

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 10-0964.01 Kate Meyer

SENATE BILL 10-187

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Riesberg,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING WORKERS' COMPENSATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill makes various changes to the "Workers' Compensation Act of Colorado" (act).

Section 1 excludes medicaid and other indigent health care programs from the purview of health insurance plans, the cost of which is factored into a calculation of wages under the act.

Section 2 adds a compensable cost under the act by requiring a court to award all reasonable costs (not including attorney fees) to a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 20, 2010

claimant when medical maintenance benefits that have been recommended by an authorized treating physician but are unpaid and contested are:

- ! Admitted fewer than 20 days before the date of the hearing;
or
- ! Ordered after the application for hearing on the benefits is filed.

Section 3 clarifies that the phrase "at the time of injury", with respect to calculation of a worker's average weekly wage, means the wages the worker was earning on the date of the worker's accident.

Section 4 eliminates permanent partial disability from the types of disabilities for which payments must be reduced under the act in order to offset benefits payable under the federal "Old-age, Survivors, and Disability Insurance Amendments of 1965" (federal act). This section also repeals the requirement that employees apply for benefits under the federal act upon request by the insurer or employer.

Section 5 describes some circumstances under which a temporarily disabled employee's rejection of an offer of modified employment does not constitute employee responsibility for termination of employment.

Section 6 replaces loss of an eye by enucleation on the schedule of specific permanent medical impairment injuries with loss of a tooth, and sets the compensation period for such loss at 6 weeks.

Section 7 requires the director of the division of workers' compensation (director) in the department of labor and employment to annually adjust, based on his or her annual adjustments to the computation of average weekly wages, the amount of compensation for combined temporary disability payments and permanent partial disability payments. This section takes effect January 1, 2011.

Section 8 forbids the director or an administrative law judge from conditioning a lump sum payment on the claimant's waiver of his or her right to pursue permanent total disability payments.

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

2 **SECTION 1.** 8-40-201 (19) (b), Colorado Revised Statutes, is
3 amended to read:

4 **8-40-201. Definitions - repeal.** As used in articles 40 to 47 of
5 this title, unless the context otherwise requires:

6 (19) (b) The term "wages" ~~shall include~~ INCLUDES the amount of
7 the employee's cost of continuing the employer's group health insurance

1 plan and, upon termination of the continuation, the employee's cost of
2 conversion to a similar or lesser insurance plan, and gratuities reported to
3 the federal internal revenue service by or for the worker for purposes of
4 filing federal income tax returns and the reasonable value of board, rent,
5 housing, and lodging received from the employer, the reasonable value
6 of which shall be fixed and determined from the facts by the division in
7 each particular case, but ~~shall~~ DOES not include any similar advantage or
8 fringe benefit not specifically enumerated in this subsection (19). If, after
9 the injury, the employer continues to pay any advantage or fringe benefit
10 specifically enumerated in this subsection (19), including the cost of
11 health insurance coverage or the cost of the conversion of ~~such~~ health
12 insurance coverage, ~~such~~ THAT advantage or benefit shall not be included
13 in the determination of the employee's wages so long as the employer
14 continues to make ~~such~~ payment. MEDICAID AND OTHER INDIGENT
15 HEALTH CARE PROGRAMS ARE NOT HEALTH INSURANCE PLANS FOR THE
16 PURPOSES OF THIS SECTION.

17 **SECTION 2.** 8-42-101, Colorado Revised Statutes, is amended
18 BY THE ADDITION OF A NEW SUBSECTION to read:

19 **8-42-101. Employer must furnish medical aid - approval of**
20 **plan - fee schedule - contracting for treatment - no recovery from**
21 **employee - medical treatment guidelines - accreditation of physicians**
22 **- rules - repeal.** (5) IF ANY PARTY FILES AN APPLICATION FOR HEARING
23 ON WHETHER THE CLAIMANT IS ENTITLED TO MEDICAL MAINTENANCE
24 BENEFITS RECOMMENDED BY AN AUTHORIZED TREATING PHYSICIAN THAT
25 ARE UNPAID AND CONTESTED, AND ANY REQUESTED MEDICAL
26 MAINTENANCE BENEFIT IS ADMITTED FEWER THAN TWENTY DAYS BEFORE
27 THE HEARING OR ORDERED AFTER APPLICATION FOR HEARING IS FILED, THE

1 COURT SHALL AWARD THE CLAIMANT ALL REASONABLE COSTS INCURRED
2 IN PURSUING THE MEDICAL BENEFIT. SUCH COSTS DO NOT INCLUDE
3 ATTORNEY FEES.

