

1 **OFFSET OF WORKERS' COMPENSATION AND**
2 **SOCIAL SECURITY**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: John W. Hickman**

6 House Sponsor: Wayne A. Harper

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to receipt of workers' compensation benefits.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ removes the offset against permanent total disability compensation for cost-of-living
14 increases in Social Security retirement benefits received by an employee with a
15 permanent total disability;

16 ▶ removes the offset against death benefits for cost-of-living increases in Social
17 Security death benefits;

18 ▶ clarifies its application to persons whose compensation was reduced on or before
19 May 4, 2008; and

20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **34A-2-403**, as renumbered and amended by Laws of Utah 1997, Chapter 375

28 **34A-2-413**, as last amended by Laws of Utah 2006, Chapter 295

29 **34A-2-702**, as renumbered and amended by Laws of Utah 1997, Chapter 375

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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-2-403** is amended to read:

34A-2-403. Dependents -- Presumption.

(1) The following persons shall be presumed to be wholly dependent for support upon a deceased employee:

(a) a child under 18 years of age, or over if the child is physically or mentally incapacitated and dependent upon the parent, with whom the child is living at the time of the death of the parent, or who is legally bound for the child's support; and

(b) for purposes of payments to be made under Subsection 34A-2-702(5)~~(a)~~(b)(i), a surviving spouse with whom the deceased employee lived at the time of the employee's death.

(2) (a) In a case not provided for in Subsection (1), the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury or death of an employee, except for purposes of dependency reviews under Subsection 34A-2-702(5)~~(a)~~(b)(iv).

(b) A person may not be considered as a dependent unless that person is:

(i) a member of the family of the deceased employee;

(ii) the spouse of the deceased employee;

(iii) a lineal descendant or ancestor of the deceased employee; or

(iv) brother or sister of the deceased employee.

(3) As used in this chapter and Chapter 3, Utah Occupational Disease Act:

(a) "brother or sister" includes a half brother or sister; and

(b) "child" includes:

(i) a posthumous child; or

(ii) a child legally adopted prior to the injury.

Section 2. Section **34A-2-413** is amended to read:

34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.

(1) (a) In ~~cases~~ the case of a permanent total disability resulting from an industrial

58 accident or occupational disease, the employee shall receive compensation as outlined in this
59 section.

60 (b) To establish entitlement to permanent total disability compensation, the employee
61 must prove by a preponderance of evidence that:

62 (i) the employee sustained a significant impairment or combination of impairments as a
63 result of the industrial accident or occupational disease that gives rise to the permanent total
64 disability entitlement;

65 (ii) the employee is permanently totally disabled; and

66 (iii) the industrial accident or occupational disease [~~was~~] is the direct cause of the
67 employee's permanent total disability.

68 (c) To establish that an employee is permanently totally disabled the employee must
69 prove by a preponderance of the evidence that:

70 (i) the employee is not gainfully employed;

71 (ii) the employee has an impairment or combination of impairments that limit the
72 employee's ability to do basic work activities;

73 (iii) the industrial or occupationally caused impairment or combination of impairments
74 prevent the employee from performing the essential functions of the work activities for which
75 the employee has been qualified until the time of the industrial accident or occupational disease
76 that is the basis for the employee's permanent total disability claim; and

77 (iv) the employee cannot perform other work reasonably available, taking into
78 consideration the employee's:

79 (A) age;

80 (B) education;

81 (C) past work experience;

82 (D) medical capacity; and

83 (E) residual functional capacity.

84 (d) Evidence of an employee's entitlement to disability benefits other than those
85 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:

86 (i) may be presented to the commission;
87 (ii) is not binding; and
88 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah
89 Occupational Disease Act.

