

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: H1/17/97 H1/23/97

## A Bill

ACT 251 OF 1997  
HOUSE BILL 1107

5 By: Representative Wallis, Malone, McKissack, Miller, Capps, McGinnis, Bond, Sheppard, Laverty, Maddox, Kidd, Ferguson, Hogue,  
6 Madison, Faris, Wilkinson, Wren, French, Simmons, Flanagan, Curran, Bryant, Horn, Ferrell, Mullenix, Wooldridge, Dietz, Smith, Davis,  
7 George, Simon, Allison, Broadway, Trammell, Ammons, Young, Jones, Schexnayder, Lancaster, Booker, Walker, Stalnaker, DeLay,  
8 Hendren, Hale, Thicksten, McGee, Molinaro, Hall, Wilkins, Angel, Wilson, Milum, Hunton, Thomas, Jeffress, Wagner, Lynn, Pappas,  
9 Rodgers, Bennett, Roberts, Newman, Baker, Harris, Vess, Johnson, Critcher, Dawson, and Luker  
10 By: Senator Bradford, Gwatney, Fitch, Ross, Webb, Hunter, Bearden, Wyrick, Brown, Argue, Boozman, Scott, Kennedy, Hill,  
11 Edwards, Lewellen, Dowd, Beebe, Russ, Hopkins, Gordon, Malone, Canada, Roebuck, and Everett

### For An Act To Be Entitled

12  
13  
14 "AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE TITLE  
15 11, CHAPTER 9, SUBCHAPTER 5 CONCERNING WORKERS  
16 COMPENSATION; AND FOR OTHER PURPOSES."

### Subtitle

17  
18  
19 "AN ACT CONCERNING WORKERS  
20 COMPENSATION."

21  
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23  
24 SECTION 1. Arkansas Code 11-9-519 is amended to read as follows:

25 "11-9-519. Compensation for disability - Total disability.

26 (a) In case of total disability, there shall be paid to the injured  
27 employee during the continuance of the total disability sixty-six and  
28 two-thirds percent (66 2/3%) of his average weekly wage.

29 (b) In the absence of clear and convincing proof to the contrary, the  
30 loss of both hands, both arms, both legs, both eyes, or of any two (2) thereof  
31 shall constitute permanent total disability.

32 (c) In all other cases, permanent total disability shall be  
33 determined in accordance with the facts.

34 (d)(1) No more often than annually, the carrier or self-insured  
35 employer or the Death and Permanent Total Disability Trust Fund may require an  
36 injured worker receiving permanent total disability benefits to, as of the

1 date thereof, certify on forms provided by the Workers' Compensation  
2 Commission that he or she is permanently and totally disabled and not  
3 gainfully employed.

4 (2) Notice of such requirement shall be made by certified mail.

5 (3) Failure of the employee to so certify within thirty (30) days  
6 after receipt of such notice shall permit the discontinuance of benefits  
7 without penalty until otherwise ordered by the commission.

8 (e)(1) Permanent total disability means inability, because of  
9 compensable injury or occupational disease, to earn any meaningful wages in  
10 the same or other employment.

11 (2) The burden of proof shall be on the employee to prove  
12 inability to earn any meaningful wage in the same or other employment.

13 (f) In considering a claim for permanent disability, the  
14 commission and the courts shall not consider the odd-lot doctrine.

15 ~~(g) Any permanent total disability benefits payable to an injured  
16 worker age sixty-five (65) or older shall be reduced in an amount equal to,  
17 dollar for dollar, the amount of benefits the injured worker receives or is  
18 eligible to receive from a publicly or privately funded retirement or pension  
19 plan but shall not be reduced by employee contributions to a privately funded  
20 retirement or pension plan. The purpose and intent of this subsection is to  
21 prohibit workers' compensation from becoming a retirement supplement.~~

22 ~~(h)~~ (g)(1)(A) On or before July 1, 1994, the commission, after a  
23 public hearing, shall adopt an impairment rating guide to be used in the  
24 assessment of anatomical impairment.

25 (B) Said guide shall not include pain as a basis for  
26 impairment.

