

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**S. B. No. 149**

**Senator Schiavoni**

**Cosponsors: Senators Cafaro, Yuko, Brown, Skindell**

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**A BILL**

To amend sections 4123.57 and 4123.58 of the  
Revised Code to make an individual who has lost  
the use of a body part due to a brain injury or  
spinal cord injury eligible for partial  
disability and permanent total disability  
compensation under the Workers' Compensation  
Law.

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**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 4123.57 and 4123.58 of the  
Revised Code be amended to read as follows:

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**Sec. 4123.57.** Partial disability compensation shall be  
paid as follows.

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Except as provided in this section, not earlier than  
twenty-six weeks after the date of termination of the latest  
period of payments under section 4123.56 of the Revised Code, or  
not earlier than twenty-six weeks after the date of the injury  
or contraction of an occupational disease in the absence of  
payments under section 4123.56 of the Revised Code, the employee  
may file an application with the bureau of workers' compensation

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for the determination of the percentage of the employee's 19  
permanent partial disability resulting from an injury or 20  
occupational disease. 21

Whenever the application is filed, the bureau shall send a 22  
copy of the application to the employee's employer or the 23  
employer's representative and shall schedule the employee for a 24  
medical examination by the bureau medical section. The bureau 25  
shall send a copy of the report of the medical examination to 26  
the employee, the employer, and their representatives. 27  
Thereafter, the administrator of workers' compensation shall 28  
review the employee's claim file and make a tentative order as 29  
the evidence before the administrator at the time of the making 30  
of the order warrants. If the administrator determines that 31  
there is a conflict of evidence, the administrator shall send 32  
the application, along with the claimant's file, to the district 33  
hearing officer who shall set the application for a hearing. 34

The administrator shall notify the employee, the employer, 35  
and their representatives, in writing, of the tentative order 36  
and of the parties' right to request a hearing. Unless the 37  
employee, the employer, or their representative notifies the 38  
administrator, in writing, of an objection to the tentative 39  
order within twenty days after receipt of the notice thereof, 40  
the tentative order shall go into effect and the employee shall 41  
receive the compensation provided in the order. In no event 42  
shall there be a reconsideration of a tentative order issued 43  
under this division. 44

If the employee, the employer, or their representatives 45  
timely notify the administrator of an objection to the tentative 46  
order, the matter shall be referred to a district hearing 47  
officer who shall set the application for hearing with written 48

notices to all interested persons. Upon referral to a district hearing officer, the employer may obtain a medical examination of the employee, pursuant to rules of the industrial commission.

(A) The district hearing officer, upon the application, shall determine the percentage of the employee's permanent disability, except as is subject to division (B) of this section, based upon that condition of the employee resulting from the injury or occupational disease and causing permanent impairment evidenced by medical or clinical findings reasonably demonstrable. The employee shall receive sixty-six and two-thirds per cent of the employee's average weekly wage, but not more than a maximum of thirty-three and one-third per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, per week regardless of the average weekly wage, for the number of weeks which equals the percentage of two hundred weeks. Except on application for reconsideration, review, or modification, which is filed within ten days after the date of receipt of the decision of the district hearing officer, in no instance shall the former award be modified unless it is found from medical or clinical findings that the condition of the claimant resulting from the injury has so progressed as to have increased the percentage of permanent partial disability. A staff hearing officer shall hear an application for reconsideration filed and the staff hearing officer's decision is final. An employee may file an application for a subsequent determination of the percentage of the employee's permanent disability. If such an application is filed, the bureau shall send a copy of the application to the employer or the employer's representative. No sooner than sixty days from the date of the mailing of the application to the employer or the employer's representative, the administrator

shall review the application. The administrator may require a 80  
medical examination or medical review of the employee. The 81  
administrator shall issue a tentative order based upon the 82  
evidence before the administrator, provided that if the 83  
administrator requires a medical examination or medical review, 84  
the administrator shall not issue the tentative order until the 85  
completion of the examination or review. 86

