

1 HB21  
2 113035-1  
3 By Representative Mitchell  
4 RFD: Commerce  
5 First Read: 12-JAN-10  
6 PFD: 09/23/2009

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8 SYNOPSIS: Currently there is a maximum cap for  
9 Workers' Compensation cases for partial disability  
10 of \$220 per week or 100 percent of the average  
11 wage.

12 This bill would remove the cap.

13 Also, currently there is a schedule for  
14 partial injury and the employee is limited to that  
15 schedule even if the injury affects other parts of  
16 the body.

17 This bill would remove that limitation.

18  
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22  
23 To amend Sections 25-5-57 and 25-5-68, Code of  
24 Alabama 1975, relating to payments under Workers'  
25 Compensation, to remove certain restrictions and limitations.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1                   Section 1. Sections 25-5-57 and 25-5-68, Code of  
2 Alabama 1975, are amended to read as follows:

3                   "§25-5-57.

4                   "(a) Compensation schedule. Following is the  
5 schedule of compensation:

6                   "(1) TEMPORARY TOTAL DISABILITY. For injury  
7 producing temporary total disability, the compensation shall  
8 be 66 2/3 percent of the average weekly earnings received at  
9 the time of injury, subject to a maximum and minimum weekly  
10 compensation as stated in Section 25-5-68, but if at the time  
11 of injury the employee received average weekly earnings of  
12 less than the minimum stated in Section 25-5-68, then he or  
13 she shall receive the full amount of the average weekly  
14 earnings per week. This compensation shall be paid during the  
15 time of the disability, but at the time as a temporary total  
16 disability shall become permanent, compensation for the  
17 continued total disability shall be governed by (a) (4) of this  
18 section with respect to permanent total disability. Payments  
19 are to be made at the intervals when the earnings were  
20 payable, as nearly as may be, unless the parties otherwise  
21 agree.

22                   "(2) TEMPORARY PARTIAL DISABILITY.

23                   "a. Amount and Duration of Compensation. For  
24 temporary partial disability, the compensation shall be 66 2/3  
25 percent of the difference between the average weekly earnings  
26 of the worker at the time of the injury and the average weekly  
27 earnings he or she is able to earn in his or her partially

1 disabled condition. This compensation shall be paid during the  
2 period of the disability, but not beyond 300 weeks. Payments  
3 shall be made at the intervals when the earnings were payable,  
4 as nearly as may be, unless the parties otherwise agree, and  
5 shall be subject to the same maximum weekly compensation as  
6 stated in Section 25-5-68.

7 "b. Effect of Change in Employment. If the injured  
8 employee who is receiving compensation for temporary partial  
9 disability leaves the employment of the employer by whom he or  
10 she was employed at the time of the accident for which the  
11 compensation is being paid, he or she shall, upon securing  
12 employment elsewhere, give to the former employer an affidavit  
13 in writing containing the name of his or her new employer, the  
14 place of employment, and the amount of wages being received at  
15 the new employment, and until he or she gives the affidavit,  
16 the compensation for temporary partial disability shall cease.  
17 The employer for whom the employee was employed at the time of  
18 the accident for which the compensation is being paid may also  
19 at any time demand of the employee an additional affidavit, in  
20 writing, containing the name of his or her employer, the place  
21 of his or her employment, and the amount of wages he or she is  
22 receiving; and if the employee upon demand fails or refuses to  
23 make and furnish the affidavit, his or her right to  
24 compensation for temporary partial disability shall cease  
25 until the affidavit is made and furnished.

26 "(3) PERMANENT PARTIAL DISABILITY.

1            "a. Amount and Duration of Compensation. For  
2 permanent partial disability, the compensation shall be based  
3 upon the extent of the disability. In cases included in the  
4 following schedule, the compensation shall be 66 2/3 percent  
5 of the average weekly earnings, during the number of weeks set  
6 out in the following schedule:

7            "1. For the loss of a thumb, 62 weeks.

8            "2. For the loss of a first finger, commonly called  
9 the index finger, 43 weeks.

10           "3. For the loss of a second finger, 31 weeks.

11           "4. For the loss of a third finger, 22 weeks.

12           "5. For the loss of a fourth finger, commonly called  
13 the little finger, 16 weeks.

