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SENATE BILL 5489

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State of Washington

52nd Legislature

1991 Regular Session

By Senators Vognild, Talmadge, A. Smith, Bauer, Rinehart, Moore and Conner.

Read first time February 4, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to workers' compensation benefits; amending RCW  
2 51.32.050, 51.32.060, and 51.32.090; providing an effective date; and  
3 declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 51.32.050 and 1988 c 161 s 2 are each amended to read  
6 as follows:

7 (1) Where death results from the injury the expenses of burial not  
8 to exceed two thousand dollars shall be paid.

9 (2)(a) Where death results from the injury, a surviving spouse of  
10 a deceased worker eligible for benefits under this title shall receive  
11 monthly for life or until remarriage payments according to the  
12 following schedule:

13 (i) If there are no children of the deceased worker, sixty percent  
14 of the wages of the deceased worker (~~((but not less than one hundred~~  
15 ~~eighty-five dollars))~~);

1 (ii) If there is one child of the deceased worker and in the legal  
2 custody of such spouse, sixty-two percent of the wages of the deceased  
3 worker (~~((but not less than two hundred twenty two dollars))~~);

4 (iii) If there are two children of the deceased worker and in the  
5 legal custody of such spouse, sixty-four percent of the wages of the  
6 deceased worker (~~((but not less than two hundred fifty three dollars))~~);

7 (iv) If there are three children of the deceased worker and in the  
8 legal custody of such spouse, sixty-six percent of the wages of the  
9 deceased worker (~~((but not less than two hundred seventy six dollars))~~);

10 (v) If there are four children of the deceased worker and in the  
11 legal custody of such spouse, sixty-eight percent of the wages of the  
12 deceased worker (~~((but not less than two hundred ninety nine dollars))~~);

13 or

14 (vi) If there are five or more children of the deceased worker and  
15 in the legal custody of such spouse, seventy percent of the wages of  
16 the deceased worker (~~((but not less than three hundred twenty two  
17 dollars))~~).

18 (b) Where the surviving spouse does not have legal custody of any  
19 child or children of the deceased worker or where after the death of  
20 the worker legal custody of such child or children passes from such  
21 surviving spouse to another, any payment on account of such child or  
22 children not in the legal custody of the surviving spouse shall be made  
23 to the person or persons having legal custody of such child or  
24 children. The amount of such payments shall be five percent of the  
25 monthly benefits payable as a result of the worker's death for each  
26 such child but such payments shall not exceed twenty-five percent.  
27 Such payments on account of such child or children shall be subtracted  
28 from the amount to which such surviving spouse would have been entitled  
29 had such surviving spouse had legal custody of all of the children and  
30 the surviving spouse shall receive the remainder after such payments on

1 account of such child or children have been subtracted. Such payments  
2 on account of a child or children not in the legal custody of such  
3 surviving spouse shall be apportioned equally among such children.

4 (c) Payments to the surviving spouse of the deceased worker shall  
5 cease at the end of the month in which remarriage occurs: PROVIDED,  
6 That a monthly payment shall be made to the child or children of the  
7 deceased worker from the month following such remarriage in a sum equal  
8 to five percent of the wages of the deceased worker for one child and  
9 a sum equal to five percent for each additional child up to a maximum  
10 of five such children. Payments to such child or children shall be  
11 apportioned equally among such children. Such sum shall be in place of  
12 any payments theretofore made for the benefit of or on account of any  
13 such child or children. If the surviving spouse does not have legal  
14 custody of any child or children of the deceased worker, or if after  
15 the death of the worker, legal custody of such child or children passes  
16 from such surviving spouse to another, any payment on account of such  
17 child or children not in the legal custody of the surviving spouse  
18 shall be made to the person or persons having legal custody of such  
19 child or children.

20 (d) In no event shall the monthly payments provided in subsection  
21 (2) of this section:

22 (i) Exceed ((one hundred percent)) the applicable percentage of the  
23 average monthly wage in the state as computed under RCW 51.08.018 as  
24 follows:

25	<u>AFTER</u>	<u>PERCENTAGE</u>
26	<u>June 30, 1991</u>	<u>133 1/3%</u>
27	<u>June 30, 1993</u>	<u>166 2/3%</u>
28	<u>June 30, 1995</u>	<u>200%; and</u>

1        (ii) Be less than the lesser of (A) fifty percent of the average  
2 monthly wage in the state as computed under RCW 51.08.018, or (B) one  
3 hundred percent of the worker's wages, except that no payment may be  
4 less than twenty-five percent of the average monthly wage in the state  
5 as computed under RCW 51.08.018.

