

SB 5675 - S AMD 172

By Senators Franklin, Kohl-Welles

ADOPTED 03/10/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 51.32.050 and 1995 c 199 s 6 are each amended to read
4 as follows:

5 (1) Where death results from the injury the expenses of burial not
6 to exceed two hundred percent of the average monthly wage in the state
7 as defined in RCW 51.08.018 shall be paid.

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

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

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

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

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

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

27 or

28 (vi) If there are five or more children of the deceased worker and
29 in the legal custody of such spouse, seventy percent of the wages of

1 the deceased worker (~~but not less than three hundred twenty two~~
2 ~~dollars~~)).

3 (b) Where the surviving spouse does not have legal custody of any
4 child or children of the deceased worker or where after the death of
5 the worker legal custody of such child or children passes from such
6 surviving spouse to another, any payment on account of such child or
7 children not in the legal custody of the surviving spouse shall be made
8 to the person or persons having legal custody of such child or
9 children. The amount of such payments shall be five percent of the
10 monthly benefits payable as a result of the worker's death for each
11 such child but such payments shall not exceed twenty-five percent.
12 Such payments on account of such child or children shall be subtracted
13 from the amount to which such surviving spouse would have been entitled
14 had such surviving spouse had legal custody of all of the children and
15 the surviving spouse shall receive the remainder after such payments on
16 account of such child or children have been subtracted. Such payments
17 on account of a child or children not in the legal custody of such
18 surviving spouse shall be apportioned equally among such children.

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

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

37 (i) Exceed the applicable percentage of the average monthly wage in
38 the state as computed under RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
1		
2	June 30, 1993	105%
3	June 30, 1994	110%
4	June 30, 1995	115%
5	June 30, 1996	120%

6 (ii) For dates of injury or disease manifestation after July 1,
7 2008, be less than fifteen percent of the average monthly wage in the
8 state as computed under RCW 51.08.018 plus an additional ten dollars
9 per month for a surviving spouse and an additional ten dollars per
10 month for each child of the worker up to a maximum of five children.
11 However, if the monthly payment computed under this subsection
12 (2)(d)(ii) is greater than one hundred percent of the wages of the
13 deceased worker as determined under RCW 51.08.178, the monthly payment
14 due to the surviving spouse shall be equal to the greater of the
15 monthly wages of the deceased worker or the minimum benefit set forth
16 in this section on June 30, 2008.

17 (e) In addition to the monthly payments provided for in subsection
18 (2)(a) through (c) of this section, a surviving spouse or child or
19 children of such worker if there is no surviving spouse, or dependent
20 parent or parents, if there is no surviving spouse or child or children
21 of any such deceased worker shall be forthwith paid a sum equal to one
22 hundred percent of the average monthly wage in the state as defined in
23 RCW 51.08.018, any such children, or parents to share and share alike
24 in said sum.

25 (f) Upon remarriage of a surviving spouse the monthly payments for
26 the child or children shall continue as provided in this section, but
27 the monthly payments to such surviving spouse shall cease at the end of
28 the month during which remarriage occurs. However, after September 8,
29 1975, an otherwise eligible surviving spouse of a worker who died at
30 any time prior to or after September 8, 1975, shall have an option of:

31 (i) Receiving, once and for all, a lump sum of twenty-four times
32 the monthly compensation rate in effect on the date of remarriage
33 allocable to the spouse for himself or herself pursuant to subsection
34 (2)(a)(i) of this section and subject to any modifications specified
35 under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty

1 percent of the then remaining annuity value of his or her pension,
2 whichever is the lesser: PROVIDED, That if the injury occurred prior
3 to July 28, 1991, the remarriage benefit lump sum available shall be as
4 provided in the remarriage benefit schedules then in effect; or

5 (ii) If a surviving spouse does not choose the option specified in
6 subsection (2)(f)(i) of this section to accept the lump sum payment,
7 the remarriage of the surviving spouse of a worker shall not bar him or
8 her from claiming the lump sum payment authorized in subsection
9 (2)(f)(i) of this section during the life of the remarriage, or shall
10 not prevent subsequent monthly payments to him or to her if the
11 remarriage has been terminated by death or has been dissolved or
12 annulled by valid court decree provided he or she has not previously
13 accepted the lump sum payment.