14           "6. The loss of the first phalange of the thumb or  
15 of any finger shall be considered as equal to the loss of one  
16 half of the thumb or finger, and compensation shall be paid at  
17 the prescribed rate during one half of the time specified  
18 above for the thumb or finger.

19           "7. The loss of two or more phalanges shall be  
20 considered as the loss of the entire finger or thumb, but in  
21 no case shall the amount received for more than one finger  
22 exceed the amount provided in this schedule for the loss of a  
23 hand.

24           "8. For the loss of a great toe, 32 weeks.

25           "9. For the loss of any of the toes other than the  
26 great toe, 11 weeks.

1           "10. The loss of the first phalange of any toe shall  
2 be considered to be equal to the loss of one half of the toe,  
3 and compensation shall be paid at the prescribed rate during  
4 one half the time prescribed above for the toe.

5           "11. The loss of two or more phalanges shall be  
6 considered as the loss of an entire toe.

7           "12. For the loss of a hand, 170 weeks.

8           "13. For the loss of an arm, 222 weeks.

9           "14. For the loss of a foot, 139 weeks.

10          "15. Amputation between the elbow and wrist shall be  
11 considered as the equivalent to the loss of a hand, and  
12 amputation between the knee and ankle shall be considered as  
13 the equivalent of the loss of a foot.

14          "16. For the loss of a leg, 200 weeks.

15          "17. For the loss of an eye, 124 weeks.

16          "18. For the complete and permanent loss of hearing  
17 in both ears, 163 weeks.

18          "19. For the complete and permanent loss of hearing  
19 in one ear, 53 weeks.

20          "20. For the loss of an eye and a leg, 350 weeks.

21          "21. For the loss of an eye and one arm, 350 weeks.

22          "22. For the loss of an eye and a hand, 325 weeks.

23          "23. For the loss of an eye and a foot, 300 weeks.

24          "24. For the loss of two arms, other than at the  
25 shoulder, 400 weeks.

26          "25. For the loss of two hands, 400 weeks.

27          "26. For the loss of two legs, 400 weeks.

1                   "27. For the loss of two feet, 400 weeks.

2                   "28. For the loss of one arm and the other hand, 400  
3 weeks.

4                   "29. For the loss of one hand and one foot, 400  
5 weeks.

6                   "30. For the loss of one leg and the other foot, 400  
7 weeks.

8                   "31. For the loss of one hand and one leg, 400  
9 weeks.

10                  "32. For the loss of one arm and one foot, 400  
11 weeks.

12                  "33. For the loss of one arm and one leg, 400 weeks.

13                  "34. For serious disfigurement, not resulting from  
14 the loss of a member or other injury specifically compensated,  
15 materially affecting the employability of the injured person  
16 in the employment in which he or she was injured or other  
17 employment for which he or she is then qualified, 66 2/3  
18 percent of the average weekly earnings for the period as the  
19 court may determine, but not exceeding 100 weeks.

20                  "Notwithstanding the foregoing, although the injury  
21 itself is to only one part or member of the body, if the  
22 effect of such injury extends to other parts of the body and  
23 produces a greater or more prolonged incapacity than that  
24 which naturally results from the specific injury, or if the  
25 injury causes an abnormal and unusual incapacity with respect  
26 to the member, then the employee is not limited in his or her  
27 recovery under the schedule for injury to the one member.

1            "b. Successive or Concurrent Temporary Total and  
2            Permanent Partial Disabilities Resulting from Same Injury.  
3            When a permanent partial disability, the number of weeks  
4            compensation for which is scheduled in subdivision (a) (3) of  
5            this section, follows or accompanies a period of temporary  
6            total disability resulting from the same injury, the number of  
7            weeks of the temporary total disability shall not be deducted  
8            from the number of weeks payable for the permanent partial  
9            disability.

10           "c. Concurrent Disabilities. If an employee sustains  
11           concurrent injuries resulting in concurrent disabilities, he  
12           or she shall receive compensation only for the injury which  
13           entitled him or her to the largest amount of compensation, but  
14           this paragraph shall not affect liability for the concurrent  
15           loss of more than one member for which members compensation is  
16           provided in the specific schedule.