The employer may obtain a medical examination of the 87  
employee and may submit medical evidence at any stage of the 88  
process up to a hearing before the district hearing officer, 89  
pursuant to rules of the commission. The administrator shall 90  
notify the employee, the employer, and their representatives, in 91  
writing, of the nature and amount of any tentative order issued 92  
on an application requesting a subsequent determination of the 93  
percentage of an employee's permanent disability. An employee, 94  
employer, or their representatives may object to the tentative 95  
order within twenty days after the receipt of the notice 96  
thereof. If no timely objection is made, the tentative order 97  
shall go into effect. In no event shall there be a 98  
reconsideration of a tentative order issued under this division. 99  
If an objection is timely made, the application for a subsequent 100  
determination shall be referred to a district hearing officer 101  
who shall set the application for a hearing with written notice 102  
to all interested persons. No application for subsequent 103  
percentage determinations on the same claim for injury or 104  
occupational disease shall be accepted for review by the 105  
district hearing officer unless supported by substantial 106  
evidence of new and changed circumstances developing since the 107  
time of the hearing on the original or last determination. 108

No award shall be made under this division based upon a 109  
percentage of disability which, when taken with all other 110

percentages of permanent disability, exceeds one hundred per 111  
cent. If the percentage of the permanent disability of the 112  
employee equals or exceeds ninety per cent, compensation for 113  
permanent partial disability shall be paid for two hundred 114  
weeks. 115

Compensation payable under this division accrues and is 116  
payable to the employee from the date of last payment of 117  
compensation, or, in cases where no previous compensation has 118  
been paid, from the date of the injury or the date of the 119  
diagnosis of the occupational disease. 120

When an award under this division has been made prior to 121  
the death of an employee, all unpaid installments accrued or to 122  
accrue under the provisions of the award are payable to the 123  
surviving spouse, or if there is no surviving spouse, to the 124  
dependent children of the employee, and if there are no children 125  
surviving, then to other dependents as the administrator 126  
determines. 127

(B) For purposes of this division, "payable per week" 128  
means the seven-consecutive-day period in which compensation is 129  
paid in installments according to the schedule associated with 130  
the applicable injury as set forth in this division. 131

Compensation paid in weekly installments according to the 132  
schedule described in this division may only be commuted to one 133  
or more lump sum payments pursuant to the procedure set forth in 134  
section 4123.64 of the Revised Code. 135

In cases included in the following schedule the 136  
compensation payable per week to the employee is the statewide 137  
average weekly wage as defined in division (C) of section 138  
4123.62 of the Revised Code per week and shall be paid in 139

installments according to the following schedule:	140
For the loss of a first finger, commonly known as a thumb,	141
sixty weeks.	142
For the loss of a second finger, commonly called index	143
finger, thirty-five weeks.	144
For the loss of a third finger, thirty weeks.	145
For the loss of a fourth finger, twenty weeks.	146
For the loss of a fifth finger, commonly known as the	147
little finger, fifteen weeks.	148
The loss of a second, or distal, phalange of the thumb is	149
considered equal to the loss of one half of such thumb; the loss	150
of more than one half of such thumb is considered equal to the	151
loss of the whole thumb.	152
The loss of the third, or distal, phalange of any finger	153
is considered equal to the loss of one-third of the finger.	154
The loss of the middle, or second, phalange of any finger	155
is considered equal to the loss of two-thirds of the finger.	156
The loss of more than the middle and distal phalanges of	157
any finger is considered equal to the loss of the whole finger.	158
In no case shall the amount received for more than one finger	159
exceed the amount provided in this schedule for the loss of a	160
hand.	161
For the loss of the metacarpal bone (bones of the palm)	162
for the corresponding thumb, or fingers, add ten weeks to the	163
number of weeks under this division.	164
For ankylosis (total stiffness of) or contractures (due to	165
scars or injuries) which makes any of the fingers, thumbs, or	166

parts of either useless, the same number of weeks apply to the 167  
members or parts thereof as given for the loss thereof. 168

If the claimant has suffered the loss of two or more 169  
fingers by amputation or ankylosis and the nature of the 170  
claimant's employment in the course of which the claimant was 171  
working at the time of the injury or occupational disease is 172  
such that the handicap or disability resulting from the loss of 173  
fingers, or loss of use of fingers, exceeds the normal handicap 174  
or disability resulting from the loss of fingers, or loss of use 175  
of fingers, the administrator may take that fact into 176  
consideration and increase the award of compensation 177  
accordingly, but the award made shall not exceed the amount of 178  
compensation for loss of a hand. 179