90 (2) For permanent total disability compensation during the initial 312-week entitlement,
91 compensation [~~shall be~~] is 66-2/3% of the employee's average weekly wage at the time of the
92 injury, limited as follows:

93 (a) compensation per week may not be more than 85% of the state average weekly
94 wage at the time of the injury;

95 (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the
96 sum of \$45 per week [~~, plus~~] and:

97 (A) \$5 for a dependent spouse [~~, plus~~]; and

98 (B) \$5 for each dependent child under the age of 18 years, up to a maximum of four
99 dependent minor children [~~, but not exceeding~~]; and

100 (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:

101 (A) the maximum established in Subsection (2)(a) [~~not exceeding~~]; or

102 (B) the average weekly wage of the employee at the time of the injury; and

103 (c) after the initial 312 weeks, the minimum weekly compensation rate under
104 Subsection (2)(b) [~~shall be~~] is 36% of the current state average weekly wage, rounded to the
105 nearest dollar.

106 (3) This Subsection (3) applies to claims resulting from an accident or disease arising
107 out of and in the course of the employee's employment on or before June 30, 1994.

108 (a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent
109 total disability compensation except as outlined in Section 34A-2-703 as in effect on the date of
110 injury.

111 (b) The employer or its insurance carrier may not be required to pay compensation for
112 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
113 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation

114 payable over the initial 312 weeks at the applicable permanent total disability compensation rate
115 under Subsection (2).

116 (c) ~~[Any]~~ The Employers' Reinsurance Fund shall for an overpayment of [this]
117 compensation [shall be reimbursed] described in Subsection (3)(b), reimburse the overpayment:

118 (i) to the employer or its insurance carrier ~~[by the Employers' Reinsurance Fund];~~ and
119 ~~[shall be paid]~~

120 (ii) out of the Employers' Reinsurance Fund's liability to the employee.

121 (d) After an employee ~~[has received]~~ receives compensation from the employee's
122 employer, its insurance carrier, or the Employers' Reinsurance Fund for any combination of
123 disabilities amounting to 312 weeks of compensation at the applicable permanent total disability
124 compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total
125 disability compensation.

126 (e) Employers' Reinsurance Fund payments shall commence immediately after the
127 employer or its insurance carrier ~~[has satisfied]~~ satisfies its liability under this Subsection (3) or
128 Section 34A-2-703.

129 (4) This Subsection (4) applies to claims resulting from an accident or disease arising
130 out of and in the course of the employee's employment on or after July 1, 1994.

131 (a) The employer or its insurance carrier is liable for permanent total disability
132 compensation.

133 (b) The employer or its insurance carrier may not be required to pay compensation for
134 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
135 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
136 payable over the initial 312 weeks at the applicable permanent total disability compensation rate
137 under Subsection (2).

138 (c) ~~[Any overpayment of this compensation shall be recouped by the]~~ The employer or
139 its insurance carrier may recoup the overpayment of compensation described in Subsection (4)
140 by reasonably offsetting the overpayment against future liability paid before or after the initial
141 312 weeks.

142 (5) ~~[Notwithstanding]~~ (a) Subject to Subsection (5)(b) and notwithstanding the
143 minimum rate established in Subsection (2), [the compensation payable by the] an employer, its
144 insurance carrier, or the Employers' Reinsurance Fund, after an employee [has received]
145 receives compensation from the employer or the employer's insurance carrier for any
146 combination of disabilities amounting to 312 weeks of compensation at the applicable total
147 disability compensation rate, shall [be reduced,] reduce the compensation payable:

148 (i) to the extent allowable by law~~[-];~~

149 (ii) by the dollar amount of 50% of the Social Security retirement benefits ~~[received by]~~
150 the employee is eligible to receive for a four week period as of the first day the employee is
151 eligible to receive a Social Security retirement benefit; and

152 (iii) that the employee receives during the same period as the Social Security retirement
153 benefits.

154 (b) (i) An employer, its insurance carrier, or the Employers' Reinsurance Fund may not
155 reduce compensation payable under this section on or after May 5, 2008, to an employee by an
156 amount related to a cost-of-living increase to the Social Security retirement benefit that the
157 employee is first eligible to receive for a four week period, notwithstanding whether the
158 employee is injured on or before May 4, 2008.

