

**Representative Michael T. Morley** proposes the following substitute bill:

**EMPLOYEE OBLIGATIONS RELATED TO**

**WORKERS' COMPENSATION**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill modifies the Workers' Compensation Act to address an employee's duties related to workers' compensation.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ addresses reductions in disability compensation under certain circumstances;
- ▶ provides for adjudication;
- ▶ addresses application of certain provisions to a local governmental entity or state

institution of higher education;

- ▶ addresses the scope of the provisions;
- ▶ provides for rulemaking;
- ▶ addresses incarceration or unlawful employment related to permanent total

disabilities; and

- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 This bill takes effect on July 1, 2008.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **34A-2-410**, as last amended by Laws of Utah 2005, Chapter 81

31 **34A-2-413**, as last amended by Laws of Utah 2006, Chapter 295

32 ENACTS:

33 **34A-2-410.5**, Utah Code Annotated 1953



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

36 Section 1. Section **34A-2-410** is amended to read:

37 **34A-2-410. Temporary disability -- Amount of payments -- State average weekly**  
38 **wage defined.**

39 (1) (a) ~~[It]~~ Subject to Subsections (1)(b) and (5), in case of temporary disability, so  
40 long as the disability is total, the employee shall receive 66-2/3% of that employee's average  
41 weekly wages at the time of the injury but:

42 (i) not more than a maximum of 100% of the state average weekly wage at the time of  
43 the injury per week; and

44 (ii) (A) subject to Subsections (1)(a)(ii)(B) and (C), not less than a minimum of \$45  
45 per week plus;

46 (I) \$5 for a dependent spouse; and

47 (II) \$5 for each dependent child under the age of 18 years, up to a maximum of four  
48 dependent children[;];

49 (B) not to exceed the average weekly wage of the employee at the time of the injury[;  
50 but]; and

51 (C) not to exceed 100% of the state average weekly wage at the time of the injury per  
52 week.

53 (b) In no case shall the compensation benefits exceed 312 weeks at the rate of 100% of  
54 the state average weekly wage at the time of the injury over a period of 12 years from the date  
55 of the injury.

56 (2) ~~[In the event]~~ If a light duty medical release is obtained ~~[prior to]~~ before the

57 employee [~~reaching~~] reaches a fixed state of recovery[;] and [~~when~~] no light duty employment  
 58 is available to the employee from the employer, temporary disability benefits shall continue to  
 59 be paid.

60 (3) The "state average weekly wage" as referred to in this chapter and Chapter 3, Utah  
 61 Occupational Disease Act, shall be determined by the commission as follows:

62 (a) On or before June 1 of each year, the total wages reported on contribution reports to  
 63 the Unemployment Insurance Division for the preceding calendar year shall be divided by the  
 64 average monthly number of insured workers determined by dividing the total insured workers  
 65 reported for the preceding year by 12.

66 (b) The average annual wage obtained under Subsection (3)(a) shall be divided by 52.

67 (c) The average weekly wage determined under Subsection (3)(b) is rounded to the  
 68 nearest dollar.

69 (4) The state average weekly wage determined under Subsection (3) shall be used as  
 70 the basis for computing the maximum compensation rate for:

71 (a) injuries or disabilities arising from occupational disease that occurred during the  
 72 [~~twelve-month~~] 12-month period commencing July 1 following the June 1 determination; and

73 (b) any death resulting from the injuries or disabilities arising from occupational  
 74 disease.

75 (5) The commission may reduce or terminate temporary disability compensation in  
 76 accordance with Section 34-2-410.5.

77 Section 2. Section **34A-2-410.5** is enacted to read:

78 **34A-2-410.5. Employee cooperation with reemployment.**

79 (1) As used in this section:

80 (a) "Controlled substance" is as defined in Section 58-37-2.

81 (b) "Correctional facility" means:

82 (i) a correctional facility as defined in Section 76-8-311.3; or

83 (ii) a facility operated by or contracting with the federal government to house a  
 84 criminal offender in either a secure or nonsecure setting.

85 (c) "Disability claim" means a claim for compensation for:

86 (i) a temporary total disability benefit; or

87 (ii) a temporary partial disability benefit.

88 (d) "Local governmental entity" is as defined in Section 34-41-101.

89 (e) "Reemployment" means employment that:

90 (i) is after an accident or occupational disease that is the basis for a disability claim;

91 and

92 (ii) in a manner consistent with Subsection (2)(b), offers to an employee an opportunity  
93 for earnings, considering the employee's:

94 (A) education;

95 (B) experience; and

96 (C) physical and mental impairment or condition.

97 (f) "State institution of higher education" means an institution listed in Section  
98 53B-3-102.

99 (g) "Valid prescription" is a prescription, as defined in Section 58-37-2, that is:

100 (i) prescribed for a controlled substance for use by the employee for whom it is  
101 prescribed; and

102 (ii) not altered or forged.

