

1 AN ACT concerning workers' compensation.

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
8 for an accidental injury to the employee resulting in death
9 is:

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

24 The term "child" means a child whom the deceased employee
25 left surviving, including a posthumous child, a child legally
26 adopted, a child whom the deceased employee was legally
27 obligated to support or a child to whom the deceased employee
28 stood in loco parentis. The term "children" means the plural
29 of "child".

30 The term "physically or mentally incapacitated child or
31 children" means a child or children incapable of engaging in

1 regular and substantial gainful employment.

2 In the event of the remarriage of a widow or widower,
3 where the decedent did not leave surviving any child or
4 children who, at the time of such remarriage, are entitled to
5 compensation benefits under this Act, the surviving spouse
6 shall be paid a lump sum equal to 2 years compensation
7 benefits and all further rights of such widow or widower
8 shall be extinguished.

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

15 Any beneficiary entitled to compensation under this
16 paragraph (a) of this Section shall receive from the special
17 fund provided in paragraph (f) of this Section, in addition
18 to the compensation herein provided, supplemental benefits in
19 accordance with paragraph (g) of Section 8.

20 (b) If no compensation is payable under paragraph (a) of
21 this Section and the employee leaves surviving a parent or
22 parents who at the time of the accident were totally
23 dependent upon the earnings of the employee then weekly
24 payments equal to the compensation rate payable in the case
25 where the employee leaves surviving a widow or widower, shall
26 be paid to such parent or parents for the duration of their
27 lives, and in the event of the death of either, for the life
28 of the survivor.

29 (c) If no compensation is payable under paragraphs (a)
30 or (b) of this Section and the employee leaves surviving any
31 child or children who are not entitled to compensation under
32 the foregoing paragraph (a) but who at the time of the
33 accident were nevertheless in any manner dependent upon the
34 earnings of the employee, or leaves surviving a parent or

1 parents who at the time of the accident were partially
2 dependent upon the earnings of the employee, then there shall
3 be paid to such dependent or dependents for a period of 8
4 years 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 the rights under this paragraph shall be
11 extinguished.

12 (d) If no compensation is payable under paragraphs (a),
13 (b) or (c) of this Section and the employee leaves surviving
14 any grandparent, grandparents, grandchild or grandchildren or
15 collateral heirs dependent upon the employee's earnings to
16 the extent of 50% or more of total dependency, then there
17 shall be paid to such dependent or dependents for a period of
18 5 years weekly compensation payments at such proportion of
19 the applicable rate if the employee had left surviving a
20 widow or widower as such dependency bears to total
21 dependency. In the event of the death of any such
22 beneficiary the share of such beneficiary shall be divided
23 equally among the surviving beneficiaries and in the event of
24 the death of the last such beneficiary all rights hereunder
25 shall be extinguished.

26 (e) The compensation to be paid for accidental injury
27 which results in death, as provided in this Section, shall be
28 paid to the persons who form the basis for determining the
29 amount of compensation to be paid by the employer, the
30 respective shares to be in the proportion of their respective
31 dependency at the time of the accident on the earnings of the
32 deceased. The Commission or an Arbitrator thereof may, in
33 its or his discretion, order or award the payment to the
34 parent or grandparent of a child for the latter's support the

1 amount of compensation which but for such order or award
2 would have been paid to such child as its share of the
3 compensation payable, which order or award may be modified
4 from time to time by the Commission in its discretion with
5 respect to the person to whom shall be paid the amount of the
6 order or award remaining unpaid at the time of the
7 modification.

8 The payments of compensation by the employer in
9 accordance with the order or award of the Commission
10 discharges such employer from all further obligation as to
11 such compensation.

12 (f) The sum of \$4200 for burial expenses shall be paid
13 by the employer to the widow or widower, other dependent,
14 next of kin or to the person or persons incurring the expense
15 of burial.

16 In the event the employer failed to provide necessary
17 first aid, medical, surgical or hospital service, he shall
18 pay the cost thereof to the person or persons entitled to
19 compensation under paragraphs (a), (b), (c) or (d) of this
20 Section, or to the person or persons incurring the obligation
21 therefore, or providing the same.

22 On January 15 and July 15, 1981, and on January 15 and
23 July 15 of each year thereafter the employer shall within 60
24 days pay a sum equal to $1/8$ of 1% of all compensation
25 payments made by him after July 1, 1980, either under this
26 Act or the Workers' Occupational Diseases Act, whether by
27 lump sum settlement or weekly compensation payments, but not
28 including hospital, surgical or rehabilitation payments, made
29 during the first 6 months and during the second 6 months
30 respectively of the fiscal year next preceding the date of
31 the payments, into a special fund which shall be designated
32 the "Second Injury Fund", of which the State Treasurer is
33 ex-officio custodian, such special fund to be held and
34 disbursed for the purposes hereinafter stated in paragraphs

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

12 To the extent that the employer insures its workers'
13 compensation liability under this Act, insurers shall
14 collect such assessments from their policyholders through a
15 surcharge based on premium. Assessments when collected shall
16 not constitute an element of loss for the purpose of
17 establishing rates for workers' compensation insurance, but,
18 for the purpose of collection, shall be treated as separate
19 costs imposed upon insured employers. The premium surcharge
20 shall be excluded from the definition of premium for all
21 purposes, including computation of agents' commissions or
22 premium taxes, provided, an insurer may cancel a workers'
23 compensation policy for non-payment of the premium surcharge.
24 An employer who has ceased to be a self-insurer shall
25 continue to be liable for any assessments based on
26 compensation payments made by the employer in the preceding
27 fiscal year.