17           "d. Loss of Use of Member. The permanent and total  
18           loss of the use of a member shall be considered as equivalent  
19           to the loss of that member, but in such cases the compensation  
20           specified in the schedule for such injury shall be in lieu of  
21           all other compensation, except as otherwise provided herein.  
22           For permanent disability due to injury to a member resulting  
23           in less than total loss of use of the member not otherwise  
24           compensated in this schedule, compensation shall be paid at  
25           the prescribed rate during that part of the time specified in  
26           the schedule for the total loss or total loss of use of the



1       respective member which the extent of the injury to the member  
2       bears to its total loss.

3                "e. Effect of Refusal of Suitable Employment. If an  
4       injured employee refuses employment suitable to his or her  
5       capacity offered to or procured for him or her, he or she  
6       shall not be entitled to any compensation at any time during  
7       the continuance of the refusal, unless at any time, in the  
8       opinion of the judge of the circuit court of the county of his  
9       or her residence, the refusal is justifiable.

10               "f. Maximum and Minimum Compensation Awards.  
11       Compensation provided in this subsection (a) for loss of  
12       members or loss of use of members is subject to the same  
13       limitations as to maximum and minimum weekly compensation as  
14       stated in Section 25-5-68.

15               "g. Compensation for Permanent Partial Disabilities  
16       Not Enumerated. For all other permanent partial disabilities  
17       not above enumerated, the compensation shall be 66 2/3 percent  
18       of the difference between the average weekly earnings of the  
19       worker at the time of the injury and the average weekly  
20       earnings he or she is able to earn in his or her partially  
21       disabled condition, subject to the same maximum weekly  
22       compensation as stated in Section 25-5-68. If a permanent  
23       partial disability, compensation for which is not calculated  
24       by use of the schedule in subdivision (a) (3) of this section,  
25       follows a period of temporary total disability resulting from  
26       the same injury, the number of weeks of the temporary total  
27       disability shall be deducted from the number of weeks payable

1 for the permanent partial disability. Compensation shall  
2 continue during disability, but not beyond 300 weeks.

3 "h. Affidavit of New Employment. If the injured  
4 employee leaves the services of the employer for whom he or  
5 she was working at the time of the accident and accepts  
6 employment elsewhere, he or she shall make and furnish  
7 affidavit as to his or her new employment in the manner as  
8 required in (a) (2) of this section.

9 "i. Return to Work. If, on or after the date of  
10 maximum medical improvement, except for scheduled injuries as  
11 provided in Section 25-5-57(a) (3), an injured worker returns  
12 to work at a wage equal to or greater than the worker's  
13 pre-injury wage, the worker's permanent partial disability  
14 rating shall be equal to his or her physical impairment and  
15 the court shall not consider any evidence of vocational  
16 disability. Notwithstanding the foregoing, if the employee has  
17 lost his or her employment under circumstances other than any  
18 of the following within a period of time not to exceed 300  
19 weeks from the date of injury, an employee may petition a  
20 court within two years thereof for reconsideration of his or  
21 her permanent partial disability rating:

22 "(i) The loss of employment is due to a labor  
23 dispute still in active progress in the establishment in which  
24 he or she is or was last employed. For the purposes of this  
25 section only, the term "labor dispute" includes any  
26 controversy concerning terms, tenure, or conditions of  
27 employment, or concerning the association or representation of

1 persons in negotiating, fixing, maintaining, changing, or  
2 seeking to arrange terms or conditions of employment,  
3 regardless of whether the disputants stand in the proximate  
4 relation of employer and employee. This definition shall not  
5 relate to a dispute between an individual worker and his or  
6 her employer.

7 "(ii) The loss of employment is voluntary, without  
8 good cause connected with such work.

9 "(iii) The loss of employment is for a dishonest or  
10 criminal act committed in connection with his or her work, for  
11 sabotage, or an act endangering the safety of others.

12 "(iv) The loss of employment is for actual or  
13 threatened misconduct committed in connection with his or her  
14 work after previous warning to the employee.

15 "(v) The loss of employment is because a license,  
16 certificate, permit, bond, or surety which is necessary for  
17 the performance of such employment and which he or she is  
18 responsible to supply has been revoked, suspended, or  
19 otherwise become lost to him or her for a cause.

