

First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

DRAFT  
1.16.23

DRAFT

LLS NO. 23-0224.01 Yelana Love x2295

**HOUSE BILL**

**HOUSE SPONSORSHIP**

**Boesenecker and Lieder,**

**SENATE SPONSORSHIP**

**(None),**

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**BILL TOPIC:** "Workers' Compensation Benefits"  
**DEADLINES:** File by: 2/7/2023

**A BILL FOR AN ACT**

101     **CONCERNING WORKERS' COMPENSATION BENEFITS, AND, IN**  
102         **CONNECTION THEREWITH, REMOVING THE SCHEDULE OF**  
103         **INJURIES AND THE CAP ON WORKERS' COMPENSATION BENEFITS**  
104         **FOR CERTAIN INDIVIDUALS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

Currently, workers' compensation benefits for a person whose workplace injury results in permanent medical impairment are calculated according to a schedule of injuries model or a whole person impairment

*Capital letters or bold & italic numbers indicate new material to be added to existing law.  
Dashes through the words indicate deletions from existing law.*

model, depending on the specific permanent medical impairment. The bill repeals the schedule of injuries model so that all workers' compensation benefits will be calculated based on the whole person impairment model.

The bill also removes the current cap on the amount of workers' compensation benefits certain claimants may receive.

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1     *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** In Colorado Revised Statutes, 8-42-107, **amend**  
3     (8)(a) and (8)(d); **repeal** (1), (2), (5), (6), (7), and (8)(c.5); and **add** (9) as  
4     follows:

5           **8-42-107. Permanent partial disability benefits - medical**  
6     **impairment benefits - mental or emotional stress benefits - how**  
7     **determined - determination of MMI.** (1) **Benefits available.** (a) When  
8     an ~~injury results in permanent medical impairment, and the employee has~~  
9     an ~~injury or injuries enumerated in the schedule set forth in subsection (2)~~  
10    ~~of this section, the employee shall be limited to medical impairment~~  
11    ~~benefits as specified in subsection (2) of this section.~~

12           (b) ~~When an injury results in permanent medical impairment and~~  
13     ~~the employee has an injury or injuries not listed on the schedule specified~~  
14    ~~in subsection (2) of this section, the employee is limited to medical~~  
15    ~~impairment benefits as specified in subsection (8) of this section, except~~  
16    ~~as provided in subsection (7)(b)(IV) of this section.~~

17           (2) **Scheduled injuries.** ~~In case an injury results in a loss set forth~~  
18    ~~in the following schedule, the injured employee, in addition to~~  
19    ~~compensation to be paid for temporary disability, shall receive~~  
20    ~~compensation for the period as specified:~~

21           (a) ~~The loss of an arm at the shoulder .....~~ 208 weeks  
22           (a.5) ~~The loss of an arm above the hand including the wrist .....~~  
23           ~~.....~~ 208 weeks

1 (b) (Deleted by amendment, L. 94, p. 2002, § 4, effective July 1,  
2 1994.)

|    |  |           |
|----|--|-----------|
| 3  | (e) The loss of a hand below the wrist .....                             | 104 weeks |
| 4  | (d) The loss of a thumb and the metacarpal bone thereof .....            |           |
| 5  | .....  | 50 weeks  |
| 6  | (e) The loss of a thumb at the proximal joint .....                      | 35 weeks  |
| 7  | (f) The loss of a thumb at the second or distal joint .....              | 18 weeks  |
| 8  | (g) The loss of an index finger and the metacarpal bone thereof .....    |           |
| 9  | .....  | 26 weeks  |
| 10 | (h) The loss of an index finger at the proximal joint .....              | 18 weeks  |
| 11 | (i) Loss of an index finger at the second joint .....                    | 13 weeks  |
| 12 | (j) Loss of an index finger at the distal joint .....                    | 9 weeks   |
| 13 | (k) Loss of a second finger and the metacarpal bone thereof .....        |           |
| 14 | .....  | 18 weeks  |
| 15 | (l) Loss of a middle finger at the proximal joint .....                  | 13 weeks  |
| 16 | (m) Loss of a middle finger at the second joint .....                    | 9 weeks   |
| 17 | (n) Loss of a middle finger at the distal joint .....                    | 5 weeks   |
| 18 | (o) Loss of a third or ring finger and the metacarpal bone thereof ..... |           |
| 19 | .....  | 11 weeks  |
| 20 | (p) Loss of a ring finger at the proximal joint .....                    | 7 weeks   |
| 21 | (q) Loss of a ring finger at the second joint .....                      | 7 weeks   |
| 22 | (r) Loss of a ring finger at the distal joint .....                      | 4 weeks   |
| 23 | (s) Loss of a little finger and the metacarpal bone thereof .....        |           |
| 24 | .....  | 13 weeks  |
| 25 | (t) Loss of a little finger at the proximal joint .....                  | 9 weeks   |
| 26 | (u) Loss of a little finger at the second joint .....                    | 9 weeks   |
| 27 | (v) Loss of a little finger at the distal joint .....                    | 4 weeks   |