103 (2) In accordance with this section, the commission may reduce or terminate an  
104 employee's disability compensation for a disability claim for good cause shown by the  
105 employer including if:

106 (a) the employer terminates the employee from the reemployment and the termination  
107 is:

108 (i) reasonable;

109 (ii) for cause; and

110 (iii) as a result, in whole or in part, of:

111 (A) criminal conduct;

112 (B) violent conduct; or

113 (C) a violation of a reasonable, written workplace health, safety, licensure, or  
114 nondiscrimination rule that is applied in a manner that is reasonable and nondiscriminatory;

115 (b) the employee is incarcerated in a correctional facility for a period of time that  
116 would result in the termination of the employee's reemployment in accordance with a  
117 reasonable, written workplace rule that is applied in a manner that is reasonable and  
118 nondiscriminatory; or

- 119 (c) subject to Subsection (6), the employee is terminated from the reemployment:  
120 (i) (A) for use of a controlled substance that the employee did not obtain under a valid  
121 prescription;  
122 (B) for intentional abuse of a controlled substance that the employee obtained under a  
123 valid prescription, if the employee uses the controlled substance intentionally:  
124 (I) in excess of a prescribed therapeutic amount; or  
125 (II) in an otherwise abusive manner; or  
126 (C) for the use of alcohol that results in intoxication from alcohol with a blood or  
127 breath alcohol concentration of .08 grams or greater; and  
128 (ii) in accordance with a reasonable, written workplace rule that is applied in a manner  
129 that is reasonable and nondiscriminatory.  
130 (3) Notwithstanding the other provisions of this section, the employee described in  
131 Subsection (2) is eligible for medical benefits to the extent otherwise allowed under this title.  
132 (4) (a) An employer or the employer's insurance carrier may file an application for  
133 hearing with the Division of Adjudication to request that an employee's disability  
134 compensation for a disability claim be reduced or terminated under this section.  
135 (b) An action under this Subsection (4) is barred if an application for hearing is not  
136 filed within one year from the day on which the employer terminates the employee from  
137 reemployment as described in Subsection (2).  
138 (c) An employer or the employer's insurance carrier shall notify the employee that the  
139 employer or employer's insurance carrier has filed a request for a hearing under this section  
140 within three business days of the day on which the filing is made.  
141 (5) (a) The commission may reduce or terminate the disability compensation of an  
142 employee for a disability claim if after a hearing requested under Subsection (4), the  
143 commission determines that the conditions of Subsection (2) are met.  
144 (b) The commission shall issue an order as to whether or not an employee's disability  
145 compensation is reduced or terminated under this section by no later than 45 days from the day  
146 on which an application for a hearing is filed.  
147 (c) A reduction or termination of disability compensation under this Subsection (5)  
148 takes effect on the day determined by the commission.  
149 (d) If the disability compensation is ordered terminated or reduced, the employer or

150 employer's insurance carrier shall treat a resulting overpayment as an offset against the  
151 employer's or employer's insurance carrier's future obligations to pay disability compensation to  
152 the employee.

153 (6) (a) For purposes of Subsection (2)(c), the commission may consider a chemical test  
154 that conforms to scientifically accepted analytical methods and procedures and includes  
155 verification or confirmation of any positive test result by gas chromatography, gas  
156 chromatography-mass spectroscopy, or other comparably reliable analytical method showing  
157 that the employee has:

158 (i) in the employee's system during employment:

159 (A) any amount of a controlled substance or its metabolites if the employee did not  
160 obtain the controlled substance under a valid prescription; or

161 (B) a controlled substance the employee obtained under a valid prescription or the  
162 metabolites of the controlled substance if the amount in the employee's system is consistent  
163 with the employee using the controlled substance intentionally:

164 (I) in excess of prescribed therapeutic amounts; or

165 (II) in an otherwise abusive manner; or

166 (ii) a blood or breath alcohol concentration of .08 grams or greater during employment.

167 (b) A local governmental entity or state institution of higher education shall comply  
168 with Title 34, Chapter 41, Local Governmental Entity Drug-Free Workplace Policies, in  
169 engaging in a test for a controlled substance that is the basis of a presumption under this  
170 section.

171 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
172 commission may make rules:

173 (a) describing factors to be considered under Subsection (2); and

174 (b) related to the procedures for a request for a hearing under this section.

175 (8) The adjudication of a dispute arising under this section is governed by Part 8,  
176 Adjudication.

177 (9) An issue related to an employee's cooperation with regard to a claim for  
178 compensation for permanent total disability benefits is governed by Section 34A-2-413.

179 Section 3. Section **34A-2-413** is amended to read:

180 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

181 (1) (a) In [~~cases~~] the case of a permanent total disability resulting from an industrial  
182 accident or occupational disease, the employee shall receive compensation as outlined in this  
183 section.

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

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

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

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

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

194 (i) the employee is not gainfully employed;

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

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

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

203 (A) age;

204 (B) education;

205 (C) past work experience;

206 (D) medical capacity; and

207 (E) residual functional capacity.

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

210 (i) may be presented to the commission;

211 (ii) is not binding; and

212 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah  
213 Occupational Disease Act.