20 "The burden of proof is on the employer to prove, by  
21 clear and convincing evidence, that an employee's loss of  
22 employment was due to one of the causes (i) through (v) above.  
23 At the hearing, the court may consider evidence as to the  
24 earnings the employee is or may be able to earn in his or her  
25 partially disabled condition, and may consider any evidence of  
26 vocational disability. The fact the employee had returned to  
27 work prior to his or her loss of employment shall not

1 constitute a presumption of no vocational impairment. In  
2 making this evaluation, the court shall consider the permanent  
3 restriction, if any, imposed by the treating physician under  
4 Section 25-5-77, as well as all available reasonable  
5 accommodations that would enable the employee in his or her  
6 condition following the accident or onset of occupational  
7 disease to perform jobs that he or she in that condition  
8 otherwise would be unable to perform, and shall treat an  
9 employee able to perform with such accommodation as though he  
10 or she could perform without the accommodation. Nothing  
11 contained in this section shall be construed as having any  
12 effect upon any evidentiary issues or claims made in third  
13 party actions pursuant to Section 25-5-11.

14 "(4) PERMANENT TOTAL DISABILITY.

15 "a. Amount, Duration, and Payment of Compensation.

16 For permanent total disability, as defined in paragraph d. of  
17 this subdivision, the employee shall receive  $66 \frac{2}{3}$  percent of  
18 the average weekly earnings received at the time of the  
19 injury, subject to a maximum and minimum weekly compensation  
20 as stated in Section 25-5-68. Notwithstanding the foregoing,  
21 if at the time of injury the employee was receiving earnings  
22 of less than the minimum as stated in Section 25-5-68, then he  
23 or she shall receive the full amount of his or her earnings  
24 per week. This compensation shall be paid during the permanent  
25 total disability, as defined in paragraph d. of this  
26 subdivision. Payment of the compensation shall be made at the  
27 intervals when the earnings were payable, as nearly as may be,

1 unless the parties otherwise agree. The payments, with the  
2 approval of the circuit judge or by the agreement of the  
3 parties, may be made monthly, quarterly, or otherwise as the  
4 parties may agree. Payments for permanent total disability  
5 shall not be ordered to be paid in a lump sum without the  
6 consent of both the employer and the employee.

7 "b. Alteration, Amendment, or Revision of  
8 Compensation. At any time, the employer may petition the court  
9 that awarded or approved compensation for permanent total  
10 disability to alter, amend, or revise the award or approval of  
11 the compensation on the ground that as a result of physical or  
12 vocational rehabilitation, or otherwise, the disability from  
13 which the employee suffers is no longer a permanent total  
14 disability and, if the court is so satisfied after a hearing,  
15 it shall alter, amend, or revise the award accordingly. If  
16 compensation for permanent total disability is being paid  
17 pursuant to a written agreement between employer and employee  
18 without approval, the employer may make application to the  
19 court that would have had jurisdiction to award the  
20 compensation to the employee to alter, amend, or revise the  
21 agreement on such grounds. If an employee is receiving  
22 benefits for permanent total disability other than as a result  
23 of an award or a written agreement between the employer and  
24 employee and if the employer terminates the payment of the  
25 benefits, the employee may, within two years of the last  
26 payment, petition the court to reinstate the benefits and,  
27 upon a showing that the permanent total disability still

1 exists, shall be entitled to have the benefits reinstated  
2 effective the date of the last payment.

3 "c. Employees in Public Institutions. In case an  
4 employee who is permanently and totally disabled becomes an  
5 inmate of a public institution, no compensation shall be  
6 payable unless the employee has wholly dependent on him or her  
7 for support a person or persons named in Sections 25-5-61 and  
8 25-5-62, whose dependency shall be determined as if the  
9 employee were deceased, in which case the compensation  
10 provided for in this subdivision shall be paid for the benefit  
11 of the person so dependent, during dependency, in the manner  
12 so ordered by the court, while the employee is an inmate in  
13 the institution. Nothing contained herein shall be construed  
14 to deprive a permanently and totally disabled employee who has  
15 no dependent named in Sections 25-5-61 and 25-5-62 from  
16 receiving benefits to which he or she would otherwise be  
17 entitled if the employee, although an inmate of a public  
18 institution, is paying or on whose behalf funds are paid from  
19 any source to the public institution the normal and customary  
20 charge for the services rendered by the public institution.  
21 Normal and customary charge shall mean that charge actually  
22 made by the public institution to persons able to pay for the  
23 services rendered them whether the charge actually covers the  
24 expense of the upkeep of the inmate or not. If the employee  
25 has had a guardian appointed by a court of competent  
26 jurisdiction, the workers' compensation payments shall be  
27 directly paid to the guardian.

