

CHAPTER 322

LABOR AND INDUSTRY

SENATE BILL 94-199

BY SENATORS Norton, Cassidy, Johnson, Mares, Rizzuto, Ruddick, Schroeder, Tebedo, and Traylor;
also REPRESENTATIVES Schauer, Reeser, Armstrong, Blue, Chlouber, Eisenach, Fleming, Friednash, Greenwood, Hagedorn,
Hernandez, Keller, Kerns, Knox, Linkhart, Mattingly, Nichol, Snyder, Taylor, and Tucker.

AN ACT

CONCERNING WORKERS' COMPENSATION, AND IN RELATION THERETO, CREATING A REBUTTABLE PRESUMPTION OF PERMANENT TOTAL DISABILITY, ALLOWING FOR THE APPORTIONMENT OF COSTS FOR PREEXISTING CONDITIONS, FREEZING ANY INCREASE IN THE MEDICAL FEE SCHEDULE, ELIMINATING THE OFFSET OF PERMANENT TOTAL DISABILITY BENEFITS AGAINST PRIVATE PENSION PLANS, MODIFYING THE SCHEDULE OF INJURIES, ELIMINATING THE COST OF LIVING ADJUSTMENT FOR PERMANENT TOTAL DISABILITY, AUTHORIZING LIFETIME PERMANENT TOTAL DISABILITY PAYMENTS, ALLOWING FOR THE GATHERING OF INFORMATION ON THE WORKERS' COMPENSATION SYSTEM, AND PROVIDING FOR REVIEW OF PHYSICIANS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-40-201 (16.5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-40-201. Definitions. As used in articles 40 to 47 of this title, unless the context otherwise requires:

(16.5) (a) "Permanent total disability" means the employee is unable to earn any wages in the same or other employment. EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (16.5), the burden of proof shall be on the employee to prove that ~~he~~ THE EMPLOYEE is unable to earn any wages in the same or other employment.

(b) TOTAL LOSS OF OR TOTAL LOSS OF USE OF BOTH HANDS, OR BOTH ARMS, OR BOTH FEET, OR BOTH LEGS, OR BOTH EYES, OR ANY TWO THEREOF SHALL CREATE A REBUTTABLE PRESUMPTION OF PERMANENT TOTAL DISABILITY. "TOTAL LOSS OF USE" SHALL BE A MEDICAL DETERMINATION, BASED UPON OBJECTIVE FINDINGS, MADE BY AN INDEPENDENT MEDICAL EXAMINER WHO IS A LEVEL II ACCREDITED PHYSICIAN IN THE APPROPRIATE FIELD.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. 8-42-101 (3) (a) (II), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-42-101. Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee - medical treatment guidelines - accreditation of physicians. (3) (a) (II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a) the fees set forth in the schedule established pursuant to subparagraph (I) of this paragraph (a) shall be those fees in effect immediately prior to July 1, 1991, and such fees shall remain in effect until ~~January 1, 1993, or until the director promulgates the impairment rating guidelines and medical treatment guidelines and utilization standards required in subparagraph (I) of this paragraph (a) and subsection (3.5) of this section, whichever is later~~ JULY 1, 1995.

SECTION 3. 8-42-103 (1) (c) (II), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 8-42-103 (1) (c) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

8-42-103. Disability indemnity payable as wages - period of disability. (1) If the injury or occupational disease causes disability, a disability indemnity shall be payable as wages pursuant to the provisions of section 8-42-105 (2) (a) subject to the following limitations:

(c) (II) In cases where it is determined that periodic benefits granted by the federal old-age, survivors, and disability insurance act or employer-paid retirement benefits are payable to an individual and the individual's dependents when the individual reaches the age of sixty-five years, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero:

(A) By an amount equal as nearly as practical to one-half such federal benefits; except that this reduction for the periodic benefits granted by the federal old-age, survivors, and disability insurance act shall not exceed the reduction specified in subparagraph (I) of this paragraph (c) for the periodic disability benefits payable to an individual; ~~and~~

