

1 1248-S.E AMS LAB S3342.1

2 **ESHB 1248** - S COMM AMD TO LAB COMM AMD (1248-S.E AMS LAB S2968.1)
3 By Committee on Labor & Commerce

4 PULLED BY SEN. ANDERSON 4/15/93

5 On page 1, after line 6 of the amendment, strike all material
6 through "1993." on page 9, line 13, and insert the following:

7 "Sec. 1. RCW 51.32.050 and 1991 c 88 s 2 are each amended to read
8 as follows:

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

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

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

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

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

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

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

30 (vi) If there are five or more children of the deceased worker and
31 in the legal custody of such spouse, seventy percent of the wages of
32 the deceased worker but not less than three hundred twenty-two dollars.

33 (b) Where the surviving spouse does not have legal custody of any
34 child or children of the deceased worker or where after the death of
35 the worker legal custody of such child or children passes from such
36 surviving spouse to another, any payment on account of such child or

1 children not in the legal custody of the surviving spouse shall be made
2 to the person or persons having legal custody of such child or
3 children. The amount of such payments shall be five percent of the
4 monthly benefits payable as a result of the worker's death for each
5 such child but such payments shall not exceed twenty-five percent.
6 Such payments on account of such child or children shall be subtracted
7 from the amount to which such surviving spouse would have been entitled
8 had such surviving spouse had legal custody of all of the children and
9 the surviving spouse shall receive the remainder after such payments on
10 account of such child or children have been subtracted. Such payments
11 on account of a child or children not in the legal custody of such
12 surviving spouse shall be apportioned equally among such children.

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

29 (d) In no event shall the monthly payments provided in subsection
30 (2) of this section exceed (~~one hundred percent~~) the applicable
31 percentage of the average monthly wage in the state as computed under
32 RCW 51.08.018(~~-~~) as follows:

33	<u>AFTER</u>	<u>PERCENTAGE</u>
34	<u>June 30, 1993</u>	<u>105%</u>
35	<u>June 30, 1994</u>	<u>110%</u>

36 (e) In addition to the monthly payments provided for in (2)(a)
37 through (2)(c) of this section, a surviving spouse or child or children
38 of such worker if there is no surviving spouse, or dependent parent or

1 parents, if there is no surviving spouse or child or children of any
2 such deceased worker shall be forthwith paid the sum of one thousand
3 six hundred dollars, any such children, or parents to share and share
4 alike in said sum.

5 (f) Upon remarriage of a surviving spouse the monthly payments for
6 the child or children shall continue as provided in this section, but
7 the monthly payments to such surviving spouse shall cease at the end of
8 the month during which remarriage occurs. However, after September 8,
9 1975, an otherwise eligible surviving spouse of a worker who died at
10 any time prior to or after September 8, 1975, shall have an option of:

11 (i) Receiving, once and for all, a lump sum of twenty-four times
12 the monthly compensation rate in effect on the date of remarriage
13 allocable to the spouse for himself or herself pursuant to (2)(a)(i) of
14 this section and subject to any modifications specified under (2)(d) of
15 this section and RCW 51.32.075(3) or fifty percent of the then
16 remaining annuity value of his or her pension, whichever is the lesser:
17 PROVIDED, That if the injury occurred prior to July 28, 1991, the
18 remarriage benefit lump sum available shall be as provided in the
19 remarriage benefit schedules then in effect; or

20 (ii) If a surviving spouse does not choose the option specified in
21 (2)(f)(i) of this section to accept the lump sum payment, the
22 remarriage of the surviving spouse of a worker shall not bar him or her
23 from claiming the lump sum payment authorized in (2)(f)(i) of this
24 section during the life of the remarriage, or shall not prevent
25 subsequent monthly payments to him or to her if the remarriage has been
26 terminated by death or has been dissolved or annulled by valid court
27 decree provided he or she has not previously accepted the lump sum
28 payment.

29 (g) If the surviving spouse during the remarriage should die
30 without having previously received the lump sum payment provided in
31 (2)(f)(i) of this section, his or her estate shall be entitled to
32 receive the sum specified under subsection (2)(f)(i) of this section or
33 fifty percent of the then remaining annuity value of his or her pension
34 whichever is the lesser.

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

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

6 (3) If there is a child or children and no surviving spouse of the
7 deceased worker or the surviving spouse is not eligible for benefits
8 under this title, a sum equal to thirty-five percent of the wages of
9 the deceased worker shall be paid monthly for one child and a sum
10 equivalent to fifteen percent of such wage shall be paid monthly for
11 each additional child, the total of such sum to be divided among such
12 children, share and share alike: PROVIDED, That benefits under this
13 subsection or subsection (4) of this section shall not exceed the
14 lesser of sixty-five percent of the wages of the deceased worker at the
15 time of his or her death or (~~one hundred percent~~) the applicable
16 percentage of the average monthly wage in the state as defined in RCW
17 51.08.018, (~~whichever is the lesser of the two sums.~~) as follows:

18	<u>AFTER</u>	<u>PERCENTAGE</u>
19	<u>June 30, 1993</u>	<u>105%</u>
20	<u>June 30, 1994</u>	<u>110%</u>

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

24 (5) If the worker leaves no surviving spouse or child, but leaves
25 a dependent or dependents, a monthly payment shall be made to each
26 dependent equal to fifty percent of the average monthly support
27 actually received by such dependent from the worker during the twelve
28 months next preceding the occurrence of the injury, but the total
29 payment to all dependents in any case shall not exceed the lesser of
30 sixty-five percent of the wages of the deceased worker at the time of
31 (~~the~~) his or her death or (~~one hundred percent~~) the applicable
32 percentage of the average monthly wage in the state as defined in RCW
33 51.08.018(~~, whichever is the lesser of the two sums.~~) as follows:

34	<u>AFTER</u>	<u>PERCENTAGE</u>
35	<u>June 30, 1993</u>	<u>105%</u>
36	<u>June 30, 1994</u>	<u>110%</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.