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

20 (h) The effective date of resumption of payments under subsection
21 (2)(f)(ii) of this section to a surviving spouse based upon termination
22 of a remarriage by death, annulment, or dissolution shall be the date
23 of the death or the date the judicial decree of annulment or
24 dissolution becomes final and when application for the payments has
25 been received.

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

31 (3) If there is a child or children and no surviving spouse of the
32 deceased worker or the surviving spouse is not eligible for benefits
33 under this title, a sum equal to thirty-five percent of the wages of
34 the deceased worker shall be paid monthly for one child and a sum
35 equivalent to fifteen percent of such wage shall be paid monthly for
36 each additional child, the total of such sum to be divided among such
37 children, share and share alike: PROVIDED, That benefits under this
38 subsection or subsection (4) of this section shall not exceed the

1 lesser of sixty-five percent of the wages of the deceased worker at the
2 time of his or her death or the applicable percentage of the average
3 monthly wage in the state as defined in RCW 51.08.018, as follows:

4	AFTER	PERCENTAGE
5	June 30, 1993	105%
6	June 30, 1994	110%
7	June 30, 1995	115%
8	June 30, 1996	120%

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

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

21	AFTER	PERCENTAGE
22	June 30, 1993	105%
23	June 30, 1994	110%
24	June 30, 1995	115%
25	June 30, 1996	120%

26 If any dependent is under the age of eighteen years at the time of the
27 occurrence of the injury, the payment to such dependent shall cease
28 when such dependent reaches the age of eighteen years except such
29 payments shall continue until the dependent reaches age twenty-three
30 while permanently enrolled at a full time course in an accredited
31 school. The payment to any dependent shall cease if and when, under
32 the same circumstances, the necessity creating the dependency would
33 have ceased if the injury had not happened.

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

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

13 **Sec. 2.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read
14 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (3) In case of permanent total disability, if the character of the
21 injury is such as to render the worker so physically helpless as to
22 require the hiring of the services of an attendant, the department
23 shall make monthly payments to such attendant for such services as long
24 as such requirement continues, but such payments shall not obtain or be
25 operative while the worker is receiving care under or pursuant to the
26 provisions of chapter 51.36 RCW and RCW 51.04.105.

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

31 (5) In no event shall the monthly payments provided in this
32 section:

33 (a) Exceed the applicable percentage of the average monthly wage in
34 the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%

1	June 30, 1994	110%
2	June 30, 1995	115%
3	June 30, 1996	120%

4 (b) For dates of injury or disease manifestation after July 1,
5 2008, be less than fifteen percent of the average monthly wage in the
6 state as computed under RCW 51.08.018 plus an additional ten dollars
7 per month if a worker is married and an additional ten dollars per
8 month for each child of the worker up to a maximum of five children.
9 However, if the monthly payment computed under this subsection (5)(b)
10 is greater than one hundred percent of the wages of the worker as
11 determined under RCW 51.08.178, the monthly payment due to the worker
12 shall be equal to the greater of the monthly wages of the worker or the
13 minimum benefit set forth in this section on June 30, 2008.