6        (e) In addition to the monthly payments provided for in (2)(a)  
7 through (2)(c) of this section, a surviving spouse or child or children  
8 of such worker if there is no surviving spouse, or dependent parent or  
9 parents, if there is no surviving spouse or child or children of any  
10 such deceased worker shall be forthwith paid the sum of one thousand  
11 six hundred dollars, any such children, or parents to share and share  
12 alike in said sum.

13        (f) Upon remarriage of a surviving spouse the monthly payments for  
14 the child or children shall continue as provided in this section, but  
15 the monthly payments to such surviving spouse shall cease at the end of  
16 the month during which remarriage occurs. However, after September 8,  
17 1975, an otherwise eligible surviving spouse of a worker who died at  
18 any time prior to or after September 8, 1975, shall have an option of:

19        (i) Receiving, once and for all, a lump sum of seventy-five hundred  
20 dollars or fifty percent of the then remaining annuity value of his or  
21 her pension, whichever is the lesser: PROVIDED, That if the injury  
22 occurred prior to July 1, 1971, the remarriage benefit lump sum  
23 available shall be as provided in the remarriage benefit schedules then  
24 in effect; or

25        (ii) If a surviving spouse does not choose the option specified in  
26 (2)(f)(i) of this section to accept the lump sum payment, the  
27 remarriage of the surviving spouse of a worker shall not bar him or her  
28 from claiming the lump sum payment authorized in (2)(f)(i) of this  
29 section during the life of the remarriage, or shall not prevent  
30 subsequent monthly payments to him or to her if the remarriage has been

1 terminated by death or has been dissolved or annulled by valid court  
2 decree provided he or she has not previously accepted the lump sum  
3 payment.

4 (g) If the surviving spouse during the remarriage should die  
5 without having previously received the lump sum payment provided in  
6 (2)(f)(i) of this section, his or her estate shall be entitled to  
7 receive the sum of seventy-five hundred dollars or fifty percent of the  
8 then remaining annuity value of his or her pension whichever is the  
9 lesser.

10 (h) The effective date of resumption of payments under (2)(f)(ii)  
11 of this section to a surviving spouse based upon termination of a  
12 remarriage by death, annulment, or dissolution shall be the date of the  
13 death or the date the judicial decree of annulment or dissolution  
14 becomes final and when application for the payments has been received.

15 (i) If it should be necessary to increase the reserves in the  
16 reserve fund or to create a new pension reserve fund as a result of the  
17 amendments in chapter 45, Laws of 1975-'76 2nd ex. less., the amount of  
18 such increase in pension reserve in any such case shall be transferred  
19 to the reserve fund from the supplemental pension fund.

20 (3) If there is a child or children and no surviving spouse of the  
21 deceased worker or the surviving spouse is not eligible for benefits  
22 under this title, a sum equal to thirty-five percent of the wages of  
23 the deceased worker shall be paid monthly for one child and a sum  
24 equivalent to fifteen percent of such wage shall be paid monthly for  
25 each additional child, the total of such sum to be divided among such  
26 children, share and share alike: PROVIDED, That benefits under this  
27 subsection or subsection (4) of this section shall not exceed the  
28 lesser of sixty-five percent of the wages of the deceased worker at the  
29 time of his or her death or (~~one hundred percent~~) the applicable

1 percentage of the average monthly wage in the state as defined in RCW  
2 51.08.018, (~~((whichever is the lesser of the two sums))~~) as follows:

3	<u>AFTER</u>	<u>PERCENTAGE</u>
4	<u>June 30, 1991</u>	<u>133 1/3%</u>
5	<u>June 30, 1993</u>	<u>166 2/3%</u>
6	<u>June 30, 1995</u>	<u>200%.</u>

7 (4) In the event a surviving spouse receiving monthly payments  
8 dies, the child or children of the deceased worker shall receive the  
9 same payment as provided in subsection (3) of this section.

10 (5) If the worker leaves no surviving spouse or child, but leaves  
11 a dependent or dependents, a monthly payment shall be made to each  
12 dependent equal to fifty percent of the average monthly support  
13 actually received by such dependent from the worker during the twelve  
14 months next preceding the occurrence of the injury, but the total  
15 payment to all dependents in any case shall not exceed the lesser of  
16 sixty-five percent of the wages of the deceased worker at the time of  
17 ~~((the))~~ his or her death or ~~((one hundred percent))~~ the applicable  
18 percentage of the average monthly wage in the state as defined in RCW  
19 51.08.018(~~(, whichever is the lesser of the two sums))~~) as follows:

20	<u>AFTER</u>	<u>PERCENTAGE</u>
21	<u>June 30, 1991</u>	<u>133 1/3%</u>
22	<u>June 30, 1993</u>	<u>166 2/3%</u>
23	<u>June 30, 1995</u>	<u>200%.</u>

1 If any dependent is under the age of eighteen years at the time of the  
2 occurrence of the injury, the payment to such dependent shall cease  
3 when such dependent reaches the age of eighteen years except such  
4 payments shall continue until the dependent reaches age twenty-three  
5 while permanently enrolled at a full time course in an accredited  
6 school. The payment to any dependent shall cease if and when, under  
7 the same circumstances, the necessity creating the dependency would  
8 have ceased if the injury had not happened.

