

CHAPTER 103

LABOR AND INDUSTRY

HOUSE BILL 99-1157

BY REPRESENTATIVES Ament, May, Alexander, Berry, Dean, Hoppe, Larson, Lee, McKay, Paschall, Pfiffner, Scott, Smith, Spence, Spradley, Stengel, and Sullivant;
also SENATORS Owen, Arnold, Musgrave, and Tebedo.

AN ACT

CONCERNING THE REESTABLISHMENT OF AN EXCLUSIVE SCHEDULE FOR PERMANENT PARTIAL DISABILITY UNDER THE WORKERS' COMPENSATION LAW, AND, IN CONNECTION THEREWITH, INCREASING THE AMOUNT OF BENEFITS RECEIVED UNDER THE SCHEDULE AND LIMITING BENEFITS FOR MENTAL STRESS.

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

SECTION 1. 8-42-107 (6) and (7), Colorado Revised Statutes, are amended to read:

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (6) (a) The amounts specified in subsections (1) to (5) of this section shall be at the compensation rate of one hundred ~~five~~ **fifty** SEVENTY-SIX dollars per week.

(b) ON JULY 1, 2000, AND ON EACH SUCCEEDING JULY 1 THEREAFTER, THE COMPENSATION RATE ESTABLISHED IN THIS SUBSECTION (6) SHALL BE MODIFIED FOR CLAIMS ARISING ON AND AFTER SUCH DATE BY THE SAME PERCENTAGE INCREASE OR DECREASE AS THE STATE AVERAGE WEEKLY WAGE AS DETERMINED BY THE DIRECTOR WHEN THE DIRECTOR ESTABLISHES THE STATE AVERAGE WEEKLY WAGE PURSUANT TO SECTION 8-47-106.

(7) (a) When an injured employee sustains two or more injuries coming under this schedule, the disabilities specified in subsections (1) to (5) of this section shall be added, and the injured employee shall receive the sum total thereof; except that, where the injury results in the loss or partial loss of use of the index finger and thumb of the same hand or of more than two digits of any one hand or foot, the disability, in the discretion of the director, may be compensated on the basis of the partial loss of

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

use of said hand or foot, measured respectively from the wrist or ankle.

(b) (I) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE RATING ORGANIZATION THAT STUDIED THE IMPACT OF THE CHANGES IN SENATE BILL 91-218, ENACTED AT THE FIRST REGULAR SESSION OF THE FIFTY-EIGHTH GENERAL ASSEMBLY, ASSUMED THAT SCHEDULED INJURIES WOULD REMAIN ON THE SCHEDULE AND NONSCHEDULED INJURIES WOULD BE COMPENSATED AS MEDICAL IMPAIRMENT BENEFITS. THEREFORE, THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE PURPOSE OF CHANGING THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), AS AMENDED BY HOUSE BILL 99-1157, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, IS TO CLARIFY THAT SCHEDULED INJURIES SHALL BE COMPENSATED AS PROVIDED ON THE SCHEDULE AND NONSCHEDULED INJURIES SHALL BE COMPENSATED AS MEDICAL IMPAIRMENT BENEFITS, AND THAT, WHEN AN INJURED WORKER SUSTAINS BOTH SCHEDULED AND NONSCHEDULED INJURIES, THE LOSSES SHALL BE COMPENSATED ON THE SCHEDULE FOR SCHEDULED INJURIES AND THE NONSCHEDULED INJURIES SHALL BE COMPENSATED AS MEDICAL IMPAIRMENT BENEFITS. THE GENERAL ASSEMBLY FURTHER DETERMINES AND DECLARES THAT MENTAL OR EMOTIONAL STRESS SHALL BE COMPENSATED PURSUANT TO SECTION 8-41-301 (2) AND SHALL NOT BE COMBINED WITH A SCHEDULED OR A NONSCHEDULED INJURY.

(II) 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 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. WHERE AN INJURY CAUSES A LOSS SET FORTH IN THE SCHEDULE IN SUBSECTION (2) OF THIS SECTION AND A LOSS SET FORTH FOR MEDICAL IMPAIRMENT BENEFITS IN SUBSECTION (8) OF THIS SECTION, THE LOSS SET FORTH IN THE SCHEDULE FOUND IN SAID SUBSECTION (2) SHALL BE COMPENSATED SOLELY ON THE BASIS OF SUCH SCHEDULE AND THE LOSS SET FORTH IN SAID SUBSECTION (8) SHALL BE COMPENSATED SOLELY ON THE BASIS FOR SUCH MEDICAL IMPAIRMENT BENEFITS SPECIFIED IN SAID SUBSECTION (8).

(III) MENTAL OR EMOTIONAL STRESS SHALL BE COMPENSATED PURSUANT TO SECTION 8-41-301 (2) AND SHALL NOT BE COMBINED WITH A SCHEDULED OR A NONSCHEDULED INJURY.

SECTION 2. 8-41-301 (2) (a) and (2) (b), Colorado Revised Statutes, are amended, and the said 8-41-301 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

8-41-301. Conditions of recovery. (2) (a) A claim of mental impairment must be proven by evidence supported by the testimony of a licensed physician or psychologist. For purposes of this subsection (2), "mental impairment" means a RECOGNIZED, PERMANENT disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances. A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action,

work evaluation, job transfer, lay-off, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. THE MENTAL IMPAIRMENT THAT IS THE BASIS OF THE CLAIM SHALL HAVE ARISEN PRIMARILY FROM THE CLAIMANT'S THEN OCCUPATION AND PLACE OF EMPLOYMENT IN ORDER TO BE COMPENSABLE.

(a.5) FOR PURPOSES OF THIS SUBSECTION (2), "MENTAL IMPAIRMENT" ALSO INCLUDES A DISABILITY ARISING FROM AN ACCIDENTAL PHYSICAL INJURY THAT LEADS TO A RECOGNIZED PERMANENT PSYCHOLOGICAL DISABILITY.

~~(b) The mental impairment which is the basis of the claim must have arisen primarily from the claimant's then occupation and place of employment.~~ Notwithstanding any other provision of articles 40 to 47 of this title, where a claim is by reason of mental impairment, the claimant shall be limited to twelve weeks of medical impairment benefits which shall be in an amount not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, inclusive of any temporary disability benefits. This limitation shall not apply to any victim of a crime of violence NOR TO THE VICTIM OF A PHYSICAL INJURY OR OCCUPATIONAL DISEASE THAT CAUSES NEUROLOGICAL BRAIN DAMAGE.

SECTION 3. Effective date - applicability. This act shall take effect July 1, 1999, and shall apply to injuries occurring on or after said date.

SECTION 4. 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: April 14, 1999