159 (ii) For purposes of an employee whose compensation payable is reduced under this
160 Subsection (5) on or before May 4, 2008, the reduction is limited to the amount of the
161 reduction as of May 4, 2008.

162 (6) (a) A finding by the commission of permanent total disability is not final, unless
163 otherwise agreed to by the parties, until:

164 (i) an administrative law judge reviews a summary of reemployment activities
165 undertaken pursuant to Chapter 8, Utah Injured Worker Reemployment Act;

166 (ii) the employer or its insurance carrier submits to the administrative law judge:

167 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably
168 designed to return the employee to gainful employment; or

169 (B) notice that the employer or its insurance carrier will not submit a plan; and

170 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless
171 otherwise stipulated, to:

172 (A) consider evidence regarding rehabilitation; and

173 (B) review any reemployment plan submitted by the employer or its insurance carrier
174 under Subsection (6)(a)(ii).

175 (b) Before commencing the procedure required by Subsection (6)(a), the administrative
176 law judge shall order:

177 (i) the initiation of permanent total disability compensation payments to provide for the
178 employee's subsistence; and

179 (ii) the payment of any undisputed disability or medical benefits due the employee.

180 (c) Notwithstanding Subsection (6)(a), an order for payment of benefits described in
181 Subsection (6)(b) is considered a final order for purposes of Section 34A-2-212.

182 (d) The employer or its insurance carrier shall be given credit for any disability
183 payments made under Subsection (6)(b) against its ultimate disability compensation liability
184 under this chapter or Chapter 3, Utah Occupational Disease Act.

185 (e) An employer or its insurance carrier may not be ordered to submit a reemployment
186 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to
187 Subsections (6)(e)(i) through (iii).

188 (i) The plan may include, but not require an employee to pay for:

189 (A) retraining[;];

190 (B) education[;];

191 (C) medical and disability compensation benefits[;];

192 (D) job placement services[;]; or

193 (E) incentives calculated to facilitate reemployment [~~funded by the employer or its~~
194 ~~insurance carrier~~].

195 (ii) The plan shall include payment of reasonable disability compensation to provide for
196 the employee's subsistence during the rehabilitation process.

197 (iii) The employer or its insurance carrier shall diligently pursue the reemployment plan.

198 The employer's or insurance carrier's failure to diligently pursue the reemployment plan [~~shall~~
199 ~~be~~] is cause for the administrative law judge on the administrative law judge's own motion to
200 make a final decision of permanent total disability.

201 (f) If a preponderance of the evidence shows that successful rehabilitation is not
202 possible, the administrative law judge shall order that the employee be paid weekly permanent
203 total disability compensation benefits.

204 (7) (a) The period of benefits commences on the date the employee became
205 permanently totally disabled, as determined by a final order of the commission based on the
206 facts and evidence, and ends:

207 (i) with the death of the employee; or

208 (ii) when the employee is capable of returning to regular, steady work.

209 (b) An employer or its insurance carrier may provide or locate for a permanently totally
210 disabled employee reasonable, medically appropriate, part-time work in a job earning at least
211 minimum wage [~~provided that employment~~], except that the employee may not be required to
212 accept the work to the extent that it would disqualify the employee from Social Security
213 disability benefits.

214 (c) An employee shall:

215 (i) fully cooperate in the placement and employment process; and

216 (ii) accept the reasonable, medically appropriate, part-time work.

217 (d) In a consecutive four-week period when an employee's gross income from the work
218 provided under Subsection (7)(b) exceeds \$500, the employer or insurance carrier may reduce
219 the employee's permanent total disability compensation by 50% of the employee's income in
220 excess of \$500.

221 (e) If a work opportunity is not provided by the employer or its insurance carrier, a
222 permanently totally disabled employee may obtain medically appropriate, part-time work subject
223 to the offset provisions [~~contained in~~] of Subsection (7)(d).