|  |  |           |
|--|--|-----------|
|  | (w) Loss of a leg at the hip joint or so near thereto as to preclude the use of an artificial limb .....   | 208 weeks |
|  | (w.5) The loss of a leg above the foot including the ankle .....   | 208 weeks |
|  | (x) (Deleted by amendment, L. 94, p. 2002, § 4, effective July 1, 1994.)   |           |
|  | (y) The loss of a foot below the ankle .....   | 104 weeks |
|  | (z) The loss of a great toe with the metatarsal bone thereof .....   | 26 weeks  |
|  | (aa) The loss of a great toe at the proximal joint .....   | 18 weeks  |
|  | (bb) The loss of a great toe at the second or distal joint .....   | 9 weeks   |
|  | (cc) The loss of any other toe with the metatarsal bone thereof .....  | 11 weeks  |
|  | (dd) The loss of any other toe at the proximal joint .....   | 4 weeks   |
|  | (ee) The loss of any other toe at the second or distal joint .....   | 4 weeks   |
|  | (ff) The loss of a tooth .....   | 6 weeks   |
|  | (gg) Total blindness of one eye .....  | 104 weeks |
|  | (hh) Total deafness of both ears .....   | 139 weeks |
|  | (ii) Total deafness of one ear .....   | 35 weeks  |
|  | (jj) Where worker prior to injury has suffered a total loss of hearing in one ear, and as a result of the accident loses total hearing in remaining ear .....  | 139 weeks |
|  | (5) If amputation is made between any two joints mentioned in this schedule, except amputation between the knee and the hip joint, the resulting loss shall be estimated as if the amputation had been made at the |           |

1 joint nearest thereto. If any portion of the bone of the distal joint of any  
2 finger, thumb, or toe is amputated, the amount paid therefor shall be the  
3 amount allowed for amputation at said distal joint.

4 (6) (a) The amounts specified in subsections (1) to (5) of this  
5 section shall be at the compensation rate of one hundred seventy-six  
6 dollars per week.

7 (b) On July 1, 2000, and on each succeeding July 1 thereafter, the  
8 compensation rate established in this subsection (6) shall be modified for  
9 claims arising on and after such date by the same percentage increase or  
10 decrease as the state average weekly wage as determined by the director  
11 when the director establishes the state average weekly wage pursuant to  
12 section 8-47-106.

13 (7) (a) When an injured employee sustains two or more injuries  
14 coming under this schedule, the disabilities specified in subsections (1)  
15 to (5) of this section shall be added, and the injured employee shall  
16 receive the sum total thereof, except that, where the injury results in the  
17 loss or partial loss of use of the index finger and thumb of the same hand  
18 or of more than two digits of any one hand or foot, the disability, in the  
19 discretion of the director, may be compensated on the basis of the partial  
20 loss of use of said hand or foot, measured respectively from the wrist or  
21 ankle.

22 (b) (I) The general assembly finds, determines, and declares that  
23 the rating organization that studied the impact of the changes in Senate  
24 Bill 91-218, enacted at the first regular session of the fifty-eighth general  
25 assembly, assumed that scheduled injuries would remain on the schedule  
26 and nonscheduled injuries would be compensated as medical impairment  
27 benefits. Therefore, the general assembly finds, determines, and declares

1 that the purpose of changing the provisions of subparagraph (II) of this  
2 paragraph (b), as amended by House Bill 99-1157, enacted at the first  
3 regular session of the sixty-second general assembly, is to clarify that  
4 scheduled injuries shall be compensated as provided on the schedule and  
5 nonscheduled injuries shall be compensated as medical impairment  
6 benefits, and that, when an injured worker sustains both scheduled and  
7 nonscheduled injuries, the losses shall be compensated on the schedule  
8 for scheduled injuries and the nonscheduled injuries shall be compensated  
9 as medical impairment benefits. The general assembly further determines  
10 and declares that mental or emotional stress shall be compensated  
11 pursuant to section 8-41-301 (2) and shall not be combined with a  
12 scheduled or a nonscheduled injury.

