

HB5697



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5697

Introduced 2/9/2010, by Rep. Daniel V. Beiser

SYNOPSIS AS INTRODUCED:

820 ILCS 305/7

from Ch. 48, par. 138.7

Amends provisions of the Workers' Compensation Act relating to compensation for an accidental injury resulting in death. Provides that if payments are to made to a child who is under 18 years of age, a guardian of the child's estate must be appointed under the Probate Act of 1975 and it shall be the responsibility of the guardian of the child's estate to manage the child's estate in accordance with the Probate Act of 1975.

LRB096 19371 WGH 36149 b

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Section 7 as follows:

6 (820 ILCS 305/7) (from Ch. 48, par. 138.7)

7 Sec. 7. The amount of compensation which shall be paid for
8 an accidental injury to the employee resulting in death is:

9 (a) If the employee leaves surviving a widow, widower,
10 child or children, the applicable weekly compensation rate
11 computed in accordance with subparagraph 2 of paragraph (b) of
12 Section 8, shall be payable during the life of the widow or
13 widower and if any surviving child or children shall not be
14 physically or mentally incapacitated then until the death of
15 the widow or widower or until the youngest child shall reach
16 the age of 18, whichever shall come later; provided that if
17 such child or children shall be enrolled as a full time student
18 in any accredited educational institution, the payments shall
19 continue until such child has attained the age of 25. In the
20 event any surviving child or children shall be physically or
21 mentally incapacitated, the payments shall continue for the
22 duration of such incapacity.

23 The term "child" means a child whom the deceased employee

1 left surviving, including a posthumous child, a child legally
2 adopted, a child whom the deceased employee was legally
3 obligated to support or a child to whom the deceased employee
4 stood in loco parentis. The term "children" means the plural of
5 "child".

6 The term "physically or mentally incapacitated child or
7 children" means a child or children incapable of engaging in
8 regular and substantial gainful employment.

9 In the event of the remarriage of a widow or widower, where
10 the decedent did not leave surviving any child or children who,
11 at the time of such remarriage, are entitled to compensation
12 benefits under this Act, the surviving spouse shall be paid a
13 lump sum equal to 2 years compensation benefits and all further
14 rights of such widow or widower shall be extinguished.

15 If the employee leaves surviving any child or children
16 under 18 years of age who at the time of death shall be
17 entitled to compensation under this paragraph (a) of this
18 Section, the weekly compensation payments herein provided for
19 such child or children shall in any event continue for a period
20 of not less than 6 years.

21 Any beneficiary entitled to compensation under this
22 paragraph (a) of this Section shall receive from the special
23 fund provided in paragraph (f) of this Section, in addition to
24 the compensation herein provided, supplemental benefits in
25 accordance with paragraph (g) of Section 8.

26 (b) If no compensation is payable under paragraph (a) of

1 this Section and the employee leaves surviving a parent or
2 parents who at the time of the accident were totally dependent
3 upon the earnings of the employee then weekly payments equal to
4 the compensation rate payable in the case where the employee
5 leaves surviving a widow or widower, shall be paid to such
6 parent or parents for the duration of their lives, and in the
7 event of the death of either, for the life of the survivor.

8 (c) If no compensation is payable under paragraphs (a) or
9 (b) of this Section and the employee leaves surviving any child
10 or children who are not entitled to compensation under the
11 foregoing paragraph (a) but who at the time of the accident
12 were nevertheless in any manner dependent upon the earnings of
13 the employee, or leaves surviving a parent or parents who at
14 the time of the accident were partially dependent upon the
15 earnings of the employee, then there shall be paid to such
16 dependent or dependents for a period of 8 years weekly
17 compensation payments at such proportion of the applicable rate
18 if the employee had left surviving a widow or widower as such
19 dependency bears to total dependency. In the event of the death
20 of any such beneficiary the share of such beneficiary shall be
21 divided equally among the surviving beneficiaries and in the
22 event of the death of the last such beneficiary all the rights
23 under this paragraph shall be extinguished.

24 (d) If no compensation is payable under paragraphs (a), (b)
25 or (c) of this Section and the employee leaves surviving any
26 grandparent, grandparents, grandchild or grandchildren or

1 collateral heirs dependent upon the employee's earnings to the
2 extent of 50% or more of total dependency, then there shall be
3 paid to such dependent or dependents for a period of 5 years
4 weekly compensation payments at such proportion of the
5 applicable rate if the employee had left surviving a widow or
6 widower as such dependency bears to total dependency. In the
7 event of the death of any such beneficiary the share of such
8 beneficiary shall be divided equally among the surviving
9 beneficiaries and in the event of the death of the last such
10 beneficiary all rights hereunder shall be extinguished.