27 (2) Provided, the impairment rating guide adopted by the  
28 commission shall become null and void on March 1, 1997, unless  
29 reenacted by the General Assembly."  
30

31 SECTION 2. Arkansas Code §11-9-521 is amended to read as follows:

32 "11-9-521. Compensation for disability - Scheduled permanent  
33 injuries.

34 (a) An employee who sustains a permanent compensable injury scheduled  
35 in this section shall receive, in addition to compensation for  
36 temporary total and temporary partial benefits during the healing

1 period or until the employee returns to work, whichever occurs first,  
2 weekly benefits in the amount of the permanent partial disability rate  
3 attributable to the injury, for that period of time set out in the  
4 following schedule:

- 5 (1) Arm amputated at the elbow, or between the elbow and  
6 shoulder, ~~two hundred ten (210)~~ two hundred forty-four (244) weeks;
- 7 (2) Arm amputated between the elbow and wrist, ~~one hundred~~  
8 ~~fifty-eight (158)~~ one hundred eighty-three (183) weeks;
- 9 (3) Leg amputated at the knee, or between the knee and the hip,  
10 one hundred eighty-four (184) weeks;
- 11 (4) Leg amputated between the knee and the ankle, one hundred  
12 thirty-one (131) weeks;
- 13 (5) Hand amputated, ~~one hundred fifty-eight (158)~~ one hundred  
14 eighty-three (183) weeks;
- 15 (6) Thumb amputated, ~~sixty-three (63)~~ seventy-three (73) weeks;
- 16 (7) First finger amputated, ~~thirty-seven (37)~~ forty-three (43)  
17 weeks;
- 18 (8) Second finger amputated, ~~thirty-two (32)~~ thirty-seven (37)  
19 weeks;
- 20 (9) Third finger amputated, ~~twenty-one (21)~~ twenty-four (24)  
21 weeks;
- 22 (10) Fourth finger amputated, ~~sixteen (16)~~ nineteen (19) weeks;
- 23 (11) Foot amputated, one hundred thirty-one (131) weeks;
- 24 (12) Great toe amputated, thirty-two (32) weeks;
- 25 (13) Toe other than great toe amputated, eleven (11) weeks;
- 26 (14) Eye enucleated, in which there was useful vision, one  
27 hundred five (105) weeks;
- 28 (15) Loss of hearing of one ear, forty-two (42) weeks;
- 29 (16) Loss of hearing of both ears, one hundred fifty-eight (158)  
30 weeks;
- 31 (17) Loss of one testicle, fifty-three (53) weeks; loss of both  
32 testicles, one hundred fifty-eight (158) weeks.

33 (b)(1) Compensation for amputation of the first phalange shall be  
34 one-half (1/2) of the compensation for the amputation of the entire  
35 digit.

36 (2) Compensation for amputation of more than one (1) phalange of

1 a digit shall be the same as for amputation of the entire digit.

2 (c)(1) Compensation for the permanent loss of eighty percent  
3 (80%) or more of the vision of an eye shall be the same as for the  
4 loss of an eye.

5 (2) In all cases of permanent loss of vision, the use of  
6 corrective lenses may be taken into consideration in evaluating the  
7 extent of loss of vision.

8 (d) Compensation for amputation or loss of use of two (2) or more  
9 digits or one (1) or more phalanges of two (2) or more digits of a  
10 hand or a foot may be proportioned to the total loss of use of the  
11 hand or the foot occasioned thereby but shall not exceed the  
12 compensation for total loss of a hand or a foot.

13 (e) Compensation for permanent total loss of use of a member  
14 shall be the same as for amputation of the member.

15 (f) Compensation for permanent partial loss or loss of use of a  
16 member shall be for the proportionate loss or loss of use of the  
17 member.

18 (g) Any employee suffering a scheduled injury shall not be  
19 entitled to permanent partial disability benefits in excess of the  
20 percentage of permanent physical impairment set forth above except as  
21 otherwise provided in §11-9-519(b).

22 (h)(1)(A) On or before July 1, 1994, the commission, after a  
23 public hearing, shall adopt an impairment rating guide to be used in  
24 the assessment of anatomical impairment.