4 **SECTION 3.** 8-42-102, Colorado Revised Statutes, is amended
5 BY THE ADDITION OF A NEW SUBSECTION to read:

6 **8-42-102. Basis of compensation - "wages" defined - average**
7 **weekly wage - "at the time of injury" clarified.** (5) (a) THE GENERAL
8 ASSEMBLY HEREBY FINDS THAT THE PHRASE "AT THE TIME OF INJURY" IN
9 SUBSECTION (2) OF THIS SECTION REFERS TO THE DATE OF THE EMPLOYEE'S
10 ACCIDENT. WHEN SUBSECTION (2) OF THIS SECTION IS USED TO
11 DETERMINE A WORKER'S AVERAGE WEEKLY WAGE, THE WAGE ON THE
12 DATE OF THE ACCIDENT SHALL BE USED.

13 (b) NOTHING IN THIS SUBSECTION (5) ALTERS THE DISCRETION OF
14 THE DIVISION OR THE DIRECTOR TO FAIRLY DETERMINE A WORKER'S
15 AVERAGE WEEKLY WAGE IN ACCORDANCE WITH SUBSECTION (3) OF THIS
16 SECTION.

17 **SECTION 4.** The introductory portion to 8-42-103 (1), 8-42-103
18 (1) (c) (I) and (1) (c) (III), and the introductory portion to 8-42-103 (1) (d)
19 (I), Colorado Revised Statutes, are amended to read:

20 **8-42-103. Disability indemnity payable as wages - period of**
21 **disability.** (1) If the injury or occupational disease causes disability, a
22 disability indemnity shall be payable as wages pursuant to ~~the provisions~~
23 ~~of section 8-42-105 (2) (a) subject to the following limitations:~~

24 (c) (I) In cases where it is determined that periodic disability
25 benefits granted by the federal ~~old-age, survivors, and disability insurance~~
26 ~~act~~ "OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AMENDMENTS OF
27 1965", PUB.L. 89-97, are payable to an individual and ~~said~~ THE

1 individual's dependents, the aggregate benefits payable for temporary
2 total disability, temporary partial disability, ~~permanent partial disability,~~
3 and permanent total disability pursuant to this section shall be reduced,
4 but not below zero, by an amount equal as nearly as practical to one-half
5 ~~such~~ THE federal periodic benefits; but, if ~~provisions of the federal~~
6 ~~old-age, survivors, and disability insurance act should be~~ "OLD-AGE,
7 SURVIVORS, AND DISABILITY INSURANCE AMENDMENTS OF 1965", PUB.L.
8 89-97, IS amended to provide for a reduction of an individual's disability
9 benefits thereunder because of compensation benefits payable under
10 articles 40 to 47 of this title, the reduction of compensation benefits
11 provided in said articles shall be decreased by an amount equal to ~~such~~
12 THE federal reduction. Upon request of the insurer or employer, the
13 employee shall apply for such federal periodic DISABILITY benefits and
14 respond to requests from the insurer or employer as to the status of such
15 application. Failure to comply with this section ~~shall be~~ CONSTITUTES
16 cause for suspension of benefits.

17 (III) Notwithstanding ~~the provisions of sub-subparagraph (A) of~~
18 ~~subparagraph (II) of this paragraph (c), if provisions of the federal~~
19 ~~old-age, survivors, and disability insurance act should be~~ "OLD-AGE,
20 SURVIVORS, AND DISABILITY INSURANCE AMENDMENTS OF 1965", PUB.L.
21 89-97, IS amended to provide for a reduction of an individual's periodic
22 benefits thereunder because of compensation benefits payable under
23 articles 40 to 47 of this title, the reduction of compensation benefits
24 provided in said articles shall be decreased by an amount equal to ~~such~~
25 THE federal reduction. ~~Upon request of the insurer or employer, the~~
26 ~~employee shall apply for such federal benefits no later than such time as~~
27 ~~the employee is entitled to a full award of such benefits and shall respond~~

1 ~~to requests from the insurer or employer as to the status of such~~
2 ~~application. Failure to comply with this section shall be cause for~~
3 ~~suspension of benefits.~~

4 (d) (I) In cases where it is determined that periodic disability
5 benefits are payable to an employee under ~~the provisions of~~ a pension or
6 disability plan financed in whole or in part by the employer, hereinafter
7 called "employer pension or disability plan", the aggregate benefits
8 payable for temporary total disability, temporary partial disability,
9 ~~permanent partial disability~~, and permanent total disability pursuant to
10 this section shall be reduced, but not below zero, by an amount equal as
11 nearly as practical to ~~such~~ THE employer pension or disability plan
12 benefits, with the following limitations:

13 **SECTION 5.** 8-42-105 (4), Colorado Revised Statutes, is
14 amended to read:

15 **8-42-105. Temporary total disability.** (4) (a) In cases where it
16 is determined that a temporarily disabled employee is responsible for
17 termination of employment, the resulting wage loss shall not be
18 attributable to the on-the-job injury.