13 (II) Except as provided in subsection (8) of this section, where an  
14 injury causes the loss of, loss of use of, or partial loss of use of any  
15 member specified in the foregoing schedule, the amount of permanent  
16 partial disability shall be the proportionate share of the amount stated in  
17 the above schedule for the total loss of a member, and such amount shall  
18 be in addition to compensation for temporary disability. Where an injury  
19 causes a loss set forth in the schedule in subsection (2) of this section and  
20 a loss set forth for medical impairment benefits in subsection (8) of this  
21 section, the loss set forth in the schedule found in said subsection (2) shall  
22 be compensated solely on the basis of such schedule and the loss set forth  
23 in said subsection (8) shall be compensated solely on the basis for such  
24 medical impairment benefits specified in said subsection (8).

25 (III) Mental or emotional stress shall be compensated pursuant to  
26 section 8-41-301 (2) and shall not be combined with a scheduled or a  
27 nonscheduled injury, except for the purposes of calculating a claimant's

1 impairment rating to determine the applicable cap for benefits pursuant  
2 to section 8-42-107.5.

3 (IV) When an employee sustains an injury on the schedule of  
4 injuries listed in subsection (2) of this section that may also be  
5 compensated as specified in subsection (8) of this section, if the amount  
6 of compensation for medical impairment when using the schedule of  
7 injuries in subsection (2) of this section would be greater than the  
8 nonscheduled impairment benefits in subsection (8) of this section, then  
9 the employee is entitled to the compensation specified in subsection (2)  
10 of this section.

11 **(8) Medical impairment benefits - determination of MMI for**  
12 **injuries.** (a) When an injury results in permanent medical impairment,  
13 not set forth in the schedule in subsection (2) of this section, the employee  
14 is limited to medical impairment benefits calculated as provided in this  
15 subsection (8), except as provided in subsection (7)(b)(IV) of this section  
16 THE MEDICAL IMPAIRMENT BENEFITS ARE DETERMINED AS A PERCENTAGE  
17 OF THE WHOLE PERSON BASED ON THE REVISED THIRD EDITION OF THE  
18 "AMERICAN MEDICAL ASSOCIATION GUIDES TO THE EVALUATION OF  
19 PERMANENT IMPAIRMENT", IN EFFECT AS OF JULY 1, 1991. The procedures  
20 for determination of maximum medical improvement set forth in  
21 subsection (8)(b) of this section are available in ALL cases of injuries. set  
22 forth in the schedule in subsection (2) of this section and also in cases of  
23 injuries that are not set forth in said schedule.

24 (c.5) When an injury results in the total loss or total loss of use of  
25 an arm at the shoulder, a forearm at the elbow, a hand at the wrist, a leg  
26 at the hip or so near thereto as to preclude the use of an artificial limb, the  
27 loss of a leg at or above the knee where the stump remains sufficient to

1      ~~permit the use of an artificial limb, a foot at the ankle, an eye, or a~~  
2      ~~combination of any such losses, the benefits for such loss shall be~~  
3      ~~determined pursuant to this subsection (8), except as provided in~~  
4      ~~subsection (7)(b)(IV) of this section.~~

5                (d) (I) Medical impairment benefits shall be:

6                    (A) Determined by multiplying the medical impairment rating  
7      determined pursuant to ~~paragraph (c) of this subsection (8)~~ SUBSECTION  
8      (8)(c) OF THIS SECTION by the age factor determined pursuant to ~~paragraph~~  
9      ~~(e) of this subsection (8)~~ SUBSECTION (8)(e) OF THIS SECTION and by four  
10     hundred weeks; and ~~shall be~~

11                    (B) Calculated at EITHER the temporary total disability rate  
12     specified in section 8-42-105 OR FIFTY PERCENT OF THE STATE MAXIMUM  
13     TEMPORARY TOTAL DISABILITY RATE AT THE TIME OF MAXIMUM MEDICAL  
14     IMPROVEMENT, WHICHEVER AMOUNT IS GREATER.