224 (f) (i) The commission shall establish rules regarding the part-time work and offset.

225 (ii) The adjudication of disputes arising under this Subsection (7) is governed by Part 8,

226 Adjudication.

227 (g) The employer or its insurance carrier [~~shall have~~] has the burden of proof to show
228 that medically appropriate part-time work is available.

229 (h) The administrative law judge may:

230 (i) excuse an employee from participation in any [~~job~~] work:

231 (A) that would require the employee to undertake work exceeding the employee's:

232 (I) medical capacity [~~and~~]; or

233 (II) residual functional capacity; or

234 (B) for good cause; or

235 (ii) allow the employer or its insurance carrier to reduce permanent total disability
236 benefits as provided in Subsection (7)(d) when reasonable, medically appropriate, part-time
237 [~~employment has been~~] work is offered, but the employee [~~has failed~~] fails to fully cooperate.

238 (8) When an employee [~~has been~~] is rehabilitated or the employee's rehabilitation is
239 possible but the employee has some loss of bodily function, the award shall be for permanent
240 partial disability.

241 (9) As determined by an administrative law judge, an employee is not entitled to
242 disability compensation, unless the employee fully cooperates with any evaluation or
243 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The
244 administrative law judge shall dismiss without prejudice the claim for benefits of an employee if
245 the administrative law judge finds that the employee fails to fully cooperate, unless the
246 administrative law judge states specific findings on the record justifying dismissal with prejudice.

247 (10) (a) The loss or permanent and complete loss of the use of the following constitutes
248 total and permanent disability that is compensated according to this section:

249 (i) both hands[;];

250 (ii) both arms[;];

251 (iii) both feet[;];

252 (iv) both legs[;];

253 (v) both eyes[;]; or

254 (vi) any combination of two [~~such~~] body members [~~constitutes total and permanent~~
255 ~~disability, to be compensated according to this section~~] described in this Subsection (10)(a).

256 (b) A finding of permanent total disability pursuant to Subsection (10)(a) is final.

257 (11) (a) An insurer or self-insured employer may periodically reexamine a permanent
258 total disability claim, except those based on Subsection (10), for which the insurer or
259 self-insured employer had or has payment responsibility to determine whether the [~~worker~~]
260 employee remains permanently totally disabled.

261 (b) Reexamination may be conducted no more than once every three years after an
262 award is final, unless good cause is shown by the employer or its insurance carrier to allow
263 more frequent reexaminations.

264 (c) The reexamination may include:

265 (i) the review of medical records;

266 (ii) employee submission to one or more reasonable medical evaluations;

267 (iii) employee submission to one or more reasonable rehabilitation evaluations and
268 retraining efforts;

269 (iv) employee disclosure of Federal Income Tax Returns;

270 (v) employee certification of compliance with Section 34A-2-110; and

271 (vi) employee completion of one or more sworn affidavits or questionnaires approved
272 by the division.

273 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with
274 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per
275 diem as well as reasonable expert witness fees incurred by the employee in supporting the
276 employee's claim for permanent total disability benefits at the time of reexamination.

277 (e) If an employee fails to fully cooperate in the reasonable reexamination of a
278 permanent total disability finding, an administrative law judge may order the suspension of the
279 employee's permanent total disability benefits until the employee cooperates with the
280 reexamination.

281 (f) (i) [~~Should~~] If the reexamination of a permanent total disability finding [~~reveal~~]

282 reveals evidence that reasonably raises the issue of an employee's continued entitlement to
283 permanent total disability compensation benefits, an insurer or self-insured employer may
284 petition the Division of Adjudication for a rehearing on that issue. The [~~petition~~] insurer or
285 self-insured employer shall [~~be accompanied by~~] include with the petition, documentation
286 supporting the insurer's or self-insured employer's belief that the employee is no longer
287 permanently totally disabled.