11 (e) The compensation to be paid for accidental injury which
12 results in death, as provided in this Section, shall be paid to
13 the persons who form the basis for determining the amount of
14 compensation to be paid by the employer, the respective shares
15 to be in the proportion of their respective dependency at the
16 time of the accident on the earnings of the deceased. The
17 Commission or an Arbitrator thereof may, in its or his
18 discretion, order or award the payment to the parent or
19 grandparent of a child for the latter's support the amount of
20 compensation which but for such order or award would have been
21 paid to such child as its share of the compensation payable,
22 which order or award may be modified from time to time by the
23 Commission in its discretion with respect to the person to whom
24 shall be paid the amount of the order or award remaining unpaid
25 at the time of the modification.

26 The payments of compensation by the employer in accordance

1 with the order or award of the Commission discharges such
2 employer from all further obligation as to such compensation.

3 (f) The sum of \$8,000 for burial expenses shall be paid by
4 the employer to the widow or widower, other dependent, next of
5 kin or to the person or persons incurring the expense of
6 burial.

7 In the event the employer failed to provide necessary first
8 aid, medical, surgical or hospital service, he shall pay the
9 cost thereof to the person or persons entitled to compensation
10 under paragraphs (a), (b), (c) or (d) of this Section, or to
11 the person or persons incurring the obligation therefore, or
12 providing the same.

13 On January 15 and July 15, 1981, and on January 15 and July
14 15 of each year thereafter the employer shall within 60 days
15 pay a sum equal to 1/8 of 1% of all compensation payments made
16 by him after July 1, 1980, either under this Act or the
17 Workers' Occupational Diseases Act, whether by lump sum
18 settlement or weekly compensation payments, but not including
19 hospital, surgical or rehabilitation payments, made during the
20 first 6 months and during the second 6 months respectively of
21 the fiscal year next preceding the date of the payments, into a
22 special fund which shall be designated the "Second Injury
23 Fund", of which the State Treasurer is ex-officio custodian,
24 such special fund to be held and disbursed for the purposes
25 hereinafter stated in paragraphs (f) and (g) of Section 8,
26 either upon the order of the Commission or of a competent

1 court. Said special fund shall be deposited the same as are
2 State funds and any interest accruing thereon shall be added
3 thereto every 6 months. It is subject to audit the same as
4 State funds and accounts and is protected by the General bond
5 given by the State Treasurer. It is considered always
6 appropriated for the purposes of disbursements as provided in
7 Section 8, paragraph (f), of this Act, and shall be paid out
8 and disbursed as therein provided and shall not at any time be
9 appropriated or diverted to any other use or purpose.

10 On January 15, 1991, the employer shall further pay a sum
11 equal to one half of 1% of all compensation payments made by
12 him from January 1, 1990 through June 30, 1990 either under
13 this Act or under the Workers' Occupational Diseases Act,
14 whether by lump sum settlement or weekly compensation payments,
15 but not including hospital, surgical or rehabilitation
16 payments, into an additional Special Fund which shall be
17 designated as the "Rate Adjustment Fund". On March 15, 1991,
18 the employer shall pay into the Rate Adjustment Fund a sum
19 equal to one half of 1% of all such compensation payments made
20 from July 1, 1990 through December 31, 1990. Within 60 days
21 after July 15, 1991, the employer shall pay into the Rate
22 Adjustment Fund a sum equal to one half of 1% of all such
23 compensation payments made from January 1, 1991 through June
24 30, 1991. Within 60 days after January 15 of 1992 and each
25 subsequent year through 1996, the employer shall pay into the
26 Rate Adjustment Fund a sum equal to one half of 1% of all such

1 compensation payments made in the last 6 months of the
2 preceding calendar year. Within 60 days after July 15 of 1992
3 and each subsequent year through 1995, the employer shall pay
4 into the Rate Adjustment Fund a sum equal to one half of 1% of
5 all such compensation payments made in the first 6 months of
6 the same calendar year. Within 60 days after January 15 of 1997
7 and each subsequent year through 2005, the employer shall pay
8 into the Rate Adjustment Fund a sum equal to three-fourths of
9 1% of all such compensation payments made in the last 6 months
10 of the preceding calendar year. Within 60 days after July 15 of
11 1996 and each subsequent year through 2004, the employer shall
12 pay into the Rate Adjustment Fund a sum equal to three-fourths
13 of 1% of all such compensation payments made in the first 6
14 months of the same calendar year. Within 60 days after July 15
15 of 2005, the employer shall pay into the Rate Adjustment Fund a
16 sum equal to 1% of such compensation payments made in the first
17 6 months of the same calendar year. Within 60 days after
18 January 15 of 2006 and each subsequent year, the employer shall
19 pay into the Rate Adjustment Fund a sum equal to 1.25% of such
20 compensation payments made in the last 6 months of the
21 preceding calendar year. Within 60 days after July 15 of 2006
22 and each subsequent year, the employer shall pay into the Rate
23 Adjustment Fund a sum equal to 1.25% of such compensation
24 payments made in the first 6 months of the same calendar year.
25 The administrative costs of collecting assessments from
26 employers for the Rate Adjustment Fund shall be paid from the

