

1 **SENATE FLOOR VERSION**

2 April 4, 2023

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1738

6 By: Townley of the House

7 and

8 Alvord of the Senate

9 **An Act relating to workers' compensation; amending**
10 **85A O.S. 2021, Section 47, which relates to death**
11 **benefits for certain survivors; increasing death**
12 **benefit amount; and providing an effective date.**

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 85A O.S. 2021, Section 47, is
15 amended to read as follows:

16 Section 47. A. Time of death. If death does not result within
17 one (1) year from the date of the accident or within the first three
18 (3) years of the period for compensation payments fixed by the
19 compensation judgment, a rebuttable presumption shall arise that the
20 death did not result from the injury.

21 B. Common law spouse. A common law spouse shall not be
22 entitled to benefits under this section unless he or she obtains an
23 order from the Workers' Compensation Commission ruling that a common
24 law marriage existed between the decedent and the surviving spouse.
The ruling by the Commission shall be exclusive in regard to

1 benefits under this section regardless of any district court
2 decision regarding the probate of the decedent's estate.

3 C. Beneficiaries - Amounts. If an injury or occupational
4 illness causes death, weekly income benefits shall be payable as
5 follows:

6 1. If there is a surviving spouse, a lump-sum payment of One
7 Hundred Thousand Dollars (\$100,000.00) and seventy percent (70%) of
8 the lesser of the deceased employee's average weekly wage and the
9 state average weekly wage. In addition to the benefits theretofore
10 paid or due, two (2) years' indemnity benefit in one lump sum shall
11 be payable to a surviving spouse upon remarriage;

12 2. If there is a surviving spouse and a one (1) child ~~or~~
13 ~~children, the child shall receive~~ a lump-sum payment of Twenty-five
14 Thousand Dollars (\$25,000.00) and fifteen percent (15%) of the
15 lesser of the deceased employee's average weekly wage and the state
16 average weekly wage ~~to each child.~~ If there is more than one (1)
17 child but less than five (5) children, each child shall receive a
18 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and a
19 pro rata share of thirty percent (30%) of the deceased employee's
20 average weekly wage. If there are five (5) or more ~~than two~~
21 children, each child shall receive a pro rata share of ~~Fifty~~
22 ~~Thousand Dollars (\$50,000.00)~~ One Hundred Thousand Dollars
23 (\$100,000.00) and a pro rata share of thirty percent (30%) of the
24 deceased employee's average weekly wage;

1 3. If there is a child or children and no surviving spouse, a
2 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
3 fifty percent (50%) of the lesser of the deceased employee's average
4 weekly wage and the state average weekly wage to each child. If
5 there are more than two children, each child shall receive a pro
6 rata share of one hundred percent (100%) of the lesser of the
7 deceased employee's average weekly wage and the state average weekly
8 wage. With respect to the lump-sum payment, if there are more than
9 six children, each child shall receive a pro rata share of One
10 Hundred Fifty Thousand Dollars (\$150,000.00);

11 4. If there is no surviving spouse or children, each legal
12 guardian, if financially dependent on the employee at the time of
13 death, shall receive twenty-five percent (25%) of the lesser of the
14 deceased employee's average weekly wage and the state average weekly
15 wage until the earlier of death, becoming eligible for Social
16 Security, obtaining full-time employment, or five (5) years from the
17 date benefits under this section begin; and

18 5. The employer shall pay the actual funeral expenses, not
19 exceeding the sum of Ten Thousand Dollars (\$10,000.00).

20 D. The weekly income benefits payable to the surviving spouse
21 under this section shall continue while the surviving spouse remains
22 unmarried. In no event shall this spousal weekly income benefit be
23 diminished by the award to other beneficiaries. The weekly income
24 benefits payable to any child under this section shall terminate on

1 the earlier of death, marriage, or reaching the age of eighteen
2 (18). However, if the child turns eighteen (18) and is:

3 1. Enrolled as a full-time student in high school or is being
4 schooled by other means pursuant to the Oklahoma Constitution;

5 2. Enrolled as a full-time student in any accredited
6 institution of higher education or vocational or technology
7 education; or

8 3. Physically or mentally incapable of self-support,
9 then he or she may continue to receive weekly income benefits under
10 this section until the earlier of reaching the age of twenty-three
11 (23) or, with respect to paragraphs 1 and 2 of this subsection, no
12 longer being enrolled as a student, and with respect to paragraph 3
13 of this subsection, becoming capable of self-support.

14 E. If any member of the class of beneficiaries who receive a
15 pro rata share of weekly income benefits becomes ineligible to
16 continue to receive benefits, the remaining members of the class
17 shall receive adjusted weekly income benefits equal to the new class
18 size.

19 F. To receive benefits under this section, a beneficiary or his
20 or her guardian, if applicable, shall file a proof of loss form with
21 the Commission. All questions of dependency shall be determined as
22 of the time of the injury. The employer shall initiate payment of
23 benefits within fifteen (15) days of the Commission's determination
24 of the proper beneficiaries. The Commission shall appoint a

1 guardian ad litem to represent known and unknown minor children and
2 the guardian ad litem shall be paid a reasonable fee for his or her
3 services.

4 SECTION 2. This act shall become effective November 1, 2023.

5 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
6 April 4, 2023 - DO PASS AS AMENDED

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