(B) By an amount determined as a percentage of the employer-paid retirement benefits, said percentage to be determined by a weighted average of the employer's contributions during the period of covered employment divided by the total contributions during the period of covered employment; EXCEPT THAT IN PERMANENT TOTAL DISABILITY CASES ALL CONTRIBUTIONS MADE BY THE EMPLOYER PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT WITH THE EMPLOYEE'S REPRESENTATIVE SHALL BE CONSIDERED TO HAVE BEEN MADE BY THE EMPLOYEE.

(II.5) IN CASES WHERE AN EMPLOYER DOES NOT PARTICIPATE IN FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE, AND IT IS DETERMINED THAT EMPLOYER-PAID RETIREMENT BENEFITS ARE PAYABLE TO AN INDIVIDUAL AND THE INDIVIDUAL'S DEPENDENTS WHEN THE INDIVIDUAL REACHES THE AGE OF SIXTY-FIVE YEARS, THE AGGREGATE BENEFITS PAYABLE FOR PERMANENT TOTAL DISABILITY PURSUANT TO THIS SECTION SHALL BE REDUCED, BUT NOT BELOW ZERO BY AN AMOUNT DETERMINED AS A PERCENTAGE OF THE EMPLOYER-PAID RETIREMENT

BENEFITS, SAID PERCENTAGE TO BE DETERMINED BY A WEIGHTED AVERAGE OF THE EMPLOYER'S CONTRIBUTIONS DURING THE PERIOD OF COVERED EMPLOYMENT DIVIDED BY THE TOTAL CONTRIBUTIONS DURING THE PERIOD OF COVERED EMPLOYMENT.

SECTION 4. 8-42-107 (2) (b), (2) (c), (2) (x), (2) (y), and (7) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 8-42-107 (2) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (2) **Scheduled injuries.** In case an injury results in a loss set forth in the following schedule, the injured employee, in addition to compensation to be paid for temporary disability, shall receive compensation for the period as specified:

(a.5) THE LOSS OF AN ARM ABOVE THE HAND INCLUDING THE WRIST
208 WEEKS

(b) ~~The loss of forearm at the elbow~~ 139 weeks

(c) The loss of a hand ~~at~~ BELOW the wrist 104 weeks

(w.5) THE LOSS OF A LEG ABOVE THE FOOT INCLUDING THE ANKLE
208 WEEKS

(x) ~~Loss of a leg at or above the knee, where the stump remains sufficient to permit the use of an artificial limb~~
139 weeks

(y) The loss of a foot ~~at~~ BELOW the ankle 104 weeks

(7) (b) Except as provided in subsection (8) of this section, where an injury causes the loss of, loss of use of or partial loss of use of any member specified in the foregoing schedule, the amount of ~~compensation~~ PERMANENT PARTIAL DISABILITY shall be the proportionate share of the amount stated in the above schedule for the total loss of a member, and such amount shall be in addition to compensation for temporary disability.

SECTION 5. 8-42-111 (4) and (5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

8-42-111. Award for permanent total disability. (4) For injuries occurring on and after July 1, 1991, AND BEFORE JULY 1, 1994, the average weekly wage of injured employees used for computing compensation paid for awards pursuant to subsection (1) of this section shall be increased by two percent per year effective July 1 of each year, and such increased compensation shall be payable for the subsequent twelve months.

(5) For injuries occurring on and after July 1, 1991, AND BEFORE JULY 1, 1994, compensation payable pursuant to this section shall cease when the employee reaches the age of sixty-five years.