1 Rate Adjustment Fund. The cost of an actuarial audit of the
2 Fund shall be paid from the Rate Adjustment Fund. The State
3 Treasurer is ex officio custodian of such Special Fund and the
4 same shall be held and disbursed for the purposes hereinafter
5 stated in paragraphs (f) and (g) of Section 8 upon the order of
6 the Commission or of a competent court. The Rate Adjustment
7 Fund shall be deposited the same as are State funds and any
8 interest accruing thereon shall be added thereto every 6
9 months. It shall be subject to audit the same as State funds
10 and accounts and shall be protected by the general bond given
11 by the State Treasurer. It is considered always appropriated
12 for the purposes of disbursements as provided in paragraphs (f)
13 and (g) of Section 8 of this Act and shall be paid out and
14 disbursed as therein provided and shall not at any time be
15 appropriated or diverted to any other use or purpose. Within 5
16 days after the effective date of this amendatory Act of 1990,
17 the Comptroller and the State Treasurer shall transfer
18 \$1,000,000 from the General Revenue Fund to the Rate Adjustment
19 Fund. By February 15, 1991, the Comptroller and the State
20 Treasurer shall transfer \$1,000,000 from the Rate Adjustment
21 Fund to the General Revenue Fund. The Comptroller and Treasurer
22 are authorized to make transfers at the request of the Chairman
23 up to a total of \$19,000,000 from the Second Injury Fund, the
24 General Revenue Fund, and the Workers' Compensation Benefit
25 Trust Fund to the Rate Adjustment Fund to the extent that there
26 is insufficient money in the Rate Adjustment Fund to pay claims

1 and obligations. Amounts may be transferred from the General
2 Revenue Fund only if the funds in the Second Injury Fund or the
3 Workers' Compensation Benefit Trust Fund are insufficient to
4 pay claims and obligations of the Rate Adjustment Fund. All
5 amounts transferred from the Second Injury Fund, the General
6 Revenue Fund, and the Workers' Compensation Benefit Trust Fund
7 shall be repaid from the Rate Adjustment Fund within 270 days
8 of a transfer, together with interest at the rate earned by
9 moneys on deposit in the Fund or Funds from which the moneys
10 were transferred.

11 Upon a finding by the Commission, after reasonable notice
12 and hearing, that any employer has willfully and knowingly
13 failed to pay the proper amounts into the Second Injury Fund or
14 the Rate Adjustment Fund required by this Section or if such
15 payments are not made within the time periods prescribed by
16 this Section, the employer shall, in addition to such payments,
17 pay a penalty of 20% of the amount required to be paid or
18 \$2,500, whichever is greater, for each year or part thereof of
19 such failure to pay. This penalty shall only apply to
20 obligations of an employer to the Second Injury Fund or the
21 Rate Adjustment Fund accruing after the effective date of this
22 amendatory Act of 1989. All or part of such a penalty may be
23 waived by the Commission for good cause shown.

24 Any obligations of an employer to the Second Injury Fund
25 and Rate Adjustment Fund accruing prior to the effective date
26 of this amendatory Act of 1989 shall be paid in full by such

1 employer within 5 years of the effective date of this
2 amendatory Act of 1989, with at least one-fifth of such
3 obligation to be paid during each year following the effective
4 date of this amendatory Act of 1989. If the Commission finds,
5 following reasonable notice and hearing, that an employer has
6 failed to make timely payment of any obligation accruing under
7 the preceding sentence, the employer shall, in addition to all
8 other payments required by this Section, be liable for a
9 penalty equal to 20% of the overdue obligation or \$2,500,
10 whichever is greater, for each year or part thereof that
11 obligation is overdue. All or part of such a penalty may be
12 waived by the Commission for good cause shown.

