

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Dowd**

A Bill

SENATE BILL

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE WORKERS'
9 COMPENSATION LAW TO CLARIFY THE USE OF THE SECOND INJURY
10 FUND; TO PROVIDE FOR THE ROUNDING OFF OF THE WEEKLY
11 BENEFIT RATE; TO PROVIDE FOR THE PAYMENT OF ATTORNEY'S
12 FEES ON MEDICAL EXPENSES; AND FOR OTHER PURPOSES."

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14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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16 SECTION 1. Arkansas Code Annotated §11-9-525(a) is amended to read as
17 follows:

18 "(a) (1) The Second Injury Trust Fund established in this chapter is a
19 special fund designed to insure that an employer employing a handicapped
20 worker will not, in the event the worker suffers an injury on the job, be held
21 liable for a greater disability or impairment than actually occurred while the
22 worker was in his employment.

23 (2) The employee is to be fully protected in that the Second
24 Injury Fund pays the worker the difference between the employer's liability
25 and the balance of his disability or impairment which results from all
26 disabilities or impairments combined.

27 (3) It is intended that latent conditions which are not known to
28 the employee or employer not be considered previous disabilities or
29 impairments which would give rise to a claim against the Second Injury Fund.

30 (4) Second Injury Fund liability shall attach even if the previous
31 disability or impairment occurred in the same employment."

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33 SECTION 2. Arkansas Code Annotated §11-9-501(b) is amended to read as
34 follows:

35 "(b) Compensation payable to an injured employee for disability, other

1 than permanent partial disability as specified in subsection (d) of this
2 section, and compensation payable to surviving dependents of a deceased
3 employee, the total disability rate, shall not exceed sixty-six and two-thirds
4 percent (66 2/3%) of the employee's average weekly wage with a twenty dollar
5 (\$20.00) per week minimum, subject to the following maximums:

6 (1) For disability or death due to an injury occurring on and
7 after July 1, 1987, through December 31, 1988, the maximum weekly benefits
8 payable shall be one hundred eighty-nine dollars (\$189);

9 (2) For disability or death due to an injury occurring on and
10 after January 1, 1989, through December 31, 1989, the maximum weekly benefits
11 payable shall be sixty-six and two-thirds percent (66 2/3%) of the state
12 average weekly wage;

13 (3) For a disability or death which results from an injury
14 occurring during a calendar year beginning on or after January 1, 1990, the
15 maximum weekly benefit payable shall be seventy percent (70%) of the state
16 average weekly wage.

17 (4) After January 1, 1992, the weekly benefit rate shall be
18 rounded to the nearest whole dollar."

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20 SECTION 3. Arkansas Code Annotated §11-9-715(a)(2)(B) is amended to
21 read as follows:

22 "(B) In all other cases whenever the commission finds that a claim has
23 been controverted, in whole or in part, the commission shall direct that fees
24 for legal services be paid to the attorney for the claimant as follows: One-
25 half (1/2) by the employer or carrier in addition to compensation awarded, and
26 one-half (1/2) by the injured employee or dependents of a deceased employee
27 out of compensation payable to them; however, in claims for controverted
28 medical services and supplies, provided for in §11-9-508, the employer or
29 carrier shall be responsible for the payment of the entire attorney's fee
30 awarded for such services and supplies in addition to the compensation
31 awarded. The fees shall be allowed only on the amount of compensation
32 controverted and awarded. However, the commission shall not find a claim has
33 been controverted if the claimant or his representative has withheld from the
34 respondent during the period of time allotted for the respondent to determine
35 its position any medical information in his possession which substantiates the

1 claim."

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3 SECTION 4. Arkansas Code Annotated §11-9-702(a)(4) is repealed.

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5 SECTION 5. All provisions of this act of a general and permanent nature
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
7 Revision Commission shall incorporate the same in the Code.

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9 SECTION 6. If any provision of this act or the application thereof to
10 any person or circumstance is held invalid, such invalidity shall not affect
11 other provisions or applications of the act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 act are declared to be severable.

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15 SECTION 7. All laws and parts of laws in conflict with this act are
16 hereby repealed.

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18 SECTION 8. Emergency. It is hereby found and determined by the General
19 Assembly that recent court interpretations of the Second Injury Fund has
20 resulted in restricting the application of the fund; that the setting of the
21 weekly benefit rate at other than a whole dollar has created an undue burden
22 on administration; that injured workers are generally unable to pay attorney's
23 fees out of benefits for medical expenses and at the same time make full
24 payment of the medical expenses incurred; and the dismissal provisions of
25 Arkansas Code Annotated
26 §11-9-702(a)(4) have created a tremendous administrative burden on the
27 Arkansas Workers' Compensation Commission and has served no useful purpose.
28 Therefore, an emergency is hereby declared to exist, and this act, being
29 necessary for the preservation of the public peace, health and safety, shall
30 be in full force and effect from and after its passage and approval.

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