

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 369

By: David

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5  
6 AS INTRODUCED

7 An Act relating to workers' compensation death  
8 benefits; amending Sections 32 and 47, Chapter 208,  
9 O.S.L. 2013, as amended by Sections 61 and 19,  
10 Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2020,  
11 Sections 32 and 47), which relate to permanent total  
12 disability awards and beneficiaries; establishing  
13 exception for death benefit awards to surviving  
14 spouses of law enforcement officers or firefighters;  
15 and providing an effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY Section 32, Chapter 208, O.S.L.  
18 2013, as amended by Section 61, Chapter 476, O.S.L. 2019 (85A O.S.  
19 Supp. 2020, Section 32), is amended to read as follows:

20 Section 32. A. If an employee who is a "physically impaired  
21 person" receives an accidental personal injury compensable under the  
22 Administrative Workers' Compensation Act which results in additional  
23 permanent disability so that the degree of disability caused by the  
24 combination of both disabilities results in disability materially  
25 greater than that which would have resulted from the subsequent  
26 injury alone, the employee may proceed against the Multiple Injury

1 Trust Fund for permanent total disability. Only disability due to  
2 an injury to the body as a whole at a subsequent employer shall be  
3 combinable with a prior body disability, except that disability to a  
4 member may be combined with disability to the body as a whole. If  
5 such combined disabilities constitute permanent total disability, as  
6 defined in Section 2 of this title, the employee shall receive full  
7 compensation as provided by law for the disability resulting  
8 directly and specifically from the subsequent injury. In addition,  
9 the employee shall receive compensation for permanent total  
10 disability if the combination of injuries renders the employee  
11 permanently and totally disabled. The employer shall be liable only  
12 for the degree of percent of disability which would have resulted  
13 from the subsequent injury if there had been no preexisting  
14 impairment. The compensation rate for permanent total disability  
15 awards from the Multiple Injury Trust Fund shall be the compensation  
16 rate for permanent partial disability paid by the employer in the  
17 last combinable compensable injury.

18 B. Permanent total disability awards from the Multiple Injury  
19 Trust Fund shall be payable in periodic installments for a period of  
20 eight (8) years or until the employee reaches sixty-five (65) years  
21 of age, whichever period is longer.

22 C. Permanent total disability awards from the Multiple Injury  
23 Trust Fund shall accrue from the file date of the order of the  
24

1 Workers' Compensation Commission finding the claimant to be  
2 permanently and totally disabled.

3 D. Before a physically impaired person can proceed against the  
4 Multiple Injury Trust Fund, the previously adjudicated compensable  
5 permanent partial disability adjudged and determined by the Workers'  
6 Compensation Court, the Workers' Compensation Court of Existing  
7 Claims or the Workers' Compensation Commission and the permanent  
8 partial disability from the last injury must exceed fifty percent  
9 (50%) to the body as a whole. However, amputations and loss of use  
10 of a scheduled member qualifying as previous impairment under  
11 paragraph 2 of subsection A of Section 30 of this title shall be  
12 considered in lieu of previously adjudicated compensable permanent  
13 partial disability.

14 E. Awards under this section shall abate upon the death, from  
15 any cause, of the employee.

16 F. Reopening any prior claim other than the last injury claim  
17 against the employer shall not give a claimant the right to  
18 additional Multiple Injury Trust Fund benefits.

19 G. The Multiple Injury Trust Fund shall have authority to  
20 compromise a claim for less than the indicated amount of permanent  
21 total disability. Orders shall be paid in periodic installments  
22 beginning on the date of the award, unless commuted to a lump-sum  
23 payment or payments, by agreement of the claimant and the Multiple  
24 Injury Trust Fund. All offers made by the Multiple Injury Trust

1 Fund pursuant to this section shall be conveyed by the claimant's  
2 attorney to the claimant within five (5) days of receipt of the  
3 offer.

4 H. If an order is entered finding an employee to be permanently  
5 totally disabled as a result of combined disability, and such order  
6 is the result of a compromised settlement, the employee is  
7 thereafter prohibited from making an additional claim against the  
8 Multiple Injury Trust Fund. An attorney for a claimant against the  
9 Multiple Injury Trust Fund shall be entitled to a fee equal to  
10 twenty percent (20%) of permanent disability benefits awarded. The  
11 attorney fee shall be paid in periodic installments by the attorney  
12 receiving every fifth check. All benefits awarded to the attorney  
13 shall be vested at the time the award becomes final.

14 I. In the event a claimant receiving benefits for permanent and  
15 total disability from the Multiple Injury Trust Fund dies as a  
16 result of his or her injury before the award has been fully paid,  
17 payments shall continue to the surviving spouse for five (5) years  
18 or upon remarriage, whichever occurs first. However, a surviving  
19 spouse eligible for benefits under this section shall remain  
20 eligible upon remarriage if the death of the decedent occurred in  
21 the course and scope of employment as a state or local law  
22 enforcement officer or firefighter. In no event shall payments to  
23 the surviving spouse extend beyond the period of benefits awarded to  
24 the claimant.