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

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

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

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

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

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

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

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

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

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

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

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

28 (3) In case of permanent total disability, if the character of the
29 injury is such as to render the worker so physically helpless as to
30 require the hiring of the services of an attendant, the department
31 shall make monthly payments to such attendant for such services as long
32 as such requirement continues, but such payments shall not obtain or be
33 operative while the worker is receiving care under or pursuant to the
34 provisions of chapter 51.36 RCW and RCW 51.04.105.

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

1 (5) In no event shall the monthly payments provided in this section
2 exceed (~~(one hundred percent)~~) the applicable percentage of the average
3 monthly wage in the state as computed under the provisions of RCW
4 51.08.018(~~(, except that this)~~) as follows:

5	<u>AFTER</u>	<u>PERCENTAGE</u>
6	<u>June 30, 1993</u>	<u>105%</u>
7	<u>June 30, 1994</u>	<u>110%</u>

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

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

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

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

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

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

26 (3) As soon as recovery is so complete that the present earning
27 power of the worker, at any kind of work, is restored to that existing
28 at the time of the occurrence of the injury, the payments shall cease.
29 If and so long as the present earning power is only partially restored,
30 the payments shall continue in the proportion which the new earning
31 power shall bear to the old. No compensation shall be payable unless
32 the loss of earning power shall exceed five percent.

33 (4) Whenever an employer requests that a worker who is entitled to
34 temporary total disability under this chapter be certified by a
35 physician as able to perform available work other than his or her usual
36 work, the employer shall furnish to the physician, with a copy to the
37 worker, a statement describing the available work in terms that will

1 enable the physician to relate the physical activities of the job to
2 the worker's disability. The physician shall then determine whether
3 the worker is physically able to perform the work described. If the
4 worker is released by his or her physician for said work, and the work
5 thereafter comes to an end before the worker's recovery is sufficient
6 in the judgment of his or her physician to permit him or her to return
7 to his or her usual job, or to perform other available work, the
8 worker's temporary total disability payments shall be resumed. Should
9 the available work described, once undertaken by the worker, impede his
10 or her recovery to the extent that in the judgment of his or her
11 physician he or she should not continue to work, the worker's temporary
12 total disability payments shall be resumed when the worker ceases such
13 work.

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

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

21 (5) No worker shall receive compensation for or during the day on
22 which injury was received or the three days following the same, unless
23 his or her disability shall continue for a period of fourteen
24 consecutive calendar days from date of injury: PROVIDED, That attempts
25 to return to work in the first fourteen days following the injury shall
26 not serve to break the continuity of the period of disability if the
27 disability continues fourteen days after the injury occurs.

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

34 (7) In no event shall the monthly payments provided in this section
35 exceed (~~one hundred percent~~) the applicable percentage of the average
36 monthly wage in the state as computed under the provisions of RCW
37 51.08.018(~~(-)~~) as follows:

38 AFTER PERCENTAGE

1 June 30, 1993 105%
2 June 30, 1994 110%

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

6 NEW SECTION. Sec. 4. (1) There is hereby created a legislative
7 task force on workers' compensation to review the state's industrial
8 insurance system and make recommendations on the following issues:

9 (a) The adequacy and equity of the industrial insurance benefit
10 structure with regard to death and disability benefit increases;

11 (b) Alternative benefit formulas such as utilizing spendable income
12 in the computation;

13 (c) The effectiveness and efficiency of claims management services
14 with the department; and

15 (d) Alternative claims management options.

16 (2) The task force consists of up to twelve voting members, as
17 follows:

18 (a) Two members from each caucus of the senate, appointed by the
19 president of the senate, with at least two members from the membership
20 of the labor and commerce committee;

21 (b) Two members from each caucus of the house of representatives,
22 appointed by the speaker of the house of representatives, with at least
23 two members from the membership of the commerce and labor committee;
24 and

25 (c) Two representatives of business, including self-insurers, and
26 self-insured public employers; and two representatives of labor
27 appointed jointly by the president of the senate and the speaker of the
28 house of representatives.

29 (3) The department of labor and industries shall cooperate with the
30 task force and the deputy director of the department of labor and
31 industries in charge of industrial insurance shall be the nonvoting
32 chairperson.

33 (4) The task force shall use legislative staff and facilities, but
34 may hire additional staff with specific technical expertise if such
35 expertise is necessary to carry out the mandates of this section. All
36 expenses of the task force, including travel, shall be paid jointly by
37 the senate and the house of representatives.

1 (5) The task force shall report its findings and recommendations to
2 the appropriate legislative committees by December 1, 1994. The task
3 force shall expire July 1, 1995.

4 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and shall take
7 effect July 1, 1993."

8 **ESHB 1248** - S COMM AMD TO LAB COMM AMD (1248-S.E AMS LAB S2968.1)
9 By Committee on Labor & Commerce

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11 On page 9, line 19 of the title amendment, after "51.32.090;"
12 insert "creating a new section;"

--- END ---