1            "d. Definition. The total and permanent loss of the  
2 sight of both eyes or the loss of both arms at the shoulder or  
3 any physical injury or mental impairment resulting from an  
4 accident, which injury or impairment permanently and totally  
5 incapacitates the employee from working at and being retrained  
6 for gainful employment, shall constitute prima facie evidence  
7 of permanent total disability but shall not constitute the  
8 sole basis on which an award of permanent total disability may  
9 be based. Any employee whose disability results from an injury  
10 or impairment and who shall have refused to undergo physical  
11 or vocational rehabilitation or to accept reasonable  
12 accommodation shall not be deemed permanently and totally  
13 disabled.

14            "e. Second Permanent Injuries Generally. If an  
15 employee has a permanent disability or has previously  
16 sustained another injury than that in which the employee  
17 received a subsequent permanent injury by accident, as is  
18 specified in this section defining permanent injury, the  
19 employee shall be entitled to compensation only for the degree  
20 of injury that would have resulted from the latter accident if  
21 the earlier disability or injury had not existed.

22            "f. Second Permanent Injury in Same Employment  
23 Resulting in Permanent Total Disability. If an employee  
24 receives a permanent injury as specified in this section after  
25 having sustained another permanent injury in the same  
26 employment, and if the previous and subsequent injuries result

1 in permanent total disability, compensation shall be payable  
2 for permanent total disability only.

3 "g. Concurrent Compensation Payments. If an employee  
4 receives an injury for which compensation is payable while he  
5 or she is still receiving or entitled to receive compensation  
6 for a previous injury in the same employment, he or she shall  
7 not at the same time be entitled to compensation for both  
8 injuries, unless the later injury is a permanent injury, as  
9 specified in this section, but he or she shall be entitled to  
10 compensation for that injury and from the time of that injury  
11 which will cover the longest period and the largest amount  
12 payable under this article and Article 4 of this chapter.

13 "If an employee receives a permanent injury as  
14 specified in this section, after having sustained another  
15 permanent injury in the same employment, he or she shall be  
16 entitled to compensation for both injuries, subject to  
17 paragraph e. of this subdivision, but the total compensation  
18 shall be paid by extending the period and not by increasing  
19 the amount of weekly compensation, and in no case for  
20 permanent partial disability exceeding 700 weeks.

21 "h. Effect of Rehabilitation or Recovery on  
22 Permanent Total Disability Benefits. If an employee who is  
23 receiving benefits for permanent total disability shall, as a  
24 result of physical or vocational rehabilitation or otherwise,  
25 obtain gainful employment, the obligation to pay permanent  
26 total disability benefits shall thereupon terminate; provided,  
27 that at any time that the employee's weekly wage from the



1 employment shall be less than the employee's average weekly  
2 wage at the time of injury, the employer shall remain  
3 obligated to pay to the employee as compensation an amount  
4 equal to 66 2/3 percent of the difference, subject to each of  
5 the following limitations:

6 "1. The employer's liability for the payment of 66  
7 2/3 percent of the difference shall continue for 200 weeks  
8 from the date of reemployment or 300 weeks from the date of  
9 injury, whichever is the longer period.

10 "2. In no event shall the amount of weekly benefits  
11 paid by the employer to the employee exceed the weekly benefit  
12 the employee was receiving for permanent total disability.

13 "3. No payments shall be due for any week the  
14 employee earns as much as or more than his or her average  
15 weekly wage at the time of injury. If the employee who obtains  
16 gainful employment suffered a permanent partial disability as  
17 specified in subsection (a), subdivision (3) of this section,  
18 the total amount of compensation paid for permanent total  
19 disability shall not be less than that amount which would have  
20 been payable for the permanent partial disability.