1 SECTION 2. AMENDATORY Section 47, Chapter 208, O.S.L.  
2 2013, as amended by Section 19, Chapter 476, O.S.L. 2019 (85A O.S.  
3 Supp. 2020, Section 47), is amended to read as follows:

4 Section 47. A. Time of death. If death does not result within  
5 one (1) year from the date of the accident or within the first three  
6 (3) years of the period for compensation payments fixed by the  
7 compensation judgment, a rebuttable presumption shall arise that the  
8 death did not result from the injury.

9 B. Common law spouse. A common law spouse shall not be  
10 entitled to benefits under this section unless he or she obtains an  
11 order from the Workers' Compensation Commission ruling that a common  
12 law marriage existed between the decedent and the surviving spouse.  
13 The ruling by the Commission shall be exclusive in regard to  
14 benefits under this section regardless of any district court  
15 decision regarding the probate of the decedent's estate.

16 C. Beneficiaries - Amounts. If an injury or occupational  
17 illness causes death, weekly income benefits shall be payable as  
18 follows:

19 1. If there is a surviving spouse, a lump-sum payment of One  
20 Hundred Thousand Dollars (\$100,000.00) and seventy percent (70%) of  
21 the lesser of the deceased employee's average weekly wage and the  
22 state average weekly wage. In addition to the benefits theretofore  
23 paid or due, two (2) years' indemnity benefit in one lump sum shall  
24 be payable to a surviving spouse upon remarriage;

1           2. If there is a surviving spouse and a child or children, a  
2 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and  
3 fifteen percent (15%) of the lesser of the deceased employee's  
4 average weekly wage and the state average weekly wage to each child.  
5 If there are more than two children, each child shall receive a pro  
6 rata share of Fifty Thousand Dollars (\$50,000.00) and thirty percent  
7 (30%) of the deceased employee's average weekly wage;

8           3. If there is a child or children and no surviving spouse, a  
9 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and  
10 fifty percent (50%) of the lesser of the deceased employee's average  
11 weekly wage and the state average weekly wage to each child. If  
12 there are more than two children, each child shall receive a pro  
13 rata share of one hundred percent (100%) of the lesser of the  
14 deceased employee's average weekly wage and the state average weekly  
15 wage. With respect to the lump-sum payment, if there are more than  
16 six children, each child shall receive a pro rata share of One  
17 Hundred Fifty Thousand Dollars (\$150,000.00);

18           4. If there is no surviving spouse or children, each legal  
19 guardian, if financially dependent on the employee at the time of  
20 death, shall receive twenty-five percent (25%) of the lesser of the  
21 deceased employee's average weekly wage and the state average weekly  
22 wage until the earlier of death, becoming eligible for Social  
23 Security, obtaining full-time employment, or five (5) years from the  
24 date benefits under this section begin; and

1           5. The employer shall pay the actual funeral expenses, not  
2 exceeding the sum of Ten Thousand Dollars (\$10,000.00).

3           D. The weekly income benefits payable to the surviving spouse  
4 under this section shall continue while the surviving spouse remains  
5 unmarried; provided, however, a surviving spouse eligible for  
6 benefits under this section shall remain eligible upon remarriage if  
7 the death of the decedent occurred in the course and scope of  
8 employment as a state or local law enforcement officer or  
9 firefighter. In no event shall this spousal weekly income benefit

10 be diminished by the award to other beneficiaries. The weekly  
11 income benefits payable to any child under this section shall  
12 terminate on the earlier of death, marriage, or reaching the age of  
13 eighteen (18). However, if the child turns eighteen (18) and is:

14           1. Enrolled as a full-time student in high school or is being  
15 schooled by other means pursuant to the Oklahoma Constitution;

16           2. Enrolled as a full-time student in any accredited  
17 institution of higher education or vocational or technology  
18 education; or

19           3. Physically or mentally incapable of self-support,  
20 then he or she may continue to receive weekly income benefits under  
21 this section until the earlier of reaching the age of twenty-three  
22 (23) or, with respect to paragraphs 1 and 2 of this subsection, no  
23 longer being enrolled as a student, and with respect to paragraph 3  
24 of this subsection, becoming capable of self-support.

1 E. If any member of the class of beneficiaries who receive a  
2 pro rata share of weekly income benefits becomes ineligible to  
3 continue to receive benefits, the remaining members of the class  
4 shall receive adjusted weekly income benefits equal to the new class  
5 size.

6 F. To receive benefits under this section, a beneficiary or his  
7 or her guardian, if applicable, shall file a proof of loss form with  
8 the Commission. All questions of dependency shall be determined as  
9 of the time of the injury. The employer shall initiate payment of  
10 benefits within fifteen (15) days of the Commission's determination  
11 of the proper beneficiaries. The Commission shall appoint a  
12 guardian ad litem to represent known and unknown minor children and  
13 the guardian ad litem shall be paid a reasonable fee for his or her  
14 services.

15 SECTION 3. This act shall become effective November 1, 2021.

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