SECTION 6. Article 42 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

8-42-125. Data gathering on workers' compensation system. THE GOVERNOR AND THE LEADER OF THE OPPOSING PARTY IN THE HOUSE OF REPRESENTATIVES AND THE LEADER OF THE OPPOSING PARTY IN THE SENATE SHALL CONTRACT WITH A PERSON OR ENTITY FOR OBTAINING INFORMATION ON THE WORKERS' COMPENSATION SYSTEM. THE PERSON OR ENTITY GATHERING SUCH INFORMATION SHALL WORK SOLELY AT THE UNANIMOUS DIRECTION OF THE GOVERNOR AND SUCH OPPOSITION LEADERSHIP. ISSUES OR TOPICS WHICH WILL BE SUBJECT TO SUCH INFORMATION GATHERING PROCESS SHALL BE DETERMINED BY UNANIMOUS DECISION OF THE GOVERNOR AND SUCH OPPOSITION LEADERSHIP. THE CONTRACTOR FOR THE GATHERING OF SUCH INFORMATION SHALL HAVE COMPLETE ACCESS TO ALL RECORDS OF AND FILES IN THE DIVISION OF WORKERS' COMPENSATION AND THE DIVISION OF ADMINISTRATIVE HEARINGS. SUCH CONTRACTOR SHALL GUARANTEE THAT ANY INFORMATION GATHERED ON ANY INDIVIDUAL SHALL BE KEPT CONFIDENTIAL.

SECTION 7. Part 5 of article 43 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

8-43-503. Utilization review of health care providers. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT HEALTH CARE PROVIDERS THAT PROVIDE MEDICAL CARE OR HEALTH CARE SERVICES THAT ARE NOT REASONABLY NECESSARY OR NOT REASONABLY APPROPRIATE ACCORDING TO ACCEPTED PROFESSIONAL STANDARDS SHOULD NOT BE ALLOWED TO PROVIDE SUCH SERVICES TO WORKERS' COMPENSATION CLAIMANTS. THE GENERAL ASSEMBLY, THEREFORE, HEREBY DECLARES THAT THE PURPOSE OF THE UTILIZATION REVIEW PROCESS AUTHORIZED IN THIS SECTION IS TO PROVIDE A MECHANISM TO REVIEW MEDICAL CARE OR HEALTH CARE SERVICES RENDERED PURSUANT TO THIS ARTICLE THAT MAY NOT BE REASONABLY NECESSARY OR REASONABLY APPROPRIATE ACCORDING TO ACCEPTED PROFESSIONAL STANDARDS AND TO PROVIDE A MECHANISM TO PREVENT SUCH HEALTH CARE PROVIDERS FROM PROVIDING MEDICAL CARE OR HEALTH CARE SERVICES.

(2) THE PROVISIONS RELATING TO THE PROCEDURES FOR UTILIZATION REVIEW FOUND IN SECTION 8-43-501 (2), (3), (4), (5) (a), (5) (c), AND (5) (d) SHALL APPLY TO UTILIZATION REVIEW UNDER THIS SECTION. A UNANIMOUS VOTE BY THE COMMITTEE CREATED IN SECTION 8-43-501 (3) SHALL BE REQUIRED FOR A RECOMMENDATION TO THE DIRECTOR THAT A HEALTH CARE PROVIDER NOT BE ALLOWED TO PROVIDE MEDICAL CARE OR HEALTH CARE SERVICES TO CLAIMANTS.

(3) EMPLOYERS, INSURERS, CLAIMANTS, OR THEIR REPRESENTATIVES SHALL NOT DICTATE TO ANY PHYSICIAN THE TYPE OR DURATION OF TREATMENT OR DEGREE OF PHYSICAL IMPAIRMENT. NOTHING IN THIS SUBSECTION (3) SHALL BE CONSTRUED TO ABROGATE ANY MANAGED CARE OR COST CONTAINMENT MEASURES AUTHORIZED IN ARTICLES 40 TO 47 OF THIS TITLE.

SECTION 8. Effective date - applicability. Sections 6 and 9 of this act and this section shall take effect on passage. Sections 1 through 5 and 7 of this act shall take effect July 1, 1994, and shall apply to injuries occurring on and after said date.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 1994