288 (ii) If the petition under Subsection (11)(f)(i) demonstrates good cause, as determined
289 by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a
290 hearing.

291 (iii) Evidence of an employee's participation in medically appropriate, part-time work
292 may not be the sole basis for termination of an employee's permanent total disability entitlement,
293 but the evidence of the employee's participation in medically appropriate, part-time work under
294 Subsection (7) may be considered in the reexamination or hearing with other evidence relating
295 to the employee's status and condition.

296 (g) In accordance with Section 34A-1-309, the administrative law judge may award
297 reasonable [~~attorneys~~] attorney fees to an attorney retained by an employee to represent the
298 employee's interests with respect to reexamination of the permanent total disability finding,
299 except if the employee does not prevail, the [~~attorneys~~] attorney fees shall be set at \$1,000. The
300 [~~attorneys~~] attorney fees awarded shall be paid by the employer or its insurance carrier in
301 addition to the permanent total disability compensation benefits due.

302 (h) During the period of reexamination or adjudication, if the employee fully
303 cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall
304 continue to pay the permanent total disability compensation benefits due the employee.

305 (12) If any provision of this section, or the application of any provision to any person or
306 circumstance, is held invalid, the remainder of this section [~~shall be~~] is given effect without the
307 invalid provision or application.

308 Section 3. Section **34A-2-702** is amended to read:

309 **34A-2-702. Employers' Reinsurance Fund -- Injury causing death -- Burial**

310 **expenses -- Payments to dependents.**

311 (1) (a) There is created an Employers' Reinsurance Fund for the purpose of making
312 [~~payments for~~] a payment for an industrial [accidents] accident or occupational [diseases]
313 disease occurring on or before June 30, 1994. [~~The payments~~] A payment made under this
314 section shall be made in accordance with this chapter or Chapter 3, Utah Occupational Disease
315 Act. The Employers' Reinsurance Fund [~~shall have~~] has no liability for an industrial [accidents]
316 accident or occupational [diseases] disease occurring on or after July 1, 1994.

317 (b) The Employers' Reinsurance Fund [~~shall succeed~~] succeeds to all monies previously
318 held in the "Special Fund," the "Combined Injury Fund," or the "Second Injury Fund."

319 (c) The commissioner shall appoint an administrator of the Employers' Reinsurance
320 Fund.

321 (d) The state treasurer shall be the custodian of the Employers' Reinsurance Fund[~~, and~~
322 ~~the~~].

323 (e) The administrator shall make provisions for and direct [its] a distribution from the
324 Employers' Reinsurance Fund.

325 [~~e~~] (f) Reasonable costs of administering the Employers' Reinsurance Fund or other
326 fees may be paid from the [~~fund~~] Employers' Reinsurance Fund.

327 (2) The state treasurer shall:

328 (a) receive workers' compensation premium assessments from the State Tax
329 Commission; and

330 (b) invest the Employers' Reinsurance Fund to ensure maximum investment return for
331 both long and short term investments in accordance with Section 51-7-12.5.

332 (3) (a) The administrator may employ, retain, or appoint counsel to represent the
333 Employers' Reinsurance Fund in [~~proceedings~~] a proceeding brought to enforce [~~claims~~] a claim
334 against or on behalf of the [~~fund~~] Employers' Reinsurance Fund.

335 (b) If requested by the commission, the attorney general shall aid in representation of
336 the [~~fund~~] Employers' Reinsurance Fund.

337 (4) The liability of the state, its departments, agencies, instrumentalities, elected or

338 appointed officials, or other duly authorized agents, with respect to payment of ~~[any]~~
339 compensation benefits, expenses, fees, medical expenses, or disbursement properly chargeable
340 against the Employers' Reinsurance Fund, is limited to the cash or assets in the Employers'
341 Reinsurance Fund, and they are not otherwise, in any way, liable for the operation, debts, or
342 obligations of the Employers' Reinsurance Fund.