214 (e) In determining under Subsections (1)(b) and (c) whether an employee cannot  
215 perform other work reasonably available, the following may not be considered:

216 (i) whether the employee is incarcerated in a facility operated by or contracting with a  
217 federal, state, county, or municipal government to house a criminal offender in either a secure  
218 or nonsecure setting; or

219 (ii) whether the employee is not legally eligible to be employed because of a reason  
220 unrelated to the impairment or combination of impairments.

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

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

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

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

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

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

232 (A) the maximum established in Subsection (2)(a) [~~nor exceeding~~]; or

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

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

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

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

242 (b) The employer or its insurance carrier may not be required to pay compensation for

243 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410  
244 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation  
245 payable over the initial 312 weeks at the applicable permanent total disability compensation  
246 rate under Subsection (2).

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

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

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

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

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

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

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

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

270 (c) ~~[Any overpayment of this compensation shall be recouped by the]~~ The employer or  
271 its insurance carrier may recoup the overpayment of compensation described in Subsection (4)  
272 by reasonably offsetting the overpayment against future liability paid before or after the initial  
273 312 weeks.

274 (5) Notwithstanding the minimum rate established in Subsection (2), ~~the~~  
275 ~~compensation payable by the~~ an employer, its insurance carrier, or the Employers' Reinsurance  
276 Fund, after an employee ~~has received~~ receives compensation from the employer or the  
277 employer's insurance carrier for any combination of disabilities amounting to 312 weeks of  
278 compensation at the applicable total disability compensation rate, shall ~~be reduced,~~ reduce the  
279 compensation payable:

280 (a) to the extent allowable by law~~[-];~~ and

281 (b) by the dollar amount of 50% of the Social Security retirement benefits received by  
282 the employee during the same period.

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

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

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

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

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

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

293 (A) consider evidence regarding rehabilitation; and

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

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

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

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

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

303 (d) The employer or its insurance carrier shall be given credit for any disability  
304 payments made under Subsection (6)(b) against its ultimate disability compensation liability

305 under this chapter or Chapter 3, Utah Occupational Disease Act.

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

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

310 (A) retraining[;];

311 (B) education[;];

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

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

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

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

318 (iii) The employer or its insurance carrier shall diligently pursue the reemployment  
319 plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan  
320 [~~shall be~~] is cause for the administrative law judge on the administrative law judge's own  
321 motion to make a final decision of permanent total disability.

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

325 (g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as  
326 prepared by a qualified rehabilitation provider and presented under Subsection (6)(e), an  
327 employee could immediately or without unreasonable delay return to work but for the  
328 following, an administrative law judge shall order that the employee be denied the payment of  
329 weekly permanent total disability compensation benefits:

330 (i) incarceration in a facility operated by or contracting with a federal, state, county, or  
331 municipal government to house a criminal offender in either a secure or nonsecure setting; or

332 (ii) not being legally eligible to be employed because of a reason unrelated to the  
333 impairment or combination of impairments.

334 (7) (a) The period of benefits commences on the date the employee became  
335 permanently totally disabled, as determined by a final order of the commission based on the

336 facts and evidence, and ends:

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

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

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

344 (c) An employee shall:

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

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

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

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

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

355 (ii) The adjudication of disputes arising under this Subsection (7) is governed by Part  
356 8, Adjudication.

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

359 (h) The administrative law judge may:

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

361 (A) that would require the employee to undertake work exceeding the employee's;

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

363 (II) residual functional capacity; or

364 (B) for good cause; or

365 (ii) allow the employer or its insurance carrier to reduce permanent total disability  
366 benefits as provided in Subsection (7)(d) when reasonable, medically appropriate, part-time

367 [~~employment has been~~] work is offered, but the employee [~~has failed~~] fails to fully cooperate.

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

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

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

380 (i) both hands[;];

381 (ii) both arms[;];

382 (iii) both feet[;];

383 (iv) both legs[;];

384 (v) both eyes[;]; or

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

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

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

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

395 (c) The reexamination may include:

396 (i) the review of medical records;

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

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

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

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

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

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

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

412 (f) (i) [~~Should~~] If the reexamination of a permanent total disability finding [~~reveal~~]  
413 reveals evidence that reasonably raises the issue of an employee's continued entitlement to  
414 permanent total disability compensation benefits, an insurer or self-insured employer may  
415 petition the Division of Adjudication for a rehearing on that issue. The [~~petition~~] insurer or  
416 self-insured employer shall [~~be accompanied by~~] include with the petition, documentation  
417 supporting the insurer's or self-insured employer's belief that the employee is no longer  
418 permanently totally disabled.

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

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

427 (g) In accordance with Section 34A-1-309, the administrative law judge may award  
428 reasonable [~~attorneys~~] attorney fees to an attorney retained by an employee to represent the

429 employee's interests with respect to reexamination of the permanent total disability finding,  
430 except if the employee does not prevail, the [~~attorneys~~] attorney fees shall be set at \$1,000.  
431 The [~~attorneys~~] attorney fees awarded shall be paid by the employer or its insurance carrier in  
432 addition to the permanent total disability compensation benefits due.

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

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

439 Section 4. **Effective date.**

440 This bill takes effect on July 1, 2008.