13 The Chairman of the Illinois Workers' Compensation
14 Commission shall, annually, furnish to the Director of the
15 Department of Insurance a list of the amounts paid into the
16 Second Injury Fund and the Rate Adjustment Fund by each
17 insurance company on behalf of their insured employers. The
18 Director shall verify to the Chairman that the amounts paid by
19 each insurance company are accurate as best as the Director can
20 determine from the records available to the Director. The
21 Chairman shall verify that the amounts paid by each
22 self-insurer are accurate as best as the Chairman can determine
23 from records available to the Chairman. The Chairman may
24 require each self-insurer to provide information concerning
25 the total compensation payments made upon which contributions
26 to the Second Injury Fund and the Rate Adjustment Fund are

1 predicated and any additional information establishing that
2 such payments have been made into these funds. Any deficiencies
3 in payments noted by the Director or Chairman shall be subject
4 to the penalty provisions of this Act.

5 The State Treasurer, or his duly authorized
6 representative, shall be named as a party to all proceedings in
7 all cases involving claim for the loss of, or the permanent and
8 complete loss of the use of one eye, one foot, one leg, one arm
9 or one hand.

10 The State Treasurer or his duly authorized agent shall have
11 the same rights as any other party to the proceeding, including
12 the right to petition for review of any award. The reasonable
13 expenses of litigation, such as medical examinations,
14 testimony, and transcript of evidence, incurred by the State
15 Treasurer or his duly authorized representative, shall be borne
16 by the Second Injury Fund.

17 If the award is not paid within 30 days after the date the
18 award has become final, the Commission shall proceed to take
19 judgment thereon in its own name as is provided for other
20 awards by paragraph (g) of Section 19 of this Act and take the
21 necessary steps to collect the award.

22 Any person, corporation or organization who has paid or
23 become liable for the payment of burial expenses of the
24 deceased employee may in his or its own name institute
25 proceedings before the Commission for the collection thereof.

26 For the purpose of administration, receipts and

1 disbursements, the Special Fund provided for in paragraph (f)
2 of this Section shall be administered jointly with the Special
3 Fund provided for in Section 7, paragraph (f) of the Workers'
4 Occupational Diseases Act.

5 (g) All compensation, except for burial expenses provided
6 in this Section to be paid in case accident results in death,
7 shall be paid in installments equal to the percentage of the
8 average earnings as provided for in Section 8, paragraph (b) of
9 this Act, at the same intervals at which the wages or earnings
10 of the employees were paid. If this is not feasible, then the
11 installments shall be paid weekly. Such compensation may be
12 paid in a lump sum upon petition as provided in Section 9 of
13 this Act. However, in addition to the benefits provided by
14 Section 9 of this Act where compensation for death is payable
15 to the deceased's widow, widower or to the deceased's widow,
16 widower and one or more children, and where a partial lump sum
17 is applied for by such beneficiary or beneficiaries within 18
18 months after the deceased's death, the Commission may, in its
19 discretion, grant a partial lump sum of not to exceed 100 weeks
20 of the compensation capitalized at their present value upon the
21 basis of interest calculated at 3% per annum with annual rests,
22 upon a showing that such partial lump sum is for the best
23 interest of such beneficiary or beneficiaries.

24 (h) In case the injured employee is under 16 years of age
25 at the time of the accident and is illegally employed, the
26 amount of compensation payable under paragraphs (a), (b), (c),

1 (d) and (f) of this Section shall be increased 50%.

2 Nothing herein contained repeals or amends the provisions
3 of the Child Labor Law relating to the employment of minors
4 under the age of 16 years.

5 However, where an employer has on file an employment
6 certificate issued pursuant to the Child Labor Law or work
7 permit issued pursuant to the Federal Fair Labor Standards Act,
8 as amended, or a birth certificate properly and duly issued,
9 such certificate, permit or birth certificate is conclusive
10 evidence as to the age of the injured minor employee for the
11 purposes of this Section only.

12 (i) Whenever the dependents of a deceased employee are
13 aliens not residing in the United States, Mexico or Canada, the
14 amount of compensation payable is limited to the beneficiaries
15 described in paragraphs (a), (b) and (c) of this Section and is
16 50% of the compensation provided in paragraphs (a), (b) and (c)
17 of this Section, except as otherwise provided by treaty.

18 In a case where any of the persons who would be entitled to
19 compensation is living at any place outside of the United
20 States, then payment shall be made to the personal
21 representative of the deceased employee. The distribution by
22 such personal representative to the persons entitled shall be
23 made to such persons and in such manner as the Commission
24 orders.

25 (j) If payments are to made under this Section to a child
26 who is under 18 years of age, a guardian of the child's estate

1 must be appointed under Article 11 of the Probate Act of 1975.
2 It shall be the responsibility of the guardian of the child's
3 estate to manage the child's estate in accordance with Section
4 11-13 of the Probate Act of 1975.

5 (Source: P.A. 93-721, eff. 1-1-05; 94-277, eff. 7-20-05;
6 94-695, eff. 11-16-05.)