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HOUSE BILL 1781

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Lisk and Romero

Read first time 02/08/95. Referred to Committee on Commerce & Labor.

1       AN ACT Relating to industrial insurance benefits for beneficiaries  
2 of injured workers; and amending RCW 51.32.020, 51.32.040, 51.32.050,  
3 and 51.32.067.

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

5       **Sec. 1.** RCW 51.32.020 and 1977 ex.s. c 350 s 39 are each amended  
6 to read as follows:

7       If injury or death results to a worker from the deliberate  
8 intention of the worker himself or herself to produce such injury or  
9 death, or while the worker is engaged in the attempt to commit, or the  
10 commission of, a felony, neither the worker nor the widow, widower,  
11 child, or dependent of the worker shall receive any payment under this  
12 title.

13       If injury or death results to a worker from the deliberate  
14 intention of a beneficiary of that worker to produce the injury or  
15 death, or if injury or death results to a worker as a consequence of a  
16 beneficiary of that worker engaging in the attempt to commit, or the  
17 commission of, a felony, the beneficiary shall not receive any payment  
18 under this title.

1        An invalid child, while being supported and cared for in a state  
2 institution, shall not receive compensation under this chapter.

3        No payment shall be made to or for a natural child of a deceased  
4 worker and, at the same time, as the stepchild of a deceased worker.

5        **Sec. 2.** RCW 51.32.040 and 1987 c 75 s 7 are each amended to read  
6 as follows:

7        No money paid or payable under this title shall, except as provided  
8 for in RCW 43.20B.720 or 74.20A.260, prior to the issuance and delivery  
9 of the check or warrant therefor, be capable of being assigned,  
10 charged, or ever be taken in execution or attached or garnished, nor  
11 shall the same pass, or be paid, to any other person by operation of  
12 law, or by any form of voluntary assignment, or power of attorney. Any  
13 such assignment or charge shall be void, unless the transfer is to a  
14 financial institution at the request of a worker or other beneficiary  
15 and in accordance with RCW 51.32.045 shall be made: PROVIDED, That if  
16 any worker suffers a permanent partial injury, and dies from some other  
17 cause than the accident which produced such injury before he or she  
18 shall have received payment of his or her award for such permanent  
19 partial injury, or if any worker suffers any other injury before he or  
20 she shall have received payment of any monthly installment covering any  
21 period of time prior to his or her death, the amount of such permanent  
22 partial award, or of such monthly payment or both, shall be paid to the  
23 surviving spouse, or to the child or children if there is no surviving  
24 spouse: PROVIDED FURTHER, That, if any worker suffers an injury and  
25 dies therefrom before he or she shall have received payment of any  
26 monthly installment covering time loss for any period of time prior to  
27 his or her death, the amount of such monthly payment shall be paid to  
28 the surviving spouse, or to the child or children if there is no  
29 surviving spouse: PROVIDED FURTHER, That any application for  
30 compensation under the foregoing provisos of this section shall be  
31 filed with the department or self-insuring employer within one year of  
32 the date of death: PROVIDED FURTHER, That if the injured worker  
33 resided in the United States as long as three years prior to the date  
34 of injury, such payment shall not be made to any surviving spouse or  
35 child who was at the time of the injury a nonresident of the United  
36 States: PROVIDED FURTHER, That any worker or beneficiary receiving  
37 benefits under this title who is subsequently confined in, or who  
38 subsequently becomes eligible therefor while confined in any

1 institution under conviction and sentence shall have all payments of  
2 such compensation canceled during the period of confinement but after  
3 discharge from the institution payment of benefits thereafter due shall  
4 be paid if such worker or beneficiary would, but for the provisions of  
5 this proviso, otherwise be entitled thereto: PROVIDED FURTHER, That if  
6 any prisoner is injured in the course of his or her employment while  
7 participating in a work or training release program authorized by  
8 chapter 72.65 RCW and is subject to the provisions of this title, he or  
9 she shall be entitled to payments under this title subject to the  
10 requirements of chapter 72.65 RCW unless his or her participation in  
11 such program has been canceled, or unless he or she is returned to a  
12 state correctional institution, as defined in RCW 72.65.010(3), as a  
13 result of revocation of parole or new sentence: PROVIDED FURTHER, That  
14 if such incarcerated worker has during such confinement period, any  
15 beneficiaries, they shall be paid directly the monthly benefits which  
16 would have been paid to him or her for himself or herself and his or  
17 her beneficiaries had he or she not been so confined. Any lump sum  
18 benefits to which the worker would otherwise be entitled but for the  
19 provisions of these provisos shall be paid on a monthly basis to his or  
20 her beneficiaries.

