SENATE BILL REPORT
SB 5323

As of January 29, 2003

Title: An act relating to calculating the amount of total disability and death benefits under Title 51 RCW.

Brief Description: Modifying industrial insurance wage provisions.

Sponsors: Senator Honeyford; by request of Department of Labor & Industries.

Brief History:
Committee Activity: Commerce & Trade: 1/30/03.

SENATE COMMITTEE ON COMMERCE & TRADE

Staff: Jennifer Ziegler (786-7316)

Background: A worker who is injured in the course of employment is entitled to benefits under Washington's industrial insurance law. Benefits include compensation for time lost from work (time-loss benefits) and for medical care related to the injury or occupational disease.

<u>Calculation of Wages</u>. Time-loss benefits are based on the worker's monthly wage at the time of the injury. If a worker's employment is seasonal in nature or essentially part-time or intermittent, the monthly wages are determined by dividing by 12 the total wages earned from all employment in any 12 successive calendar months preceding the injury.

The current statutory definition of wages includes tips, to the extent they are reported to the employer for federal income tax purposes, and the "reasonable value of board, housing, and fuel or other consideration of like nature."

<u>Time-Loss Benefits</u>. If a worker is injured or dies as the result of an occupational injury or disease, the injured worker or the surviving spouse and children are eligible for 60-72 percent of the worker's monthly wage. The actual percentage of benefits received is determined by the number of dependents.

An injured worker with a permanent partial disability receives compensation for the disability according to a statutory schedule. Payments made under this program increase each July by the annual change in the U.S. Consumer Price Index for Urban Wage Earners and Clerical Workers.

Benefit payments for lost wages must not exceed 120 percent of the state's average monthly wage.

<u>Relevant Court Cases</u>. Two recent Washington Supreme Court decisions have affected the way wages are calculated. In *Cockle v. The Department of Labor and Industries*, the court

held that health care benefits must be incorporated into the calculation of wages when determining time-loss benefits for injured workers.

In *Avundes v. The Department of Labor and Industries*, the court established a test to determine whether an employee's work was intermittent. If the Department of Labor and Industries or a self-insured employer determines that the work is intermittent, wages must be calculated by dividing the total year's wages by 12. If the work is not intermittent, wages must be calculated based on the worker's current monthly wage.

Summary of Bill: Changes are made to the calculation of wages and time-loss benefits.

<u>Calculation of Wages</u>. Wages include:

(1) The gross cash wages paid by the employer for services performed;
(2) Tips that are reported for federal income tax purposes;
(3) The average monthly value of any bonus received from the employer in the 12 months prior to the injury or disease;
(4) The actual value of board, housing and fuel received from the employer. The actual value of board, housing and fuel must not be included in the calculation of wages if the employer continues to provide those benefits while the worker is not working; and

(5) Medical, dental and vision benefits provided by the employer. The value of these wages is fixed at $373 per month and must be adjusted annually based on the medical portion of the national consumer price index for all urban consumers.

Wages do not include fringe benefits. Fringe benefits include, but are not limited to: contributions to a retirement or pension plan; life insurance; training; long-term disability; social security; profit sharing; stock options; savings account plans; or other employee or beneficiary benefit plans.

A worker's benefits must be calculated based on the monthly wages the worker received from all employment at the time of the injury. If a worker was engaged in temporary employment and the worker was employed less than 195 working days in the 12 months preceding the injury or disease, the department must calculate the monthly wage by dividing by 12 the total wages earned, including overtime, in the highest of any 12 successive calendar months in the three years preceding the injury.

<u>Time-Loss Benefits</u>. After July 1, 2004, a worker with a permanent or a temporary total disability must receive 67 percent of his or her wages each month, but no less than $352 per month.

Appropriation: None.

Fiscal Note: Requested on January 23, 2003.

Effective Date: Ninety days after adjournment of session in which bill is passed.