28 Assessments on self-insured employers and insured
29 employers shall be sent on January 15 and July 15 of each
30 year after the effective date of this amendatory Act of the
31 92nd General Assembly. Self-insured employers shall report
32 and remit payment and insurers shall report and remit premium
33 surcharges 60 days after the assessment.

34 On January 15, 1991, the employer shall further pay a sum

1 equal to one half of 1% of all compensation payments made by
2 him from January 1, 1990 through June 30, 1990 either under
3 this Act or under the Workers' Occupational Diseases Act,
4 whether by lump sum settlement or weekly compensation
5 payments, but not including hospital, surgical or
6 rehabilitation payments, into an additional Special Fund
7 which shall be designated as the "Rate Adjustment Fund". On
8 March 15, 1991, the employer shall pay into the Rate
9 Adjustment Fund a sum equal to one half of 1% of all such
10 compensation payments made from July 1, 1990 through December
11 31, 1990. Within 60 days after July 15, 1991, the employer
12 shall pay into the Rate Adjustment Fund a sum equal to one
13 half of 1% of all such compensation payments made from
14 January 1, 1991 through June 30, 1991. Within 60 days after
15 January 15 of 1992 and each subsequent year through 1996, the
16 employer shall pay into the Rate Adjustment Fund a sum equal
17 to one half of 1% of all such compensation payments made in
18 the last 6 months of the preceding calendar year. Within 60
19 days after July 15 of 1992 and each subsequent year through
20 1995, the employer shall pay into the Rate Adjustment Fund a
21 sum equal to one half of 1% of all such compensation payments
22 made in the first 6 months of the same calendar year. Within
23 60 days after January 15 of 1997 and each subsequent year,
24 the employer shall pay into the Rate Adjustment Fund a sum
25 equal to three-fourths of 1% of all such compensation
26 payments made in the last 6 months of the preceding calendar
27 year. Within 60 days after July 15 of 1996 and each
28 subsequent year, the employer shall pay into the Rate
29 Adjustment Fund a sum equal to three-fourths of 1% of all
30 such compensation payments made in the first 6 months of the
31 same calendar year.

32 To the extent that the employer insures its workers'
33 compensation liability under this Act, insurers shall
34 collect such assessments from their policyholders through

1 a surcharge based on premium. Assessments when collected
2 shall not constitute an element of loss for the purpose of
3 establishing rates for workers' compensation insurance, but,
4 for the purpose of collection, shall be treated as separate
5 costs imposed upon insured employers. The premium surcharge
6 shall be excluded from the definition of premium for all
7 purposes, including computation of premium taxes, provided,
8 an insurer may cancel a workers' compensation policy for
9 non-payment of the premium surcharge. The administrative
10 costs of collecting assessments from employers for the Rate
11 Adjustment Fund shall be paid from the Rate Adjustment Fund.
12 The cost of an actuarial audit of the Fund shall be paid from
13 the Rate Adjustment Fund and the audit shall be completed no
14 later than July 1, 1997. The State Treasurer is ex officio
15 custodian of such Special Fund and the same shall be held and
16 disbursed for the purposes hereinafter stated in paragraphs
17 (f) and (g) of Section 8 upon the order of the Commission or
18 of a competent court. The Rate Adjustment Fund shall be
19 deposited the same as are State funds and any interest
20 accruing thereon shall be added thereto every 6 months. It
21 shall be subject to audit the same as State funds and
22 accounts and shall be protected by the general bond given by
23 the State Treasurer. It is considered always appropriated
24 for the purposes of disbursements as provided in paragraphs
25 (f) and (g) of Section 8 of this Act and shall be paid out
26 and disbursed as therein provided and shall not at any time
27 be appropriated or diverted to any other use or purpose.
28 Within 5 days after the effective date of this amendatory Act
29 of 1990, the Comptroller and the State Treasurer shall
30 transfer \$1,000,000 from the General Revenue Fund to the Rate
31 Adjustment Fund. By February 15, 1991, the Comptroller and
32 the State Treasurer shall transfer \$1,000,000 from the Rate
33 Adjustment Fund to the General Revenue Fund. From the
34 effective date of this amendatory Act of 1993 to October 1,

1 1997, the Comptroller and Treasurer are authorized to make
2 transfers at the request of the Chairman up to a total of
3 \$7,000,000 from the Second Injury Fund, the General Revenue
4 Fund, and the Workers' Compensation Benefit Trust Fund to the
5 Rate Adjustment Fund to the extent that there is insufficient
6 money in the Rate Adjustment Fund to pay claims and
7 obligations. Amounts may be transferred from the General
8 Revenue Fund only if the funds in the Second Injury Fund or
9 the Workers' Compensation Benefit Trust Fund are insufficient
10 to pay claims and obligations of the Rate Adjustment Fund.
11 All amounts transferred from the Second Injury Fund, the
12 General Revenue Fund, and the Workers' Compensation Benefit
13 Trust Fund shall be repaid from the Rate Adjustment Fund
14 within 270 days of a transfer, together with interest at the
15 rate earned by moneys on deposit in the Fund or Funds from
16 which the moneys were transferred.

