered by
21 the Commission on and after July 1, 1965 under which
22 compensation payments shall become due and payable after the
23 effective date of this amendatory Act, and every award for
24 death benefits or permanent total disability entered by the
25 Commission on and after the effective date of this amendatory
26 Act shall be subject to annual adjustments as to the amount of

1 the compensation rate therein provided. Such adjustments shall
2 first be made on July 15, 1977, and all awards made and entered
3 prior to July 1, 1975 and on July 15 of each year thereafter.
4 In all other cases such adjustment shall be made on July 15 of
5 the second year next following the date of the entry of the
6 award and shall further be made on July 15 annually thereafter.
7 If during the intervening period from the date of the entry of
8 the award, or the last periodic adjustment, there shall have
9 been an increase in the State's average weekly wage in covered
10 industries under the Unemployment Insurance Act, the weekly
11 compensation rate shall be proportionately increased by the
12 same percentage as the percentage of increase in the State's
13 average weekly wage in covered industries under the
14 Unemployment Insurance Act. The increase in the compensation
15 rate under this paragraph shall in no event bring the total
16 compensation rate to an amount greater than the prevailing
17 maximum rate at the time that the annual adjustment is made.
18 Such increase shall be paid in the same manner as herein
19 provided for payments under the Second Injury Fund to the
20 injured employee, or his dependents, as the case may be, out of
21 the Rate Adjustment Fund provided in paragraph (f) of Section 7
22 of this Act. Payments shall be made at the same intervals as
23 provided in the award or, at the option of the Commission, may
24 be made in quarterly payment on the 15th day of January, April,
25 July and October of each year. In the event of a decrease in
26 such average weekly wage there shall be no change in the then

1 existing compensation rate. The within paragraph shall not
2 apply to cases where there is disputed liability and in which a
3 compromise lump sum settlement between the employer and the
4 injured employee, or his dependents, as the case may be, has
5 been duly approved by the Illinois Workers' Compensation
6 Commission.

7 Provided, that in cases of awards entered by the Commission
8 for injuries occurring before July 1, 1975, the increases in
9 the compensation rate adjusted under the foregoing provision of
10 this paragraph (g) shall be limited to increases in the State's
11 average weekly wage in covered industries under the
12 Unemployment Insurance Act occurring after July 1, 1975.

13 For every accident occurring on or after July 20, 2005 but
14 before the effective date of this amendatory Act of the 94th
15 General Assembly (Senate Bill 1283 of the 94th General
16 Assembly), the annual adjustments to the compensation rate in
17 awards for death benefits or permanent total disability, as
18 provided in this Act, shall be paid by the employer. The
19 adjustment shall be made by the employer on July 15 of the
20 second year next following the date of the entry of the award
21 and shall further be made on July 15 annually thereafter. If
22 during the intervening period from the date of the entry of the
23 award, or the last periodic adjustment, there shall have been
24 an increase in the State's average weekly wage in covered
25 industries under the Unemployment Insurance Act, the employer
26 shall increase the weekly compensation rate proportionately by

1 the same percentage as the percentage of increase in the
2 State's average weekly wage in covered industries under the
3 Unemployment Insurance Act. The increase in the compensation
4 rate under this paragraph shall in no event bring the total
5 compensation rate to an amount greater than the prevailing
6 maximum rate at the time that the annual adjustment is made. In
7 the event of a decrease in such average weekly wage there shall
8 be no change in the then existing compensation rate. Such
9 increase shall be paid by the employer in the same manner and
10 at the same intervals as the payment of compensation in the
11 award. This paragraph shall not apply to cases where there is
12 disputed liability and in which a compromise lump sum
13 settlement between the employer and the injured employee, or
14 his or her dependents, as the case may be, has been duly
15 approved by the Illinois Workers' Compensation Commission.

16 The annual adjustments for every award of death benefits or
17 permanent total disability involving accidents occurring
18 before July 20, 2005 and accidents occurring on or after the
19 effective date of this amendatory Act of the 94th General
20 Assembly (Senate Bill 1283 of the 94th General Assembly) shall
21 continue to be paid from the Rate Adjustment Fund pursuant to
22 this paragraph and Section 7(f) of this Act.

