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ENGROSSED SUBSTITUTE HOUSE BILL 1248

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State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives King, Heavey, Franklin, Orr, Jones, G. Cole, Veloria and Johanson)

Read first time 03/03/93.

1 AN ACT Relating to increasing industrial insurance death and  
2 disability benefits; amending RCW 51.32.050, 51.32.060, and 51.32.090;  
3 creating a new section; providing an effective date; and declaring an  
4 emergency.

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

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

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

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

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

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

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

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

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

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

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

29 (c) Payments to the surviving spouse of the deceased worker shall  
30 cease at the end of the month in which remarriage occurs: PROVIDED,  
31 That a monthly payment shall be made to the child or children of the  
32 deceased worker from the month following such remarriage in a sum equal  
33 to five percent of the wages of the deceased worker for one child and  
34 a sum equal to five percent for each additional child up to a maximum  
35 of five such children. Payments to such child or children shall be  
36 apportioned equally among such children. Such sum shall be in place of  
37 any payments theretofore made for the benefit of or on account of any  
38 such child or children. If the surviving spouse does not have legal  
39 custody of any child or children of the deceased worker, or if after

1 the death of the worker, legal custody of such child or children passes  
2 from such surviving spouse to another, any payment on account of such  
3 child or children not in the legal custody of the surviving spouse  
4 shall be made to the person or persons having legal custody of such  
5 child or children.

6 (d) In no event shall the monthly payments provided in subsection  
7 (2) of this section exceed one hundred ten percent of the average  
8 monthly wage in the state as computed under RCW 51.08.018.

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

16 (f) Upon remarriage of a surviving spouse the monthly payments for  
17 the child or children shall continue as provided in this section, but  
18 the monthly payments to such surviving spouse shall cease at the end of  
19 the month during which remarriage occurs. However, after September 8,  
20 1975, an otherwise eligible surviving spouse of a worker who died at  
21 any time prior to or after September 8, 1975, shall have an option of:

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

31 (ii) If a surviving spouse does not choose the option specified in  
32 (2)(f)(i) of this section to accept the lump sum payment, the  
33 remarriage of the surviving spouse of a worker shall not bar him or her  
34 from claiming the lump sum payment authorized in (2)(f)(i) of this  
35 section during the life of the remarriage, or shall not prevent  
36 subsequent monthly payments to him or to her if the remarriage has been  
37 terminated by death or has been dissolved or annulled by valid court  
38 decree provided he or she has not previously accepted the lump sum  
39 payment.

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

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

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

17 (3) If there is a child or children and no surviving spouse of the  
18 deceased worker or the surviving spouse is not eligible for benefits  
19 under this title, a sum equal to thirty-five percent of the wages of  
20 the deceased worker shall be paid monthly for one child and a sum  
21 equivalent to fifteen percent of such wage shall be paid monthly for  
22 each additional child, the total of such sum to be divided among such  
23 children, share and share alike: PROVIDED, That benefits under this  
24 subsection or subsection (4) of this section shall not exceed the  
25 lesser of sixty-five percent of the wages of the deceased worker at the  
26 time of his or her death or one hundred ten percent of the average  
27 monthly wage in the state as defined in RCW 51.08.018(~~(, whichever is~~  
28 ~~the lesser of the two sums))~~.

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

32 (5) If the worker leaves no surviving spouse or child, but leaves  
33 a dependent or dependents, a monthly payment shall be made to each  
34 dependent equal to fifty percent of the average monthly support  
35 actually received by such dependent from the worker during the twelve  
36 months next preceding the occurrence of the injury, but the total  
37 payment to all dependents in any case shall not exceed the lesser of  
38 sixty-five percent of the wages of the deceased worker at the time of  
39 ((the)) his or her death or one hundred ten percent of the average

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

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

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

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

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

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

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

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

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

36 (d) If married with three children at the time of injury,  
37 seventy-one percent of his or her wages but not less than three hundred  
38 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 ten percent of the average monthly wage in the state  
3 as computed under the provisions of RCW 51.08.018, except that this  
4 limitation shall not apply to the payments provided for in subsection  
5 (3) of this section.

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

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

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

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

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

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

29 (4) Whenever an employer requests that a worker who is entitled to  
30 temporary total disability under this chapter be certified by a  
31 physician as able to perform available work other than his or her usual  
32 work, the employer shall furnish to the physician, with a copy to the  
33 worker, a statement describing the available work in terms that will  
34 enable the physician to relate the physical activities of the job to  
35 the worker's disability. The physician shall then determine whether  
36 the worker is physically able to perform the work described. If the  
37 worker is released by his or her physician for said work, and the work  
38 thereafter comes to an end before the worker's recovery is sufficient

1 in the judgment of his or her physician to permit him or her to return  
2 to his or her usual job, or to perform other available work, the  
3 worker's temporary total disability payments shall be resumed. Should  
4 the available work described, once undertaken by the worker, impede his  
5 or her recovery to the extent that in the judgment of his or her  
6 physician he or she should not continue to work, the worker's temporary  
7 total disability payments shall be resumed when the worker ceases such  
8 work.

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

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

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

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

29       (7) In no event shall the monthly payments provided in this section  
30 exceed one hundred ten percent of the average monthly wage in the state  
31 as computed under the provisions of RCW 51.08.018.

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

35       NEW SECTION.   **Sec. 4.** (1) There is hereby created a legislative  
36 task force on workers' compensation to review the state's industrial  
37 insurance system and make recommendations on the following issues: The  
38 adequacy and equity of the industrial insurance benefit structure with



1 regard to death and disability benefit increases and the determination  
2 of benefits based on spendable income.

3 The task force consists of up to twenty-five voting members, as  
4 follows:

5 (a) Three members from each caucus of the senate, appointed by the  
6 president of the senate, with at least two members from the membership  
7 of the labor and commerce committee;

8 (b) Three members from each caucus of the house of representatives,  
9 appointed by the speaker of the house of representatives, with at least  
10 two members from the membership of the commerce and labor committee;  
11 and

12 (c) Up to thirteen members appointed jointly by the president of  
13 the senate and the speaker of the house of representatives to include  
14 geographic representation and to fairly represent the following:  
15 Injured workers; labor; the legal profession; business including self-  
16 insurers; and self-insured public employers.

17 (2) The department of labor and industries shall cooperate with the  
18 task force and maintain a liaison representative, who shall be a  
19 nonvoting member.

20 (3) The task force shall use legislative staff and facilities, but  
21 may hire additional staff with specific technical expertise if such  
22 expertise is necessary to carry out the mandates of this section. All  
23 expenses of the task force, including travel, shall be paid jointly by  
24 the senate and the house of representatives.

25 (4) The task force shall report its findings and recommendations to  
26 the appropriate legislative committees by December 1, 1993. The task  
27 force shall expire July 1, 1994.

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

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