9 (6) For claims filed prior to July 1, 1986, if the injured worker  
10 dies during the period of permanent total disability, whatever the  
11 cause of death, leaving a surviving spouse, or child, or children, the  
12 surviving spouse or child or children shall receive benefits as if  
13 death resulted from the injury as provided in subsections (2) through  
14 (4) of this section. Upon remarriage or death of such surviving  
15 spouse, the payments to such child or children shall be made as  
16 provided in subsection (2) of this section when the surviving spouse of  
17 a deceased worker remarries.

18 (7) For claims filed on or after July 1, 1986, every worker who  
19 becomes eligible for permanent total disability benefits shall elect an  
20 option as provided in RCW 51.32.067.

21 **Sec. 2.** RCW 51.32.060 and 1988 c 161 s 1 are each amended to read  
22 as follows:

23 (1) When the supervisor of industrial insurance shall determine  
24 that permanent total disability results from the injury, the worker  
25 shall receive monthly during the period of such disability:

26 (a) If married at the time of injury, sixty-five percent of his or  
27 her wages (~~but not less than two hundred fifteen dollars per month~~).

1 (b) If married with one child at the time of injury, sixty-seven  
2 percent of his or her wages (~~((but not less than two hundred fifty-two  
3 dollars per month))~~).

4 (c) If married with two children at the time of injury, sixty-nine  
5 percent of his or her wages (~~((but not less than two hundred  
6 eighty-three dollars))~~).

7 (d) If married with three children at the time of injury,  
8 seventy-one percent of his or her wages (~~((but not less than three  
9 hundred six dollars per month))~~).

10 (e) If married with four children at the time of injury, seventy-  
11 three percent of his or her wages (~~((but not less than three hundred  
12 twenty-nine dollars per month))~~).

13 (f) If married with five or more children at the time of injury,  
14 seventy-five percent of his or her wages (~~((but not less than three  
15 hundred fifty-two dollars per month))~~).

16 (g) If unmarried at the time of the injury, sixty percent of his or  
17 her wages (~~((but not less than one hundred eighty-five dollars per  
18 month))~~).

19 (h) If unmarried with one child at the time of injury, sixty-two  
20 percent of his or her wages (~~((but not less than two hundred twenty-two  
21 dollars per month))~~).

22 (i) If unmarried with two children at the time of injury, sixty-  
23 four percent of his or her wages (~~((but not less than two hundred  
24 fifty-three dollars per month))~~).

25 (j) If unmarried with three children at the time of injury,  
26 sixty-six percent of his or her wages (~~((but not less than two hundred  
27 seventy-six dollars per month))~~).

28 (k) If unmarried with four children at the time of injury,  
29 sixty-eight percent of his or her wages (~~((but not less than two hundred  
30 ninety-nine dollars per month))~~).

1 (1) If unmarried with five or more children at the time of injury,  
2 seventy percent of his or her wages (~~but not less than three hundred~~  
3 ~~twenty-two dollars per month~~)).

4 (2) For any period of time where both husband and wife are entitled  
5 to compensation as temporarily or totally disabled workers, only that  
6 spouse having the higher wages of the two shall be entitled to claim  
7 their child or children for compensation purposes.

8 (3) In case of permanent total disability, if the character of the  
9 injury is such as to render the worker so physically helpless as to  
10 require the hiring of the services of an attendant, the department  
11 shall make monthly payments to such attendant for such services as long  
12 as such requirement continues, but such payments shall not obtain or be  
13 operative while the worker is receiving care under or pursuant to the  
14 provisions of chapter 51.36 RCW and RCW 51.04.105.

15 (4) Should any further accident result in the permanent total  
16 disability of an injured worker, he or she shall receive the pension to  
17 which he or she would be entitled, notwithstanding the payment of a  
18 lump sum for his or her prior injury.

19 (5) In no event shall the monthly payments provided in this  
20 section:

21 (a) Exceed (~~(one hundred percent)~~) the applicable percentage of the  
22 average monthly wage in the state as computed under the provisions of  
23 RCW 51.08.018(~~(, except that this)~~) as follows:

24	<u>AFTER</u>	<u>PERCENTAGE</u>
25	<u>June 30, 1991</u>	<u>133 1/3%</u>
26	<u>June 30, 1993</u>	<u>166 2/3%</u>
27	<u>June 30, 1995</u>	<u>200%; and</u>

1       (b) Be less than the lesser of (i) fifty percent of the average  
2 monthly wage in the state as computed under RCW 51.08.018, or (ii) one  
3 hundred percent of the worker's wages, except that no payment may be  
4 less than twenty-five percent of the average monthly wage in the state  
5 as computed under RCW 51.08.018.