343 (5) (a) If injury causes death within a period of 312 weeks from the date of the
344 accident, the employer or insurance carrier shall pay:

345 (i) the burial expenses of the deceased as provided in Section 34A-2-418~~[-];~~ and
346 ~~[further]~~

347 (ii) benefits in the ~~[amounts]~~ amount and to ~~[the persons in accordance with~~
348 ~~Subsections (5)(a) through (c)]~~ a person provided for in this Subsection (5).

349 ~~[(a)]~~ (b) (i) If there ~~[are]~~ is a wholly dependent ~~[persons]~~ person at the time of the
350 death, the payment by the employer or its insurance carrier shall be:

351 (A) subject to Subsections (5)(b)(i)(B) and (C), 66-2/3% of the decedent's average
352 weekly wage at the time of the injury~~[-but];~~

353 (B) not more than a maximum of 85% of the state average weekly wage at the time of
354 the injury per week; and

355 (C) (I) not less than a minimum of \$45 per week, plus:

356 (Aa) \$5 for a dependent spouse~~[-plus];~~

357 (Bb) \$5 for each dependent minor child under the age of 18 years, up to a maximum of
358 four such dependent minor children~~[-but];~~ and

359 (II) not exceeding:

360 (Aa) the average weekly wage of the employee at the time of the injury~~[-];~~ and ~~[not~~
361 ~~exceeding]~~

362 (Bb) 85% of the state average weekly wage at the time of the injury per week.

363 (ii) Compensation shall continue during dependency for the remainder of the period
364 between the date of the death and the expiration of 312 weeks after the date of the injury.

365 (iii) (A) The payment by the employer or its insurance carrier to a wholly dependent

366 ~~[persons]~~ person during dependency following the expiration of the first 312-week period
367 described in Subsection (5)~~(a)(i)~~ (b)(ii) shall be an amount equal to the weekly benefits paid to
368 ~~[those]~~ the wholly dependent ~~[persons]~~ person during ~~[that]~~ the initial 312-week period,
369 reduced by 50% of ~~[any weekly]~~ the federal Social Security death benefits ~~[paid to those]~~ the
370 wholly dependent ~~[persons:]~~ person:

371 (I) is eligible to receive for a week as of the first day the employee is eligible to receive
372 a Social Security death benefit; and

373 (II) receives.

374 (B) An employer or its insurance carrier may not reduce compensation payable under
375 this Subsection (5)(b)(iii) on or after May 5, 2008, to a wholly dependent person by an amount
376 related to a cost-of-living increase to the Social Security death benefits that the wholly
377 dependent person is first eligible to receive for a week, notwithstanding whether the employee is
378 injured on or before May 4, 2008.

379 (C) For purposes of a wholly dependent person whose compensation payable is reduced
380 under this Subsection (5)(b)(iii) on or before May 4, 2008, the reduction is limited to the
381 amount of the reduction as of May 4, 2008.

382 (iv) The issue of dependency ~~[shall be]~~ is subject to review by an administrative law
383 judge at the end of the initial 312-week period and annually after the initial 312-week period. If
384 in ~~[any]~~ a review it is determined that, under the facts and circumstances existing at that time,
385 the applicant is no longer a wholly dependent person, the applicant:

386 (A) may be considered a partly dependent or nondependent person; and

387 (B) shall be paid ~~[such]~~ the benefits ~~[as]~~ the administrative law judge ~~[may determine]~~
388 determines under Subsection (5)~~(b)~~(d)(iii).

389 ~~[+]~~ (c) (i) For purposes of ~~[any]~~ a dependency determination, a surviving spouse of a
390 deceased employee ~~[shall be]~~ is conclusively presumed to be wholly dependent for a 312-week
391 period from the date of death of the employee. This presumption ~~[shall]~~ does not apply after
392 the initial 312-week period ~~[and, in]~~.