For the loss of a hand, one hundred seventy-five weeks. 180

For the loss of an arm, two hundred twenty-five weeks. 181

For the loss of a great toe, thirty weeks. 182

For the loss of one of the toes other than the great toe, 183  
ten weeks. 184

The loss of more than two-thirds of any toe is considered 185  
equal to the loss of the whole toe. 186

The loss of less than two-thirds of any toe is considered 187  
no loss, except as to the great toe; the loss of the great toe 188  
up to the interphalangeal joint is co-equal to the loss of one- 189  
half of the great toe; the loss of the great toe beyond the 190  
interphalangeal joint is considered equal to the loss of the 191  
whole great toe. 192

For the loss of a foot, one hundred fifty weeks. 193

For the loss of a leg, two hundred weeks. 194

For the loss of the sight of an eye, one hundred twenty- 195  
five weeks. 196

For the permanent partial loss of sight of an eye, the 197  
portion of one hundred twenty-five weeks as the administrator in 198  
each case determines, based upon the percentage of vision 199  
actually lost as a result of the injury or occupational disease, 200  
but, in no case shall an award of compensation be made for less 201  
than twenty-five per cent loss of uncorrected vision. "Loss of 202  
uncorrected vision" means the percentage of vision actually lost 203  
as the result of the injury or occupational disease. 204

For the permanent and total loss of hearing of one ear, 205  
twenty-five weeks; but in no case shall an award of compensation 206  
be made for less than permanent and total loss of hearing of one 207  
ear. 208

For the permanent and total loss of hearing, one hundred 209  
twenty-five weeks; but, except pursuant to the next preceding 210  
paragraph, in no case shall an award of compensation be made for 211  
less than permanent and total loss of hearing. 212

In case an injury or occupational disease results in 213  
serious facial or head disfigurement which either impairs or may 214  
in the future impair the opportunities to secure or retain 215  
employment, the administrator shall make an award of 216  
compensation as it deems proper and equitable, in view of the 217  
nature of the disfigurement, and not to exceed the sum of ten 218  
thousand dollars. For the purpose of making the award, it is not 219  
material whether the employee is gainfully employed in any 220  
occupation or trade at the time of the administrator's 221  
determination. 222

For purposes of this section, the loss of use of a body 223



part specified in division (B) of this section includes when the 224  
loss is caused by loss of function of or injury to the brain or 225  
spinal cord. 226

When an award under this division has been made prior to 227  
the death of an employee all unpaid installments accrued or to 228  
accrue under the provisions of the award shall be payable to the 229  
surviving spouse, or if there is no surviving spouse, to the 230  
dependent children of the employee and if there are no such 231  
children, then to such dependents as the administrator 232  
determines. 233

When an employee has sustained the loss of a member by 234  
severance, but no award has been made on account thereof prior 235  
to the employee's death, the administrator shall make an award 236  
in accordance with this division for the loss which shall be 237  
payable to the surviving spouse, or if there is no surviving 238  
spouse, to the dependent children of the employee and if there 239  
are no such children, then to such dependents as the 240  
administrator determines. 241

(C) Compensation for partial impairment under divisions 242  
(A) and (B) of this section is in addition to the compensation 243  
paid the employee pursuant to section 4123.56 of the Revised 244  
Code. A claimant may receive compensation under divisions (A) 245  
and (B) of this section. 246

In all cases arising under division (B) of this section, 247  
if it is determined by any one of the following: (1) the amputee 248  
clinic at University hospital, Ohio state university; (2) the 249  
opportunities for Ohioans with disabilities agency; (3) an 250  
amputee clinic or prescribing physician approved by the 251  
administrator or the administrator's designee, that an injured 252  
or disabled employee is in need of an artificial appliance, or 253

in need of a repair thereof, regardless of whether the appliance 254  
or its repair will be serviceable in the vocational 255  
rehabilitation of the injured employee, and regardless of 256  
whether the employee has returned to or can ever again return to 257  
any gainful employment, the bureau shall pay the cost of the 258  
artificial appliance or its repair out of the surplus created by 259  
division (B) of section 4123.34 of the Revised Code. 260

In those cases where an opportunities for Ohioans with 261  
disabilities—~~agency~~ agency's recommendation that an injured or 262  
disabled employee is in need of an artificial appliance would 263  
conflict with their state plan, adopted pursuant to the 264  
"Rehabilitation Act of 1973," 87 Stat. 355, 29 U.S.C.A. 701, the 265  
administrator or the administrator's designee or the bureau may 266  
obtain a recommendation from an amputee clinic or prescribing 267  
physician that they determine appropriate. 268