15                    (II) Up to ten thousand dollars of the total amount of ~~any such~~ AN  
16     award or scheduled award OF MEDICAL IMPAIRMENT BENEFITS shall be  
17     automatically paid in a lump sum less the discount as calculated in section  
18     8-43-406 upon the injured employee's written request to the employer or,  
19     if insured, to the employer's insurance carrier. The remaining periodic  
20     payments of ~~any such~~ A MEDICAL IMPAIRMENT BENEFITS award, after  
21     subtracting the total amount of the lump sum requested by the employee  
22     without subtracting the discount calculated in section 8-43-406, shall be  
23     paid at the temporary total disability rate, but ~~not less than one hundred~~  
24     ~~fifty dollars per week~~ and not more than fifty percent of the state average  
25     weekly wage, beginning on the date of maximum medical improvement.

26                    (9) **Mental impairment.** MENTAL IMPAIRMENT SHALL BE  
27     COMPENSATED PURSUANT TO SECTION 8-41-301 (2). MENTAL IMPAIRMENT

1       SHALL BE COMPENSATED SEPARATELY FROM OTHER PERMANENT MEDICAL  
2       IMPAIRMENT.

3                   **SECTION 2.** In Colorado Revised Statutes, 8-41-301, amend  
4       (2)(b) as follows:

5                   **8-41-301.       Conditions    of    recovery    -    definitions.**  
6       (2) (b) (I) Notwithstanding any other provision of articles 40 to 47 of this  
7       **title** TITLE 8, AND EXCEPT AS PROVIDED IN SUBSECTION (2)(b)(II) OF THIS  
8       SECTION, where a claim is by reason of mental impairment, the claimant  
9       **shall be** IS limited to twelve weeks of medical impairment benefits **which**  
10      **shall be** in an amount not less than one hundred fifty dollars per week and  
11      not more than fifty percent of the state average weekly wage, inclusive of  
12      any temporary disability benefits. **except that this**

13                   (II) THE limitation **shall** ON BENEFITS FOR MENTAL IMPAIRMENT DO  
14      not apply to any victim of a crime of violence, without regard to the intent  
15      of the perpetrator of the crime, nor to the victim of a physical injury or  
16      occupational disease that causes neurological brain damage. **and nothing**  
17      **in this section shall limit the determination of the percentage of**  
18      **impairment pursuant to section 8-42-107 (8) for the purposes of**  
19      **establishing the applicable cap on benefits pursuant to section 8-42-107.5.**

20                   **SECTION 3.** In Colorado Revised Statutes, **repeal** 8-42-107.5 as  
21      follows:

22                   **8-42-107.5.    Limits on temporary disability payments and**  
23      **permanent partial disability payments.** (1) **A claimant whose**  
24      **impairment rating is nineteen percent or less may not receive more than**  
25      **seventy-five thousand dollars from combined temporary disability**  
26      **payments and permanent partial disability payments.** **A claimant whose**  
27      **impairment rating is greater than nineteen percent may not receive more**

1 than one hundred fifty thousand dollars from combined temporary  
2 disability payments and permanent partial disability payments.

3 (2) For the purposes of this section, any mental impairment rating  
4 shall be combined with the physical impairment rating to establish a  
5 claimant's impairment rating for determining the applicable cap. For  
6 injuries sustained on and after January 1, 2012, the director shall adjust  
7 these limits on the amount of compensation for combined temporary  
8 disability payments and permanent partial disability payments on July 1,  
9 2011, and each July 1 thereafter, by the percentage of the adjustment  
10 made by the director to the state average weekly wage pursuant to section  
11 8-47-106.

12 **SECTION 4.** In Colorado Revised Statutes, **amend** 8-42-109 as  
13 follows:

14 **8-42-109. Added compensation for additional injuries.** Where  
15 an injured employee sustains an injury covered by sections 8-42-107,  
16 8-42-108, and 8-46-101 ~~but in addition thereto~~ AND receives other injuries  
17 ~~which~~ THAT are sufficient in their nature to alone cause temporary total  
18 disability, ~~said~~ THE employee shall receive, in addition to the amounts  
19 specified in said ~~schedule~~ SECTIONS, compensation for temporary total  
20 disability as long as ~~said~~ THE disability is found to exist as a result of ~~said~~  
21 THE other injuries.

22 **SECTION 5. Act subject to petition - effective date -**  
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
24 the expiration of the ninety-day period after final adjournment of the  
25 general assembly; except that, if a referendum petition is filed pursuant  
26 to section 1 (3) of article V of the state constitution against this act or an  
27 item, section, or part of this act within such period, then the act, item,

1 section, or part will not take effect unless approved by the people at the  
2 general election to be held in November 2024 and, in such case, will take  
3 effect on the date of the official declaration of the vote thereon by the  
4 governor.

5 (2) This act applies to claims arising on or after the applicable  
6 effective date of this act.