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

30 Any obligations of an employer to the Second Injury Fund
31 and Rate Adjustment Fund accruing prior to the effective date
32 of this amendatory Act of 1989 shall be paid in full by such
33 employer within 5 years of the effective date of this
34 amendatory Act of 1989, with at least one-fifth of such

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

12 The Chairman of the Industrial Commission shall,
13 annually, furnish to the Director of the Department of
14 Insurance a list of the amounts paid into the Second Injury
15 Fund and the Rate Adjustment Fund by each insurance company
16 on behalf of their insured employers. The Director shall
17 verify to the Chairman that the amounts paid by each
18 insurance company are accurate as best as the Director can
19 determine from the records available to the Director. The
20 Chairman shall verify that the amounts paid by each
21 self-insurer are accurate as best as the Chairman can
22 determine from records available to the Chairman. The
23 Chairman may require each self-insurer to provide information
24 concerning the total compensation payments made upon which
25 contributions to the Second Injury Fund and the Rate
26 Adjustment Fund are predicated and any additional information
27 establishing that such payments have been made into these
28 funds. Any deficiencies in payments noted by the Director or
29 Chairman shall be subject to the penalty provisions of this
30 Act.

31 The State Treasurer, or his duly authorized
32 representative, shall be named as a party to all proceedings
33 in all cases involving claim for the loss of, or the
34 permanent and complete loss of the use of one eye, one foot,

1 one leg, one arm or one hand.

2 The State Treasurer or his duly authorized agent shall
3 have the same rights as any other party to the proceeding,
4 including the right to petition for review of any award. The
5 reasonable expenses of litigation, such as medical
6 examinations, testimony, and transcript of evidence, incurred
7 by the State Treasurer or his duly authorized representative,
8 shall be borne by the Second Injury Fund.

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

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

18 For the purpose of administration, receipts and
19 disbursements, the Special Fund provided for in paragraph (f)
20 of this Section shall be administered jointly with the
21 Special Fund provided for in Section 7, paragraph (f) of the
22 Workers' Occupational Diseases Act.

23 (g) All compensation, except for burial expenses
24 provided in this Section to be paid in case accident results
25 in death, shall be paid in installments equal to the
26 percentage of the average earnings as provided for in Section
27 8, paragraph (b) of this Act, at the same intervals at which
28 the wages or earnings of the employees were paid. If this is
29 not feasible, then the installments shall be paid weekly.
30 Such compensation may be paid in a lump sum upon petition as
31 provided in Section 9 of this Act. However, in addition to
32 the benefits provided by Section 9 of this Act where
33 compensation for death is payable to the deceased's widow,
34 widower or to the deceased's widow, widower and one or more

1 children, and where a partial lump sum is applied for by such
2 beneficiary or beneficiaries within 18 months after the
3 deceased's death, the Commission may, in its discretion,
4 grant a partial lump sum of not to exceed 100 weeks of the
5 compensation capitalized at their present value upon the
6 basis of interest calculated at 3% per annum with annual
7 rests, upon a showing that such partial lump sum is for the
8 best interest of such beneficiary or beneficiaries.

9 (h) In case the injured employee is under 16 years of
10 age at the time of the accident and is illegally employed,
11 the amount of compensation payable under paragraphs (a), (b),
12 (c), (d) and (f) of this Section shall be increased 50%.

13 Nothing herein contained repeals or amends the provisions
14 of the Child Labor Law relating to the employment of minors
15 under the age of 16 years.

16 However, where an employer has on file an employment
17 certificate issued pursuant to the Child Labor Law or work
18 permit issued pursuant to the Federal Fair Labor Standards
19 Act, as amended, or a birth certificate properly and duly
20 issued, such certificate, permit or birth certificate is
21 conclusive evidence as to the age of the injured minor
22 employee for the purposes of this Section only.

23 (i) Whenever the dependents of a deceased employee are
24 aliens not residing in the United States, Mexico or Canada,
25 the amount of compensation payable is limited to the
26 beneficiaries described in paragraphs (a), (b) and (c) of
27 this Section and is 50% of the compensation provided in
28 paragraphs (a), (b) and (c) of this Section, except as
29 otherwise provided by treaty.

30 In a case where any of the persons who would be entitled
31 to compensation is living at any place outside of the United
32 States, then payment shall be made to the personal
33 representative of the deceased employee. The distribution by
34 such personal representative to the persons entitled shall be

1 made to such persons and in such manner as the Commission
2 orders.

3 (Source: P.A. 88-672, eff. 12-14-94; 89-470, eff. 6-13-96.)