

1 INTERIM STUDY PROPOSAL 2013-095

2 State of Arkansas *As Engrossed: S3/5/13 S4/8/13 S4/16/13*

3 89th General Assembly

A Bill

4 Regular Session, 2013

SENATE BILL 515

5
6 By: Senators Bledsoe, Hester, Bookout, A. Clark, J. Dismang, J. English, Files, J. Hendren, Hickey, D.
7 Sanders, G. Stubblefield, J. Woods

8 Filed with: Interim Senate Committee on Public Health, Welfare and Labor
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

10 AN ACT TO RESTORE THE LAW AND CONSISTENCY IN
11 TEMPORARY TOTAL DISABILITY BENEFIT DETERMINATIONS AND
12 EMPLOYEE MISCONDUCT AS A BASIS FOR *TERMINATION UNDER*
13 *THE WORKERS' COMPENSATION LAW THAT RESULTED FROM*
14 *INITIATED MEASURE 4 OF 1948*; AND FOR OTHER PURPOSES.
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Subtitle

18 *TO RESTORE CONSISTENCY IN TEMPORARY TOTAL*
19 *DISABILITY BENEFIT AND EMPLOYEE*
20 *MISCONDUCT DETERMINATIONS AFTER*
21 *TERMINATION UNDER INITIATED MEASURE 4 OF*
22 *1948.*
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

27
28 SECTION 1. Arkansas Code § 11-9-521(a), concerning worker's
29 compensation for total *disability under the Workers' Compensation Law that*
30 *resulted from Initiated Measure 4 of 1948*, is amended to read as follows:

31 ~~(a) An employee who sustains a permanent compensable injury scheduled~~
32 ~~in this section shall receive, in addition to compensation for temporary~~
33 ~~total and temporary partial benefits during the healing period or until the~~
34 ~~employee returns to work, whichever occurs first, weekly benefits in the~~
35 ~~amount of the permanent partial disability rate attributable to the injury,~~
36 ~~for that period of time set out in the following schedule~~

1 (a)(1) An employee who sustains a compensable injury scheduled in this
2 section is entitled to temporary total benefits, temporary partial benefits,
3 or both during the healing period if the employer does not offer work within
4 the employee's medical restrictions arising from the injury.

5 (2)(A) When an employee is terminated for misconduct and the
6 employer has work available within the former employee's medical restrictions
7 from the workers' compensation injury, the former employee is not entitled to
8 temporary total or temporary partial disability benefits during the healing
9 period in which the misconduct occurred.

10 (B) For purposes of subdivision (a)(2)(A), the employer
11 has the burden of proof by a preponderance of the evidence.

12 (3) An employee who sustains a permanent compensable injury
13 scheduled in this section is entitled to weekly benefits in the amount of the
14 permanent partial disability rate attributable to the injury for the time set
15 out in the following schedule:

16 ~~(1)(A)~~ *Arm amputated at the elbow, or between the elbow*
17 *and shoulder, two hundred forty-four (244) weeks;*

18 ~~(2)(B)~~ *Arm amputated between the elbow and wrist, one*
19 *hundred eighty-three (183) weeks;*

20 ~~(3)(C)~~ *Leg amputated at the knee, or between the knee and*
21 *the hip, one hundred eighty-four (184) weeks;*

22 ~~(4)(D)~~ *Leg amputated between the knee and the ankle, one*
23 *hundred thirty-one (131) weeks;*

24 ~~(5)(E)~~ *Hand amputated, one hundred eighty-three (183)*
25 *weeks;*

26 ~~(6)(F)~~ *Thumb amputated, seventy-three (73) weeks;*

27 ~~(7)(G)~~ *First finger amputated, forty-three (43) weeks;*

28 ~~(8)(H)~~ *Second finger amputated, thirty-seven (37) weeks;*

29 ~~(9)(I)~~ *Third finger amputated, twenty-four (24) weeks;*

30 ~~(10)(J)~~ *Fourth finger amputated, nineteen (19) weeks;*

31 ~~(11)(K)~~ *Foot amputated, one hundred thirty-one (131)*
32 *weeks;*

33 ~~(12)(L)~~ *Great toe amputated, thirty-two (32) weeks;*

34 ~~(13)(M)~~ *Toe other than great toe amputated, eleven (11)*
35 *weeks;*

1 ~~(14)(N)~~ *Eye enucleated, in which there was useful vision,*
2 *one hundred five (105) weeks;*

3 ~~(15)(O)~~ *Loss of hearing of one ear, forty-two (42) weeks;*

4 ~~(16)(P)~~ *Loss of hearing of both ears, one hundred fifty-*
5 *eight (158) weeks; and*

6 ~~(17)(Q)~~ *Loss of one testicle, fifty-three (53) weeks; loss*
7 *of both testicles, one hundred fifty-eight (158) weeks.*

8
9 *SECTION 3. Arkansas Code § 11-9-526 under the Workers' Compensation*
10 *Law that resulted from Initiated Measure 4 of 1948, is amended to read as*
11 *follows:*

12 11-9-526. Compensation for disability – Refusal of employee to accept
13 employment – Termination for misconduct.

14 ~~If any injured employee refuses employment suitable to his or her~~
15 ~~capacity offered to or procured for him or her, he or she shall not be~~
16 ~~entitled to any compensation during the continuance of the refusal, unless in~~
17 ~~the opinion of the Workers' Compensation Commission, the refusal is~~
18 ~~justifiable~~

19 (a) If an injured employee refuses employment suitable to his or her
20 capacity offered to or procured for him or her, the injured employee is not
21 entitled to compensation during the continuance of the refusal, unless in the
22 opinion of the Workers' Compensation Commission, the refusal is justifiable.

23 (b)(1) When an employee is terminated for misconduct and the employer
24 has work available within the former employee's medical restrictions from the
25 workers' compensation injury, the former employee is not entitled to
26 temporary total or temporary partial disability benefits during the healing
27 period in which the misconduct occurred.

28 (2) For purposes of subdivision (b)(1) of this section, the
29 employer has the burden of proof by a preponderance of the evidence.

30 (c) The purpose and intent of this section is to reverse specifically
31 any case law providing that former employees who are properly terminated for
32 misconduct are entitled to temporary total or temporary partial disability
33 benefits if the employer has work available within the former employee's
34 restrictions, including without limitation, Tyson Poultry, Inc. v. Narvaiz,
35 2012 Ark. 118 (2012); and Superior Industries v. Thomaston, 72 Ark. App. 7,
36 32 S.W.3d 52 (2000).

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/s/Bledsoe

Referred by the Arkansas Senate

Prepared by: MGF/VJF