25 (B) Said guide shall not include pain as a basis for  
26 impairment.

27 (2) Provided, the impairment rating guide adopted by the Workers'  
28 Compensation Commission shall become null and void on March 1, 1997,  
29 unless reenacted by the General Assembly."

30

31 SECTION 3. Arkansas Code §11-9-522 is amended to read as follows:

32 "11-9-522. Compensation for disability - Unscheduled permanent  
33 partial disability.

34 (a) A permanent partial disability not scheduled in §11-9-521 shall  
35 be apportioned to the body as a whole, which shall have a value of  
36 four hundred fifty (450) weeks, and there shall be paid compensation

1 to the injured employee for the proportionate loss of use of the body  
2 as a whole resulting from the injury.

3 (b)(1) In considering claims for permanent partial disability  
4 benefits in excess of the employee's percentage of permanent physical  
5 impairment, the commission may take into account, in addition to the  
6 percentage of permanent physical impairment, such factors as the  
7 employee's age, education, work experience, and other matters  
8 reasonably expected to affect his future earning capacity.

9 (2) However, so long as an employee, subsequent to his injury,  
10 has returned to work, has obtained other employment, or has a bona  
11 fide and reasonably obtainable offer to be employed at wages equal to  
12 or greater than his average weekly wage at the time of the accident,  
13 he shall not be entitled to permanent partial disability benefits in  
14 excess of the percentage of permanent physical impairment established  
15 by a preponderance of the medical testimony and evidence.

16 (c)(1) The employer or his workers' compensation insurance  
17 carrier shall have the burden of proving the employee's employment, or  
18 the employee's receipt of a bona fide offer to be employed, at wages  
19 equal to or greater than his average weekly wage at the time of the  
20 accident.

21 (2) Included in the stated intent of this section is to enable an  
22 employer to reduce or diminish payments of benefits for a functional  
23 disability, disability in excess of permanent physical impairment,  
24 which, in fact, no longer exists, or exists because of discharge for  
25 misconduct in connection with the work, or because the employee left  
26 his work voluntarily and without good cause connected with the work.

27 (d) In accordance with this section, the Workers' Compensation  
28 Commission may reconsider the question of functional disability and  
29 change a previously awarded disability rating based on facts occurring  
30 since the original disability determination, if any party makes  
31 application for reconsideration within one (1) year after the  
32 occurrence of the facts.

33 (e) In considering a claim for permanent disability, the  
34 commission and the courts shall not consider the odd-lot doctrine.

35 (f)(1) Any permanent partial disability benefits payable to an  
36 injured worker age sixty-five (65) or older shall be reduced ~~in an~~

1 ~~amount equal to, dollar-for-dollar~~ by fifty-percent (50%) of, the amount of  
2 *benefits the injured worker received or is eligible to receive* from a publicly  
3 or privately funded retirement or pension plan but not reduced by the  
4 employee's contributions to a privately funded retirement or pension plan.

5 (2) The purpose and intent of this subsection is to prohibit  
6 workers' compensation from becoming a retirement supplement.

7 (g)(1)(A) On or before July 1, 1994, the commission, after a  
8 public hearing, shall adopt an impairment rating guide to be used in  
9 the assessment of anatomical impairment.

10 (B) Said guide shall not include pain as a basis for  
11 impairment.

12 (2) Provided, the impairment rating guide adopted by the  
13 commission shall become null and void on March 1, 1997, unless  
14 reenacted by the General Assembly."

15

16 SECTION 4. All provisions of this act of a general and permanent nature  
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
18 Revision Commission shall incorporate the same in the Code.

19

20 SECTION 5. If any provision of this act or the application thereof to  
21 any person or circumstance is held invalid, such invalidity shall not affect  
22 other provisions or applications of the act which can be given effect without  
23 the invalid provision or application, and to this end the provisions of this  
24 act are declared to be severable.

25

26 SECTION 6. All laws and parts of laws in conflict with this act are  
27 hereby repealed.

28

29 /s/Rep. Wallis, et al

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31 APPROVED: 2-24-97

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