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

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

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

22 **Sec. 3.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and 1993
23 c 271 s 1 are each reenacted and amended to read as follows:

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

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

32 (3)(a) As soon as recovery is so complete that the present earning
33 power of the worker, at any kind of work, is restored to that existing
34 at the time of the occurrence of the injury, the payments shall cease.
35 If and so long as the present earning power is only partially restored,
36 the payments shall:

1 (i) For claims for injuries that occurred before May 7, 1993,
2 continue in the proportion which the new earning power shall bear to
3 the old; or

4 (ii) For claims for injuries occurring on or after May 7, 1993,
5 equal eighty percent of the actual difference between the worker's
6 present wages and earning power at the time of injury, but: (A) The
7 total of these payments and the worker's present wages may not exceed
8 one hundred fifty percent of the average monthly wage in the state as
9 computed under RCW 51.08.018; (B) the payments may not exceed one
10 hundred percent of the entitlement as computed under subsection (1) of
11 this section; and (C) the payments may not be less than the worker
12 would have received if (a)(i) of this subsection had been applicable to
13 the worker's claim.

14 (b) No compensation shall be payable under this subsection (3)
15 unless the loss of earning power shall exceed five percent.

16 (4)(a) Whenever the employer of injury requests that a worker who
17 is entitled to temporary total disability under this chapter be
18 certified by a physician as able to perform available work other than
19 his or her usual work, the employer shall furnish to the physician,
20 with a copy to the worker, a statement describing the work available
21 with the employer of injury in terms that will enable the physician to
22 relate the physical activities of the job to the worker's disability.
23 The physician shall then determine whether the worker is physically
24 able to perform the work described. The worker's temporary total
25 disability payments shall continue until the worker is released by his
26 or her physician for the work, and begins the work with the employer of
27 injury. If the work thereafter comes to an end before the worker's
28 recovery is sufficient in the judgment of his or her physician to
29 permit him or her to return to his or her usual job, or to perform
30 other available work offered by the employer of injury, the worker's
31 temporary total disability payments shall be resumed. Should the
32 available work described, once undertaken by the worker, impede his or
33 her recovery to the extent that in the judgment of his or her physician
34 he or she should not continue to work, the worker's temporary total
35 disability payments shall be resumed when the worker ceases such work.

36 (b) Once the worker returns to work under the terms of this
37 subsection (4), he or she shall not be assigned by the employer to work

1 other than the available work described without the worker's written
2 consent, or without prior review and approval by the worker's
3 physician.

4 (c) If the worker returns to work under this subsection (4), any
5 employee health and welfare benefits that the worker was receiving at
6 the time of injury shall continue or be resumed at the level provided
7 at the time of injury. Such benefits shall not be continued or resumed
8 if to do so is inconsistent with the terms of the benefit program, or
9 with the terms of the collective bargaining agreement currently in
10 force.

11 (d) In the event of any dispute as to the worker's ability to
12 perform the available work offered by the employer, the department
13 shall make the final determination.

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

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

27 (7) In no event shall the monthly payments provided in this
28 section:

29 (a) Exceed the applicable percentage of the average monthly wage in
30 the state as computed under the provisions of RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
31		
32	June 30, 1993	105%
33	June 30, 1994	110%
34	June 30, 1995	115%
35	June 30, 1996	120%

1 (b) For dates of injury or disease manifestation after July 1,
2 2008, be less than fifteen percent of the average monthly wage in the
3 state as computed under RCW 51.08.018 plus an additional ten dollars
4 per month if the worker is married and an additional ten dollars per
5 month for each child of the worker up to a maximum of five children.
6 However, if the monthly payment computed under this subsection (7)(b)
7 is greater than one hundred percent of the wages of the worker as
8 determined under RCW 51.08.178, the monthly payment due to the worker
9 shall be equal to the greater of the monthly wages of the worker or the
10 minimum benefit set forth in this section on June 30, 2008.

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

14 NEW SECTION. Sec. 4. This act takes effect July 1, 2008."

SB 5675 - S AMD

By Senators Franklin, Kohl-Welles

ADOPTED 03/10/2007

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

EFFECT: A worker receiving temporary or permanent total disability benefits or death benefits may not receive benefits that are greater than the worker's monthly wages but not less than the minimum benefit amount currently available to the worker. The emergency clause is removed and the effective date is changed to July 1, 2008.

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