19 (b) THE CLAIMANT'S REFUSAL TO ACCEPT AN OFFER OF MODIFIED
20 EMPLOYMENT UNDER EITHER OF THE FOLLOWING CONDITIONS DOES NOT
21 CONSTITUTE RESPONSIBILITY FOR TERMINATION:

22 (I) THE OFFER OF MODIFIED EMPLOYMENT WOULD REQUIRE THE
23 CLAIMANT TO TRAVEL A DISTANCE OF GREATER THAN FIFTY MILES ONE
24 WAY MORE THAN THE CLAIMANT'S PRE-INJURY COMMUTE; OR

25 (II) AN ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE
26 CLAIMANT'S REJECTION OF THE OFFER OF MODIFIED EMPLOYMENT WAS
27 REASONABLE CONSIDERING THE TOTALITY OF THE CLAIMANT'S

1 CIRCUMSTANCES, INCLUDING ACCOUNTING FOR:

2 (A) THE CONSEQUENCES OF THE INDUSTRIAL INJURY;

3 (B) THE FINANCIAL HARDSHIP THAT WOULD BE IMPOSED ON THE
4 CLAIMANT IN ORDER TO ACCEPT THE OFFER OF MODIFIED EMPLOYMENT; OR

5 (C) ANY OTHER REASONS THAT WOULD, IN THE OPINION OF THE
6 ADMINISTRATIVE LAW JUDGE, MAKE IT IMPRACTICABLE FOR THE
7 CLAIMANT TO ACCEPT THE OFFER OF MODIFIED EMPLOYMENT.

8 (c) THE CIRCUMSTANCES DESCRIBED IN PARAGRAPH (b) OF THIS
9 SUBSECTION (4) ARE NOT EXHAUSTIVE.

10 **SECTION 6.** 8-42-107 (2) (ff), Colorado Revised Statutes, is
11 amended to read:

12 **8-42-107. Permanent partial disability benefits - schedule -**
13 **medical impairment benefits - how determined. (2) Scheduled**
14 **injuries.** In case an injury results in a loss set forth in the following
15 schedule, the injured employee, in addition to compensation to be paid for
16 temporary disability, shall receive compensation for the period as
17 specified:

18 (ff) The loss of ~~an eye by enucleation (including disfigurement~~
19 ~~resulting therefrom)~~ A TOOTH ~~139 weeks~~ 6 WEEKS

20 **SECTION 7.** 8-42-107.5, Colorado Revised Statutes, is amended
21 to read:

22 **8-42-107.5. Limits on temporary disability payments and**
23 **permanent partial disability payments.** No claimant whose impairment
24 rating is twenty-five percent or less may receive more than seventy-five
25 thousand dollars from combined temporary disability payments and
26 permanent partial disability payments. No claimant whose impairment
27 rating is greater than twenty-five percent may receive more than one

1 hundred fifty thousand dollars from combined temporary disability
2 payments and permanent partial disability payments. For the purposes of
3 this section, any mental impairment rating shall be combined with the
4 physical impairment rating to establish a claimant's impairment rating for
5 determining the applicable cap. FOR INJURIES SUSTAINED ON AND AFTER
6 JANUARY 1, 2012, THE DIRECTOR SHALL ADJUST THESE LIMITS ON THE
7 AMOUNT OF COMPENSATION FOR COMBINED TEMPORARY DISABILITY
8 PAYMENTS AND PERMANENT PARTIAL DISABILITY PAYMENTS ON JULY 1,
9 2011, AND EACH JULY 1 THEREAFTER, BY THE PERCENTAGE OF
10 ADJUSTMENT MADE BY THE DIRECTOR TO THE STATE AVERAGE WEEKLY
11 WAGE PURSUANT TO SECTION 8-47-106.

12 **SECTION 8.** 8-43-406 (1), Colorado Revised Statutes, is
13 amended to read:

14 **8-43-406. Compensation in lump sum.** (1) At any time after six
15 months have elapsed from the date of injury, the claimant may elect to
16 take all or any part of the compensation awarded in a lump sum by
17 sending written notice of the election and the amount of benefits
18 requested to the carrier or the noninsured or self-insured employer. The
19 carrier or self-insured employer shall file the calculation of the lump sum
20 due and notice that the lump sum has been paid to the claimant within ten
21 days after the election. When the claimant is unrepresented, the director
22 shall calculate amounts to be paid based on the present worth of partial
23 payments, considering interest at four percent per annum, and less a
24 deduction for the contingency of death. The director shall make the
25 method of calculation of lump sums available to all parties at all times,
26 including posting the information on the division's web site. NEITHER
27 THE DIRECTOR NOR AN ADMINISTRATIVE LAW JUDGE SHALL IN ANY WAY

1 ATTEMPT TO CONDITION THE LUMP SUM PAYMENT ON THE CLAIMANT
2 WAIVING THE RIGHT TO PURSUE PERMANENT TOTAL DISABILITY BENEFITS.

3 **SECTION 9. Specified effective date - applicability.**

4 (1) Except as otherwise provided in subsection (2) of this section, this act
5 shall take effect July 1, 2010, and shall apply to injuries sustained on or
6 after said date.

7 (2) Section 7 of this act shall take effect January 1, 2011, and shall
8 apply to injuries sustained on or after January 1, 2012.

9 **SECTION 10. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.