

2 ESHB 1248 - S COMM AMD
3 By Committee on Labor & Commerce

4 NOT ADOPTED 4/15/93

5 Strike everything after the enacting clause and insert the
6 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>110%</u> |
| 35 | <u>June 30, 1995</u> | <u>125%</u> |
| 36 | <u>June 30, 1997</u> | <u>150%</u> |

37 (e) In addition to the monthly payments provided for in (2)(a)
38 through (2)(c) of this section, a surviving spouse or child or children

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

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

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

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

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

36 (h) The effective date of resumption of payments under (2)(f)(ii)
37 of this section to a surviving spouse based upon termination of a
38 remarriage by death, annulment, or dissolution shall be the date of the

1 death or the date the judicial decree of annulment or dissolution
2 becomes final and when application for the payments has been received.

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

8 (3) If there is a child or children and no surviving spouse of the
9 deceased worker or the surviving spouse is not eligible for benefits
10 under this title, a sum equal to thirty-five percent of the wages of
11 the deceased worker shall be paid monthly for one child and a sum
12 equivalent to fifteen percent of such wage shall be paid monthly for
13 each additional child, the total of such sum to be divided among such
14 children, share and share alike: PROVIDED, That benefits under this
15 subsection or subsection (4) of this section shall not exceed the
16 lesser of sixty-five percent of the wages of the deceased worker at the
17 time of 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, 1993</u> | <u>110%</u> |
| 22 | <u>June 30, 1995</u> | <u>125%</u> |
| 23 | <u>June 30, 1997</u> | <u>150%</u> |

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

27 (5) If the worker leaves no surviving spouse or child, but leaves
28 a dependent or dependents, a monthly payment shall be made to each
29 dependent equal to fifty percent of the average monthly support
30 actually received by such dependent from the worker during the twelve
31 months next preceding the occurrence of the injury, but the total
32 payment to all dependents in any case shall not exceed the lesser of
33 sixty-five percent of the wages of the deceased worker at the time of
34 (~~the~~) his or her death or (~~one hundred percent~~) the applicable
35 percentage of the average monthly wage in the state as defined in RCW
36 51.08.018(~~, whichever is the lesser of the two sums.~~) as follows:

| 37 | <u>AFTER</u> | <u>PERCENTAGE</u> |
|----|--------------|-------------------|
|----|--------------|-------------------|

| | | |
|---|----------------------|-------------|
| 1 | <u>June 30, 1993</u> | <u>110%</u> |
| 2 | <u>June 30, 1995</u> | <u>125%</u> |
| 3 | <u>June 30, 1997</u> | <u>150%</u> |

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (4) Should any further accident result in the permanent total
39 disability of an injured worker, he or she shall receive the pension to

1 which he or she would be entitled, notwithstanding the payment of a
2 lump sum for his or her prior injury.

3 (5) In no event shall the monthly payments provided in this section
4 exceed (~~one hundred percent~~) the applicable percentage of the average
5 monthly wage in the state as computed under the provisions of RCW
6 51.08.018(~~(, except that this)~~) as follows:

| 7 | <u>AFTER</u> | <u>PERCENTAGE</u> |
|----|----------------------|-------------------|
| 8 | <u>June 30, 1993</u> | <u>110%</u> |
| 9 | <u>June 30, 1995</u> | <u>125%</u> |
| 10 | <u>June 30, 1997</u> | <u>150%</u> |

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

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

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

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

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

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

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

36 (4) Whenever an employer requests that a worker who is entitled to
37 temporary total disability under this chapter be certified by a

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

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

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

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

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

37 (7) In no event shall the monthly payments provided in this section
38 exceed (~~one hundred percent~~) the applicable percentage of the average

1 monthly wage in the state as computed under the provisions of RCW
2 51.08.018((~~-~~)) as follows:

| 3 | <u>AFTER</u> | <u>PERCENTAGE</u> |
|---|----------------------|-------------------|
| 4 | <u>June 30, 1993</u> | <u>110%</u> |
| 5 | <u>June 30, 1995</u> | <u>125%</u> |
| 6 | <u>June 30, 1997</u> | <u>150%</u> |

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

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

14 **ESHB 1248** - S COMM AMD
15 By Committee on Labor & Commerce

16
17 On page 1, line 2 of the title, after "benefits;" strike the
18 remainder of the title and insert "amending RCW 51.32.050, 51.32.060,
19 and 51.32.090; providing an effective date; and declaring an
20 emergency."

--- END ---