23 (h) In case death occurs from any cause before the total
24 compensation to which the employee would have been entitled has
25 been paid, then in case the employee leaves any widow, widower,
26 child, parent (or any grandchild, grandparent or other lineal

1 heir or any collateral heir dependent at the time of the
2 accident upon the earnings of the employee to the extent of 50%
3 or more of total dependency) such compensation shall be paid to
4 the beneficiaries of the deceased employee and distributed as
5 provided in paragraph (g) of Section 7.

6 (h-1) In case an injured employee is under legal disability
7 at the time when any right or privilege accrues to him or her
8 under this Act, a guardian may be appointed pursuant to law,
9 and may, on behalf of such person under legal disability, claim
10 and exercise any such right or privilege with the same effect
11 as if the employee himself or herself had claimed or exercised
12 the right or privilege. No limitations of time provided by this
13 Act run so long as the employee who is under legal disability
14 is without a conservator or guardian.

15 (i) In case the injured employee is under 16 years of age
16 at the time of the accident and is illegally employed, the
17 amount of compensation payable under paragraphs (b), (c), (d),
18 (e) and (f) of this Section is increased 50%.

19 However, where an employer has on file an employment
20 certificate issued pursuant to the Child Labor Law or work
21 permit issued pursuant to the Federal Fair Labor Standards Act,
22 as amended, or a birth certificate properly and duly issued,
23 such certificate, permit or birth certificate is conclusive
24 evidence as to the age of the injured minor employee for the
25 purposes of this Section.

26 Nothing herein contained repeals or amends the provisions

1 of the Child Labor Law relating to the employment of minors
2 under the age of 16 years.

3 (j) 1. In the event the injured employee receives benefits,
4 including medical, surgical or hospital benefits under any
5 group plan covering non-occupational disabilities contributed
6 to wholly or partially by the employer, which benefits should
7 not have been payable if any rights of recovery existed under
8 this Act, then such amounts so paid to the employee from any
9 such group plan as shall be consistent with, and limited to,
10 the provisions of paragraph 2 hereof, shall be credited to or
11 against any compensation payment for temporary total
12 incapacity for work or any medical, surgical or hospital
13 benefits made or to be made under this Act. In such event, the
14 period of time for giving notice of accidental injury and
15 filing application for adjustment of claim does not commence to
16 run until the termination of such payments. This paragraph does
17 not apply to payments made under any group plan which would
18 have been payable irrespective of an accidental injury under
19 this Act. Any employer receiving such credit shall keep such
20 employee safe and harmless from any and all claims or
21 liabilities that may be made against him by reason of having
22 received such payments only to the extent of such credit.

23 Any excess benefits paid to or on behalf of a State
24 employee by the State Employees' Retirement System under
25 Article 14 of the Illinois Pension Code on a death claim or
26 disputed disability claim shall be credited against any

1 payments made or to be made by the State of Illinois to or on
2 behalf of such employee under this Act, except for payments for
3 medical expenses which have already been incurred at the time
4 of the award. The State of Illinois shall directly reimburse
5 the State Employees' Retirement System to the extent of such
6 credit.

7 2. Nothing contained in this Act shall be construed to give
8 the employer or the insurance carrier the right to credit for
9 any benefits or payments received by the employee other than
10 compensation payments provided by this Act, and where the
11 employee receives payments other than compensation payments,
12 whether as full or partial salary, group insurance benefits,
13 bonuses, annuities or any other payments, the employer or
14 insurance carrier shall receive credit for each such payment
15 only to the extent of the compensation that would have been
16 payable during the period covered by such payment.

17 3. The extension of time for the filing of an Application
18 for Adjustment of Claim as provided in paragraph 1 above shall
19 not apply to those cases where the time for such filing had
20 expired prior to the date on which payments or benefits
21 enumerated herein have been initiated or resumed. Provided
22 however that this paragraph 3 shall apply only to cases wherein
23 the payments or benefits hereinabove enumerated shall be
24 received after July 1, 1969.

25 (Source: P.A. 97-18, eff. 6-28-11; 97-268, eff. 8-8-11; 97-813,
26 eff. 7-13-12.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.