21 "i. Affidavit of Gainful Employment. If an employee  
22 who is receiving benefits for permanent total disability  
23 shall, as the result of physical or vocational rehabilitation,  
24 accommodation, or otherwise, obtain gainful employment with an  
25 employer other than with his or her former employer, he or she  
26 shall, upon securing employment, give to his or her former  
27 employer an affidavit in writing containing the name of his or

1 her new employer, the place of employment and the amount of  
2 wages being received at the new employment. Until he or she  
3 gives the affidavit, the compensation for permanent total  
4 disability shall cease. The employer for whom the employee was  
5 employed at the time of the accident for which compensation is  
6 being paid may also at any time demand of the employee  
7 additional affidavit, in writing, containing the name of his  
8 or her employer, the place of his or her employment, and the  
9 amount of wages he or she is receiving. If the employee, upon  
10 demand, fails or refuses to make and furnish the affidavit,  
11 his or her rights to compensation shall cease until the  
12 affidavit is made and furnished.

13 "(5) DEATH FOLLOWING DISABILITY. If an employee  
14 sustains an injury occasioned by an accident arising out of  
15 and in the course of his or her employment and, during the  
16 period of disability caused thereby, death results proximately  
17 therefrom, all payments previously made as compensation for  
18 the injury shall be deducted from the compensation, if any,  
19 due on account of death. If an employee who sustains a  
20 permanent partial or permanent total disability, the degree of  
21 which has been agreed upon by the parties or has been  
22 ascertained by the court, and death results not proximately  
23 therefrom, the employee's surviving spouse or dependent  
24 children or both shall be entitled to the balance of the  
25 payments which would have been due and payable to the worker,  
26 whether or not the decedent employee was receiving  
27 compensation for permanent total disability, not exceeding,

1       however, the amount that would have been due the surviving  
2       spouse or dependent children or both if death had resulted  
3       proximately from an injury on account of which compensation is  
4       being paid to an employee.

5               "(6) HERNIA.

6               "a. Proof. For hernia resulting from injury by an  
7       accident arising out of and in the course of the employee's  
8       employment, it must be definitely proven to the satisfaction  
9       of the court all of the following:

10              "1. That there was an injury resulting in hernia.

11              "2. That the hernia appeared suddenly.

12              "3. That it was accompanied by pain.

13              "4. That the hernia immediately followed an  
14       accident.

15              "5. That the hernia did not exist prior to the  
16       accident for which compensation is claimed.

17              "b. Treatment. All hernia, inguinal, femoral, or  
18       otherwise, proved to be the result of an injury by accident  
19       arising out of and in the course of the employment, shall be  
20       treated in a surgical manner by radical operation. If the  
21       injured employee refuses to undergo the radical operation for  
22       the cure of the hernia, no compensation will be allowed during  
23       the time the refusal continues. If, however, it is shown that  
24       the employee has some chronic disease or is otherwise in  
25       physical condition that the court considers it unsafe for the  
26       employee to undergo the operation, the employee shall be paid  
27       as otherwise provided in this chapter.

1           "(b) Computation of compensation; determination of  
2           average weekly earnings. Compensation under this section shall  
3           be computed on the basis of the average weekly earnings.  
4           Average weekly earnings shall be based on the wages, as  
5           defined in Section 25-5-1(6) of the injured employee in the  
6           employment in which he or she was working at the time of the  
7           injury during the period of 52 weeks immediately preceding the  
8           date of the injury divided by 52, but if the injured employee  
9           lost more than seven consecutive calendar days during the  
10          period, although not in the same week, then the earnings for  
11          the remainder of the period, although not in the same week,  
12          then the earnings for the remainder of the 52 weeks shall be  
13          divided by the number of weeks remaining after the time so  
14          lost has been deducted. Where the employment prior to the  
15          injury extended over a period of less than 52 weeks, the  
16          method of dividing the earnings during that period by the  
17          number of weeks and parts thereof during which the employee  
18          earned wages shall be followed, provided results just and fair  
19          to both parties will thereby be obtained. Where by reason of  
20          the shortness of the time during which the employee has been  
21          in the employment of his or her employer or the casual nature  
22          or terms of the employment it is impracticable to compute the  
23          average weekly earnings as above defined, regard shall be had  
24          to the average weekly amount which during the 52 weeks prior  
25          to the injury was being earned by a person in the same grade,  
26          employed at the same work by the same employer, and if there  
27          is no person so employed, by a person in the same grade

1 employed in the same class of employment in the same district.  
2 Whatever allowances of any character made to an employee in  
3 lieu of wages are specified as part of the wage contract shall  
4 be deemed a part of his or her earnings.

