

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

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John W. Hickman**

House Sponsor: Wayne A. Harper

---

---

**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ removes the offset against permanent total disability compensation for cost-of-living increases in Social Security retirement benefits received by an employee with a permanent total disability;
- ▶ removes the offset against death benefits for cost-of-living increases in Social Security death benefits;
- ▶ clarifies its application to persons whose compensation was reduced on or before May 4, 2008; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**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



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

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

33 **34A-2-403. Dependents -- Presumption.**

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

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

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

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

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

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

47 (ii) the spouse of the deceased employee;

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

49 (iv) brother or sister of the deceased employee.

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

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

52 (b) "child" includes:

53 (i) a posthumous child; or

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

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

56 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

57 (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  
91 entitlement, compensation [~~shall be~~] is 66-2/3% of the employee's average weekly wage at the  
92 time of the 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) [~~nor 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  
110 of 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  
115 rate 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  
118 overpayment:

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

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

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

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

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

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

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

139 (c) [~~Any overpayment of this compensation shall be recouped by the~~] The employer or  
140 its insurance carrier may recoup the overpayment of compensation described in Subsection (4)  
141 by reasonably offsetting the overpayment against future liability paid before or after the initial  
142 312 weeks.

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

149 (i) to the extent allowable by law[;];

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

152 eligible to receive a Social Security retirement benefit; and

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

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

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

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

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

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

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

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

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

173 (A) consider evidence regarding rehabilitation; and

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

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

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

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

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

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

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

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

190 (A) retraining[;];

191 (B) education[;];

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

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

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

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

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

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

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

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

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

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

214 disability benefits.

215 (c) An employee shall:

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

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

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

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

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

226 (ii) The adjudication of disputes arising under this Subsection (7) is governed by Part  
227 8, Adjudication.

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

230 (h) The administrative law judge may:

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

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

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

234 (II) residual functional capacity; or

235 (B) for good cause; or

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

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

242 (9) As determined by an administrative law judge, an employee is not entitled to  
243 disability compensation, unless the employee fully cooperates with any evaluation or  
244 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The

245 administrative law judge shall dismiss without prejudice the claim for benefits of an employee  
246 if the administrative law judge finds that the employee fails to fully cooperate, unless the  
247 administrative law judge states specific findings on the record justifying dismissal with  
248 prejudice.

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

251 (i) both hands[;];

252 (ii) both arms[;];

253 (iii) both feet[;];

254 (iv) both legs[;];

255 (v) both eyes[;]; or

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

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

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

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

266 (c) The reexamination may include:

267 (i) the review of medical records;

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

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

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

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

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

275 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with

276 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per  
277 diem as well as reasonable expert witness fees incurred by the employee in supporting the  
278 employee's claim for permanent total disability benefits at the time of reexamination.

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

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

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

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

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

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

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

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

311 **34A-2-702. Employers' Reinsurance Fund -- Injury causing death -- Burial**  
312 **expenses -- Payments to dependents.**

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

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

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

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

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

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

330 (2) The state treasurer shall:

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

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

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

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

340 (4) The liability of the state, its departments, agencies, instrumentalities, elected or  
341 appointed officials, or other duly authorized agents, with respect to payment of ~~[any]~~  
342 compensation benefits, expenses, fees, medical expenses, or disbursement properly chargeable  
343 against the Employers' Reinsurance Fund, is limited to the cash or assets in the Employers'  
344 Reinsurance Fund, and they are not otherwise, in any way, liable for the operation, debts, or  
345 obligations of the Employers' Reinsurance Fund.

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

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

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

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

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

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

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

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

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

362 (II) not exceeding:

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

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

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

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

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

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

376 (II) receives.

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

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

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

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

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

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

396 (ii) (A) In determining the ~~[then-existing]~~ annual income of the surviving spouse after  
 397 the initial 312-week period, the administrative law judge shall exclude 50% of ~~[any]~~ a federal  
 398 Social Security death ~~[benefits received by that]~~ benefit that the surviving spouse~~[-:]~~:

399 (I) is eligible to receive for a week as of the first day the surviving spouse is eligible to

400 receive a Social Security death benefit; and

401 (II) receives.

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

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

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

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

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

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

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

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

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

429 (B) The administrative law judge may order that a partly dependent person be paid in  
430 an amount not exceeding the maximum weekly rate that a partly dependent ~~[persons]~~ person

431 would receive if wholly dependent.

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

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

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

440 (6) The Employers' Reinsurance Fund:

441 (a) shall be:

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

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

446 (B) payment of:

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

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

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

450 (b) may not be used for:

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

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

453 (6)(a).

**Legislative Review Note**  
**as of 12-20-07 6:49 AM**

**Office of Legislative Research and General Counsel**

---

---

**S.B. 108 - Offset of Workers' Compensation and Social Security**

**Fiscal Note**

2008 General Session

State of Utah

---

---

**State Impact**

Enactment of this bill will require additional funds in FY 2009 from the Employers' Reinsurance Fund of \$124,000 and from the Uninsured Employers' Fund of \$2,400. In FY 2010 it will require additional funds from the Employers' Reinsurance Fund of \$222,600 and from the Uninsured Employers' Fund of \$4,800.

---

**Individual, Business and/or Local Impact**

Businesses and local governments may be impacted due to potential increases in workers' compensation costs due to individuals' ability to maintain their full disability payments while receiving Social Security payments with cost of living increases. Individuals may benefit due to the potential ability to continue to receive their full disability payments without a decrease in benefit for people who also receive Social Security benefits.