(D) If an employee of a state fund employer makes 269  
application for a finding and the administrator finds that the 270  
employee has contracted silicosis as defined in division (X), or 271  
coal miners' pneumoconiosis as defined in division (Y), or 272  
asbestosis as defined in division (AA) of section 4123.68 of the 273  
Revised Code, and that a change of such employee's occupation is 274  
medically advisable in order to decrease substantially further 275  
exposure to silica dust, asbestos, or coal dust and if the 276  
employee, after the finding, has changed or shall change the 277  
employee's occupation to an occupation in which the exposure to 278  
silica dust, asbestos, or coal dust is substantially decreased, 279  
the administrator shall allow to the employee an amount equal to 280  
fifty per cent of the statewide average weekly wage per week for 281  
a period of thirty weeks, commencing as of the date of the 282  
discontinuance or change, and for a period of one hundred weeks 283  
immediately following the expiration of the period of thirty 284

weeks, the employee shall receive sixty-six and two-thirds per 285  
cent of the loss of wages resulting directly and solely from the 286  
change of occupation but not to exceed a maximum of an amount 287  
equal to fifty per cent of the statewide average weekly wage per 288  
week. No such employee is entitled to receive more than one 289  
allowance on account of discontinuance of employment or change 290  
of occupation and benefits shall cease for any period during 291  
which the employee is employed in an occupation in which the 292  
exposure to silica dust, asbestos, or coal dust is not 293  
substantially less than the exposure in the occupation in which 294  
the employee was formerly employed or for any period during 295  
which the employee may be entitled to receive compensation or 296  
benefits under section 4123.68 of the Revised Code on account of 297  
disability from silicosis, asbestosis, or coal miners' 298  
pneumoconiosis. An award for change of occupation for a coal 299  
miner who has contracted coal miners' pneumoconiosis may be 300  
granted under this division even though the coal miner continues 301  
employment with the same employer, so long as the coal miner's 302  
employment subsequent to the change is such that the coal 303  
miner's exposure to coal dust is substantially decreased and a 304  
change of occupation is certified by the claimant as permanent. 305  
The administrator may accord to the employee medical and other 306  
benefits in accordance with section 4123.66 of the Revised Code. 307

(E) If a firefighter or police officer makes application 308  
for a finding and the administrator finds that the firefighter 309  
or police officer has contracted a cardiovascular and pulmonary 310  
disease as defined in division (W) of section 4123.68 of the 311  
Revised Code, and that a change of the firefighter's or police 312  
officer's occupation is medically advisable in order to decrease 313  
substantially further exposure to smoke, toxic gases, chemical 314  
fumes, and other toxic vapors, and if the firefighter, or police 315

officer, after the finding, has changed or changes occupation to 316  
an occupation in which the exposure to smoke, toxic gases, 317  
chemical fumes, and other toxic vapors is substantially 318  
decreased, the administrator shall allow to the firefighter or 319  
police officer an amount equal to fifty per cent of the 320  
statewide average weekly wage per week for a period of thirty 321  
weeks, commencing as of the date of the discontinuance or 322  
change, and for a period of seventy-five weeks immediately 323  
following the expiration of the period of thirty weeks the 324  
administrator shall allow the firefighter or police officer 325  
sixty-six and two-thirds per cent of the loss of wages resulting 326  
directly and solely from the change of occupation but not to 327  
exceed a maximum of an amount equal to fifty per cent of the 328  
statewide average weekly wage per week. No such firefighter or 329  
police officer is entitled to receive more than one allowance on 330  
account of discontinuance of employment or change of occupation 331  
and benefits shall cease for any period during which the 332  
firefighter or police officer is employed in an occupation in 333  
which the exposure to smoke, toxic gases, chemical fumes, and 334  
other toxic vapors is not substantially less than the exposure 335  
in the occupation in which the firefighter or police officer was 336  
formerly employed or for any period during which the firefighter 337  
or police officer may be entitled to receive compensation or 338  
benefits under section 4123.68 of the Revised Code on account of 339  
disability from a cardiovascular and pulmonary disease. The 340  
administrator may accord to the firefighter or police officer 341  
medical and other benefits in accordance with section 4123.66 of 342  
the Revised Code. 343

