1	State of Arkansas As Engrossed: S3/5/13 S4/8/13 S4/16/13 89th General Assembly As Engrossed: S3/5/13 S4/8/13 S4/16/13
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3	Regular Session, 2013SENATE BILL 515
4 5	By: Senators Bledsoe, Hester, Bookout, A. Clark, J. Dismang, J. English, Files, J. Hendren, Hickey, D.
6	Sanders, G. Stubblefield, J. Woods
7	
8	For An Act To Be Entitled
9	AN ACT TO RESTORE THE LAW AND CONSISTENCY IN
10	TEMPORARY TOTAL DISABILITY BENEFIT DETERMINATIONS AND
11	EMPLOYEE MISCONDUCT AS A BASIS FOR TERMINATION UNDER
12	THE WORKERS' COMPENSATION LAW THAT RESULTED FROM
13	INITIATED MEASURE 4 OF 1948; AND FOR OTHER PURPOSES.
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16	Subtitle
17	TO RESTORE CONSISTENCY IN TEMPORARY TOTAL
18	DISABILITY BENEFIT AND EMPLOYEE
19	MISCONDUCT DETERMINATIONS AFTER
20	TERMINATION UNDER INITIATED MEASURE 4 OF
21	1948.
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24	BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26	SECTION 1. Arkansas Code § 11-9-521(a), concerning worker's
27	compensation for total disability under the Workers' Compensation Law that
28	resulted from Initiated Measure 4 of 1948, is amended to read as follows:
29	(a) An employee who sustains a permanent compensable injury scheduled
30	in this section shall receive, in addition to compensation for temporary
31	total and temporary partial benefits during the healing period or until the
32	employee returns to work, whichever occurs first, weekly benefits in the
33	amount of the permanent partial disability rate attributable to the injury,
34	for that period of time set out in the following schedule
35	(a)(1) An employee who sustains a compensable injury scheduled in this
36	section is entitled to temporary total benefits, temporary partial benefits,



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1	or both during the healing period if the employer does not offer work within
2	the employee's medical restrictions arising from the injury.
3	(2)(A) When an employee is terminated for misconduct and the
4	employer has work available within the former employee's medical restrictions
5	from the workers' compensation injury, the former employee is not entitled to
6	temporary total or temporary partial disability benefits during the healing
7	period in which the misconduct occurred.
8	(B) For purposes of subdivision (a)(2)(A), the employer
9	has the burden of proof by a preponderance of the evidence.
10	(3) An employee who sustains a permanent compensable injury
11	scheduled in this section is entitled to weekly benefits in the amount of the
12	permanent partial disability rate attributable to the injury for the time set
13	out in the following schedule:
14	(1)(A) Arm amputated at the elbow, or between the elbow
15	and shoulder, two hundred forty-four (244) weeks;
16	(2)(B) Arm amputated between the elbow and wrist, one
17	hundred eighty-three (183) weeks;
18	<del>(3)<u>(C)</u> Leg amputated at the knee, or between the knee and</del>
19	the hip, one hundred eighty-four (184) weeks;
20	(4)(D) Leg amputated between the knee and the ankle, one
21	hundred thirty-one (131 weeks;
22	(5)(E) Hand amputated, one hundred eighty-three (183)
23	weeks;
24	(6)(F) Thumb amputated, seventy-three (73) weeks;
25	(7)(G) First finger amputated, forty-three (43) weeks;
26	<del>(8)<u>(H)</u> Second finger amputated, thirty-seven (37) weeks;</del>
27	<del>(9)<u>(</u>1)</del> Third finger amputated, twenty-four (24) weeks;
28	<del>(10)</del> (J) Fourth finger amputated, nineteen (19) weeks;
29	(11)(K) Foot amputated, one hundred thirty-one (131)
30	weeks;
31	(12)(L) Great toe amputated, thirty-two (32) weeks;
32	<del>(13)<u>(M)</u> Toe other than great toe amputated, eleven (11)</del>
33	weeks;
34	<del>(14)<u>(N)</u> Eye enucleated, in which there was useful vision,</del>
35	one hundred five (105) weeks;
36	<del>(15)</del> (0) Loss of hearing of one ear, forty-two (42) weeks;

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1	(16)(P) Loss of hearing of both ears, one hundred fifty-
2	eight (158) weeks; and
3	(17)(Q) Loss of one testicle, fifty-three (53) weeks; loss
4	of both testicles, one hundred fifty-eight (158) weeks.
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6	SECTION 3. Arkansas Code § 11-9-526 under the Workers' Compensation
7	Law that resulted from Initiated Measure 4 of 1948, is amended to read as
8	follows:
9	11-9-526. Compensation for disability — Refusal of employee to accept
10	employment <u>— Termination for misconduct</u> .
11	If any injured employee refuses employment suitable to his or her
12	capacity offered to or procured for him or her, he or she shall not be
13	entitled to any compensation during the continuance of the refusal, unless in
14	the opinion of the Workers' Compensation Commission, the refusal is
15	<del>justifiable</del>
16	(a) If an injured employee refuses employment suitable to his or her
17	capacity offered to or procured for him or her, the injured employee is not
18	entitled to compensation during the continuance of the refusal, unless in the
19	opinion of the Workers' Compensation Commission, the refusal is justifiable.
20	(b)(1) When an employee is terminated for misconduct and the employer
21	has work available within the former employee's medical restrictions from the
22	workers' compensation injury, the former employee is not entitled to
23	temporary total or temporary partial disability benefits during the healing
24	period in which the misconduct occurred.
25	(2) For purposes of subdivision (b)(1) of this section, the
26	employer has the burden of proof by a preponderance of the evidence.
27	(c) The purpose and intent of this section is to reverse specifically
28	any case law providing that former employees who are properly terminated for
29	misconduct are entitled to temporary total or temporary partial disability
30	benefits if the employer has work available within the former employee's
31	restrictions, including without limitation, Tyson Poultry, Inc. v. Narvaiz,
32	2012 Ark. 118 (2012); and Superior Industries v. Thomaston, 72 Ark. App. 7,
33	<u>32 S.W.3d 52 (2000).</u>
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35	/s/Bledsoe
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