393 (ii) (A) In determining the ~~[then existing]~~ annual income of the surviving spouse after

394 the initial 312-week period, the administrative law judge shall exclude 50% of [~~any~~] a federal
395 Social Security death [~~benefits received by that~~] benefit that the surviving spouse[-:]:

396 (I) is eligible to receive for a week as of the first day the surviving spouse is eligible to
397 receive a Social Security death benefit; and

398 (II) receives.

399 (B) An employer or its insurance carrier may not reduce compensation payable under
400 this Subsection (5)(c)(ii) on or after May 5, 2008, to a surviving spouse by an amount related to
401 a cost-of-living increase to the Social Security death benefits that the surviving spouse is first
402 eligible to receive for a week, notwithstanding whether the employee is injured on or before
403 May 4, 2008.

404 (C) For purposes of a surviving spouse whose compensation payable is reduced under
405 this Subsection (5)(c)(ii) on or before May 4, 2008, the reduction is limited to the amount of the
406 reduction as of May 4, 2008.

407 [~~(b)~~] (d) (i) If there [~~are~~] is a partly dependent [~~persons~~] person at the time of the death,
408 the payment shall be:

409 (A) subject to Subsections (5)(d)(i)(B) and (C), 66-2/3% of the decedent's average
410 weekly wage at the time of the injury[~~, but~~];

411 (B) not more than a maximum of 85% of the state average weekly wage at the time of
412 the injury per week; and

413 (C) not less than a minimum of \$45 per week.

414 (ii) Compensation shall continue during dependency for the remainder of the period
415 between the date of death and the expiration of 312 weeks after the date of injury as the
416 administrative law judge in each case may determine. Compensation may not amount to more
417 than a maximum of \$30,000.

418 (iii) The benefits provided for in this Subsection (5)(d) shall be in keeping with the
419 circumstances and conditions of dependency existing at the date of injury, and [~~any~~] an amount
420 awarded by the administrative law judge under this Subsection (5)(d) shall be consistent with
421 the general provisions of this chapter and Chapter 3, Utah Occupational Disease Act.

422 (iv) ~~(A) [Benefits to persons determined to be]~~ An administrative law judge shall
 423 determine that a person is partly dependent under Subsection (5)(a)(v)(c) [shall be determined
 424 by the administrative law judge] in a manner keeping with the circumstances and conditions of
 425 dependency existing at the time of the dependency review ~~[and].~~

426 (B) The administrative law judge may order that a partly dependent person be paid in an
 427 amount not exceeding the maximum weekly rate that a partly dependent [persons] person would
 428 receive if wholly dependent.

429 ~~(v) [Payments]~~ A payment under this section shall be paid to ~~[such persons]~~ a person
 430 during [their] a person's dependency by the employer or its insurance carrier.

431 ~~[(e) If]~~ (e) (i) Subject to Subsection (5)(e)(ii), if there [are] is a wholly dependent
 432 [persons] person and also a partly dependent [persons] person at the time of death, the
 433 administrative law judge may apportion the benefits as the administrative law judge considers
 434 just and equitable[; provided, that the].

435 (ii) The total benefits awarded to all parties concerned [do] may not exceed the
 436 maximum provided for by law.

437 (6) The Employers' Reinsurance Fund:

438 (a) shall be:

439 (i) used only in accordance with Subsection (1) for:

440 (A) the purpose of making ~~[payments]~~ a payment for an industrial [accidents] accident
 441 or occupational [diseases] disease occurring on or before June 30, 1994, in accordance with this
 442 section and Section 34A-2-703; and

443 (B) payment of:

444 (I) reasonable costs of administering the Employers' Reinsurance Fund; or

445 (II) fees required to be paid by the Employers' Reinsurance Fund;

446 (ii) expended according to processes that can be verified by audit; and

447 (b) may not be used for:

448 (i) administrative costs unrelated to the ~~[fund]~~ Employers' Reinsurance Fund; or

449 (ii) ~~[any]~~ an activity of the commission other than an activity described in Subsection

450 (6)(a).