6       The limitations under this subsection shall not apply to the  
7 payments provided for in subsection (3) of this section.

8       (6) In the case of new or reopened claims, if the supervisor of  
9 industrial insurance determines that, at the time of filing or  
10 reopening, the worker is voluntarily retired and is no longer attached  
11 to the work force, benefits shall not be paid under this section.

12       (7) The benefits provided by this section are subject to  
13 modification under RCW 51.32.067.

14       **Sec. 3.** RCW 51.32.090 and 1988 c 161 s 4 are each amended to read  
15 as follows:

16       (1) When the total disability is only temporary, the schedule of  
17 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as  
18 the total disability continues.

19       (2) Any compensation payable under this section for children not in  
20 the custody of the injured worker as of the date of injury shall be  
21 payable only to such person as actually is providing the support for  
22 such child or children pursuant to the order of a court of record  
23 providing for support of such child or children.

24       (3) As soon as recovery is so complete that the present earning  
25 power of the worker, at any kind of work, is restored to that existing  
26 at the time of the occurrence of the injury, the payments shall cease.  
27 If and so long as the present earning power is only partially restored,  
28 the payments shall continue in the proportion which the new earning

1 power shall bear to the old. No compensation shall be payable unless  
2 the loss of earning power shall exceed five percent.

3 (4) Whenever an employer requests that a worker who is entitled to  
4 temporary total disability under this chapter be certified by a  
5 physician as able to perform available work other than his or her usual  
6 work, the employer shall furnish to the physician, with a copy to the  
7 worker, a statement describing the available work in terms that will  
8 enable the physician to relate the physical activities of the job to  
9 the worker's disability. The physician shall then determine whether  
10 the worker is physically able to perform the work described. If the  
11 worker is released by his or her physician for said work, and the work  
12 thereafter comes to an end before the worker's recovery is sufficient  
13 in the judgment of his or her physician to permit him or her to return  
14 to his or her usual job, or to perform other available work, the  
15 worker's temporary total disability payments shall be resumed. Should  
16 the available work described, once undertaken by the worker, impede his  
17 or her recovery to the extent that in the judgment of his or her  
18 physician he or she should not continue to work, the worker's temporary  
19 total disability payments shall be resumed when the worker ceases such  
20 work.

21 Once the worker returns to work under the terms of this subsection,  
22 he or she shall not be assigned by the employer to work other than the  
23 available work described without the worker's written consent, or  
24 without prior review and approval by the worker's physician.

25 In the event of any dispute as to the worker's ability to perform  
26 the available work offered by the employer, the department shall make  
27 the final determination.

28 (5) No worker shall receive compensation for or during the day on  
29 which injury was received or the three days following the same, unless  
30 his or her disability shall continue for a period of fourteen

1 consecutive calendar days from date of injury: PROVIDED, That attempts  
2 to return to work in the first fourteen days following the injury shall  
3 not serve to break the continuity of the period of disability if the  
4 disability continues fourteen days after the injury occurs.

5 (6) Should a worker suffer a temporary total disability and should  
6 his or her employer at the time of the injury continue to pay him or  
7 her the wages which he or she was earning at the time of such injury,  
8 such injured worker shall not receive any payment provided in  
9 subsection (1) of this section during the period his or her employer  
10 shall so pay such wages.

11 (7) In no event shall the monthly payments provided in this  
12 section:

13 (a) Exceed ((one hundred percent)) the applicable percentage of the  
14 average monthly wage in the state as computed under the provisions of  
15 RCW 51.08.018 as follows:

16	<u>AFTER</u>	<u>PERCENTAGE</u>
17	<u>June 30, 1991</u>	<u>133 1/3%</u>
18	<u>June 30, 1993</u>	<u>166 2/3%</u>
19	<u>June 30, 1995</u>	<u>200%; and</u>

20 (b) Be less than the lesser of (i) fifty percent of the average  
21 monthly wage in the state as computed under RCW 51.08.018, or (ii) one  
22 hundred percent of the worker's wages, except that no payment may be  
23 less than twenty-five percent of the average monthly wage in the state  
24 as computed under RCW 51.08.018.

25 (8) If the supervisor of industrial insurance determines that the  
26 worker is voluntarily retired and is no longer attached to the work  
27 force, benefits shall not be paid under this section.

1        NEW SECTION.    **Sec. 4.**        This act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and shall take  
4 effect July 1, 1991.