

2 ESHB 1248 - S AMD

3 By Senators Gaspard, Moore and Vognild

4

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:

	<u>AFTER</u>	<u>PERCENTAGE</u>
33		
34	<u>June 30, 1993</u>	<u>105%</u>
35	<u>June 30, 1994</u>	<u>110%</u>
36	<u>June 30, 1995</u>	<u>115%</u>
37	<u>June 30, 1996</u>	<u>120%</u>

1 (e) In addition to the monthly payments provided for in (2)(a)
2 through (2)(c) of this section, a surviving spouse or child or children
3 of such worker if there is no surviving spouse, or dependent parent or
4 parents, if there is no surviving spouse or child or children of any
5 such deceased worker shall be forthwith paid the sum of one thousand
6 six hundred dollars, any such children, or parents to share and share
7 alike in said sum.

8 (f) Upon remarriage of a surviving spouse the monthly payments for
9 the child or children shall continue as provided in this section, but
10 the monthly payments to such surviving spouse shall cease at the end of
11 the month during which remarriage occurs. However, after September 8,
12 1975, an otherwise eligible surviving spouse of a worker who died at
13 any time prior to or after September 8, 1975, shall have an option of:

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

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

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

38 (h) The effective date of resumption of payments under (2)(f)(ii)
39 of this section to a surviving spouse based upon termination of a

1 remarriage by death, annulment, or dissolution shall be the date of the
2 death or the date the judicial decree of annulment or dissolution
3 becomes final and when application for the payments has been received.

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

9 (3) If there is a child or children and no surviving spouse of the
10 deceased worker or the surviving spouse is not eligible for benefits
11 under this title, a sum equal to thirty-five percent of the wages of
12 the deceased worker shall be paid monthly for one child and a sum
13 equivalent to fifteen percent of such wage shall be paid monthly for
14 each additional child, the total of such sum to be divided among such
15 children, share and share alike: PROVIDED, That benefits under this
16 subsection or subsection (4) of this section shall not exceed the
17 lesser of sixty-five percent of the wages of the deceased worker at the
18 time of his or her death or ((one hundred percent)) the applicable
19 percentage of the average monthly wage in the state as defined in RCW
20 51.08.018, ((whichever is the lesser of the two sums.)) as follows:

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

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

29 (5) If the worker leaves no surviving spouse or child, but leaves
30 a dependent or dependents, a monthly payment shall be made to each
31 dependent equal to fifty percent of the average monthly support
32 actually received by such dependent from the worker during the twelve
33 months next preceding the occurrence of the injury, but the total
34 payment to all dependents in any case shall not exceed the lesser of
35 sixty-five percent of the wages of the deceased worker at the time of
36 ((the)) his or her death or ((one hundred percent)) the applicable
37 percentage of the average monthly wage in the state as defined in RCW
38 51.08.018((, whichever is the lesser of the two sums.)) as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (3) In case of permanent total disability, if the character of the
35 injury is such as to render the worker so physically helpless as to
36 require the hiring of the services of an attendant, the department
37 shall make monthly payments to such attendant for such services as long
38 as such requirement continues, but such payments shall not obtain or be

1 operative while the worker is receiving care under or pursuant to the
2 provisions of chapter 51.36 RCW and RCW 51.04.105.

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

7 (5) In no event shall the monthly payments provided in this section
8 exceed (~~(one hundred percent)~~) the applicable percentage of the average
9 monthly wage in the state as computed under the provisions of RCW
10 51.08.018(~~(, except that this)~~) as follows:

11	<u>AFTER</u>	<u>PERCENTAGE</u>
12	<u>June 30, 1993</u>	<u>105%</u>
13	<u>June 30, 1994</u>	<u>110%</u>
14	<u>June 30, 1995</u>	<u>115%</u>
15	<u>June 30, 1996</u>	<u>120%</u>

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

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

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

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

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

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

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

1 the payments shall continue in the proportion which the new earning
2 power shall bear to the old. No compensation shall be payable unless
3 the loss of earning power shall exceed five percent.

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

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

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

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

36 (6) Should a worker suffer a temporary total disability and should
37 his or her employer at the time of the injury continue to pay him or
38 her the wages which he or she was earning at the time of such injury,
39 such injured worker shall not receive any payment provided in

1 subsection (1) of this section during the period his or her employer
2 shall so pay such wages.

3 (7) 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(~~(-)~~) as follows:

7	<u>AFTER</u>	<u>PERCENTAGE</u>
8	<u>June 30, 1993</u>	<u>105%</u>
9	<u>June 30, 1994</u>	<u>110%</u>
10	<u>June 30, 1995</u>	<u>115%</u>
11	<u>June 30, 1996</u>	<u>120%</u>

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

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

19 **ESHB 1248** - S AMD
20 By Senators Gaspard, Moore and Vognild

21
22 On page 1, line 2 of the title, after "benefits;" strike the
23 remainder of the title and insert "amending RCW 51.32.050, 51.32.060,
24 and 51.32.090; providing an effective date; and declaring an
25 emergency."

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