(F) An order issued under this section is appealable 344  
pursuant to section 4123.511 of the Revised Code but is not 345  
appealable to court under section 4123.512 of the Revised Code. 346

**Sec. 4123.58.** (A) In cases of permanent total disability, 347  
the employee shall receive an award to continue until the 348  
employee's death in the amount of sixty-six and two-thirds per 349  
cent of the employee's average weekly wage, but, except as 350  
otherwise provided in division (B) of this section, not more 351  
than a maximum amount of weekly compensation which is equal to 352  
sixty-six and two-thirds per cent of the statewide average 353  
weekly wage as defined in division (C) of section 4123.62 of the 354  
Revised Code in effect on the date of injury or on the date the 355  
disability due to the occupational disease begins, nor not less 356  
than a minimum amount of weekly compensation which is equal to 357  
fifty per cent of the statewide average weekly wage as defined 358  
in division (C) of section 4123.62 of the Revised Code in effect 359  
on the date of injury or on the date the disability due to the 360  
occupational disease begins, unless the employee's average 361  
weekly wage is less than fifty per cent of the statewide average 362  
weekly wage at the time of the injury, in which event the 363  
employee shall receive compensation in an amount equal to the 364  
employee's average weekly wage. 365

(B) In the event the weekly workers' compensation amount 366  
when combined with disability benefits received pursuant to the 367  
Social Security Act is less than the statewide average weekly 368  
wage as defined in division (C) of section 4123.62 of the 369  
Revised Code, then the maximum amount of weekly compensation 370  
shall be the statewide average weekly wage as defined in 371  
division (C) of section 4123.62 of the Revised Code. At any time 372  
that social security disability benefits terminate or are 373  
reduced, the workers' compensation award shall be recomputed to 374  
pay the maximum amount permitted under this division. 375

(C) (1) Permanent total disability shall be compensated 376  
according to this section only when at least one of the 377

following applies to the claimant: 378

~~(1)~~ (a) The claimant has lost, or lost the use of both 379  
hands or both arms, or both feet or both legs, or both eyes, or 380  
of any two thereof; however, the loss or loss of use of one limb 381  
does not constitute the loss or loss of use of two body parts; 382

~~(2)~~ (b) The impairment resulting from the employee's 383  
injury or occupational disease prevents the employee from 384  
engaging in sustained remunerative employment utilizing the 385  
employment skills that the employee has or may reasonably be 386  
expected to develop. 387

(2) For purposes of this section, the loss of use of a 388  
body part specified in division (C)(1) of this section includes 389  
when the loss is caused by loss of function of or injury to the 390  
brain or spinal cord. 391

(D) Permanent total disability shall not be compensated 392  
when the reason the employee is unable to engage in sustained 393  
remunerative employment is due to any of the following reasons, 394  
whether individually or in combination: 395

(1) Impairments of the employee that are not the result of 396  
an allowed injury or occupational disease; 397

(2) Solely the employee's age or aging; 398

(3) The employee retired or otherwise voluntarily 399  
abandoned the workforce for reasons unrelated to the allowed 400  
injury or occupational disease. 401

(4) The employee has not engaged in educational or 402  
rehabilitative efforts to enhance the employee's employability, 403  
unless such efforts are determined to be in vain. 404

(E) Compensation payable under this section for permanent 405

total disability is in addition to benefits payable under 406  
division (B) of section 4123.57 of the Revised Code. 407

(F) If an employee is awarded compensation for permanent 408  
total disability under this section because the employee 409  
sustained a traumatic brain injury, the employee is entitled to 410  
that compensation regardless of the employee's employment in a 411  
sheltered workshop subsequent to the award, on the condition 412  
that the employee does not receive income, compensation, or 413  
remuneration from that employment in excess of two thousand 414  
dollars in any calendar quarter. As used in this division, 415  
"sheltered workshop" means a state agency or nonprofit 416  
organization established to carry out a program of 417  
rehabilitation for handicapped individuals or to provide these 418  
individuals with remunerative employment or other occupational 419  
rehabilitating activity. 420

**Section 2.** That existing sections 4123.57 and 4123.58 of 421  
the Revised Code are hereby repealed. 422

**Section 3.** This act shall apply to claims arising under 423  
Chapters 4121., 4123., 4127., and 4131. of the Revised Code on 424  
or after the effective date of this act. 425