5 "(c) Setoff for other recovery. In calculating the  
6 amount of workers' compensation due:

7 "(1) The employer may reduce or accept an assignment  
8 from an employee of the amount of benefits paid pursuant to a  
9 disability plan, retirement plan, or other plan providing for  
10 sick pay by the amount of compensation paid, if and only if  
11 the employer provided the benefits or paid for the plan or  
12 plans providing the benefits deducted.

13 "(2) The employee shall forfeit to the employer all  
14 compensation paid for any period to which is attributed any  
15 award of back pay either by a court, administrative agency,  
16 arbitration, or settlement, provided, however, social security  
17 payments shall not be included herein.

18 "(3) If an employer continues the salary of an  
19 injured employee during the benefit period or pays similar  
20 compensation during the benefit period, the employer shall be  
21 allowed a setoff in weeks against the compensation owed under  
22 this article. For the purposes of this section, voluntary  
23 contributions to a Section 125-cafeteria plan for a disability  
24 or sick pay program shall not be considered as being provided  
25 by the employer.

26 "§25-5-68.

1           "(a) The compensation paid under this article shall  
2 be not less than, except as otherwise provided in this  
3 article, 27 1/2 percent of the average weekly wage of the  
4 state as determined by the director, rounded to the nearest  
5 dollar, pursuant to subsection (b) of this section and, in any  
6 event, no more than 100 percent of the average weekly wage.  
7 ~~Notwithstanding the foregoing, the maximum compensation~~  
8 ~~payable for permanent partial disability shall be no more than~~  
9 ~~the lesser of \$220.00 per week or 100 percent of the average~~  
10 ~~weekly wage.~~

11           "(b) For the purpose of this section, the average  
12 weekly wage of the state shall be determined by the director  
13 as follows: On or before June 1 of each year, the total wages  
14 reported on contribution reports to the unemployment  
15 compensation division of the department for the preceding  
16 calendar year shall be divided by the average monthly number  
17 of insured workers, which shall be determined by dividing the  
18 sum of the number of insured workers reported for each month  
19 of the preceding year by 12. The average annual wage thus  
20 obtained shall be divided by 52, and the average weekly wage  
21 thus determined rounded to the nearest cent. The average  
22 weekly wage as so determined shall be applicable for the  
23 12-month period beginning July 1 following the June 1  
24 determination. If the determination shall not be made on or  
25 before June 1, the effective date of the average weekly wage  
26 when determined shall be the first day of the month next  
27 following 30 days after the determination is made.

1           "(c) The maximum and minimum weekly benefit shall  
2 not be changed on any July 1 or as a result of any annual  
3 determination, unless the computation provided for in  
4 subsection (b) of this section results in an increase or  
5 decrease of two dollars (\$2) or more in the amount of either  
6 the maximum or minimum benefit.

7           "(d) In no event, except as provided for permanent  
8 total disability in subdivision (a)(4) of Section 25-5-57 or  
9 except for compensation benefits payable for permanent partial  
10 and temporary total disability in connection with a disability  
11 scheduled in subdivisions (1) and (3) of subsection (a) of  
12 Section 25-5-57, shall the total amount of compensation  
13 payable for an accident or an occupational disease exceed the  
14 product of 500 times the maximum weekly benefit applicable on  
15 the date of the accident.

16           "(e) The minimum and maximum benefits that are in  
17 effect on the date of the accident which results in injury or  
18 death shall be applicable for the full period during which  
19 compensation is payable."

20           Section 2. This act shall become effective on the  
21 first day of the third month following its passage and  
22 approval by the Governor, or its otherwise becoming law.