21       **Sec. 3.** RCW 51.32.050 and 1993 c 521 s 1 are each amended to read  
22 as follows:

23       (1) Where death results from the injury the expenses of burial not  
24 to exceed two ((thousand dollars)) hundred percent of the average  
25 monthly wage in the state as defined in RCW 51.08.018 shall be paid.

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

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

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

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

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

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

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

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

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

1 shall be made to the person or persons having legal custody of such  
2 child or children.

3 (d) In no event shall the monthly payments provided in subsection  
4 (2) of this section exceed the applicable percentage of the average  
5 monthly wage in the state as computed under RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
7	June 30, 1993	105%
8	June 30, 1994	110%
9	June 30, 1995	115%
10	June 30, 1996	120%

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

20 (f) Upon remarriage of a surviving spouse the monthly payments for  
21 the child or children shall continue as provided in this section, but  
22 the monthly payments to such surviving spouse shall cease at the end of  
23 the month during which remarriage occurs. However, after September 8,  
24 1975, an otherwise eligible surviving spouse of a worker who died at  
25 any time prior to or after September 8, 1975, shall have an option of:

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

35 (ii) If a surviving spouse does not choose the option specified in  
36 subsection (2)(f)(i) of this section to accept the lump sum payment,  
37 the remarriage of the surviving spouse of a worker shall not bar him or  
38 her from claiming the lump sum payment authorized in subsection

1 (2)(f)(i) of this section during the life of the remarriage, or shall  
2 not prevent subsequent monthly payments to him or to her if the  
3 remarriage has been terminated by death or has been dissolved or  
4 annulled by valid court decree provided he or she has not previously  
5 accepted the lump sum payment.

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

12 (h) The effective date of resumption of payments under subsection  
13 (2)(f)(ii) of this section to a surviving spouse based upon termination  
14 of a remarriage by death, annulment, or dissolution shall be the date  
15 of the death or the date the judicial decree of annulment or  
16 dissolution becomes final and when application for the payments has  
17 been received.

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

23 (3) If there is a child or children and no surviving spouse of the  
24 deceased worker or the surviving spouse is not eligible for benefits  
25 under this title, a sum equal to thirty-five percent of the wages of  
26 the deceased worker shall be paid monthly for one child and a sum  
27 equivalent to fifteen percent of such wage shall be paid monthly for  
28 each additional child, the total of such sum to be divided among such  
29 children, share and share alike: PROVIDED, That benefits under this  
30 subsection or subsection (4) of this section shall not exceed the  
31 lesser of sixty-five percent of the wages of the deceased worker at the  
32 time of his or her death or the applicable percentage of the average  
33 monthly wage in the state as defined in RCW 51.08.018, as follows:

	AFTER	PERCENTAGE
35	June 30, 1993	105%
36	June 30, 1994	110%
37	June 30, 1995	115%
38	June 30, 1996	120%

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

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

	AFTER	PERCENTAGE
14	June 30, 1993	105%
15	June 30, 1994	110%
16	June 30, 1995	115%
17	June 30, 1996	120%

18 If any dependent is under the age of eighteen years at the time of the  
19 occurrence of the injury, the payment to such dependent shall cease  
20 when such dependent reaches the age of eighteen years except such  
21 payments shall continue until the dependent reaches age twenty-three  
22 while permanently enrolled at a full time course in an accredited  
23 school. The payment to any dependent shall cease if and when, under  
24 the same circumstances, the necessity creating the dependency would  
25 have ceased if the injury had not happened.

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

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

1       **Sec. 4.** RCW 51.32.067 and 1986 c 58 s 4 are each amended to read  
2 as follows:

3           (1) After a worker elects one of the options in (a), (b), or (c) of  
4 this subsection, that option shall apply only if the worker dies during  
5 a period of permanent total disability from a cause unrelated to the  
6 injury, leaving a surviving spouse, child, children, or other  
7 dependent. If, after making an election under this subsection, a  
8 worker dies from a cause related to the injury during a period of  
9 permanent total disability, his or her beneficiaries shall receive  
10 benefits under RCW 51.32.050 (2) through (5).

11          (a) **Option I.** An injured worker selecting this option shall  
12 receive the benefits provided by RCW 51.32.060, with no benefits being  
13 paid to the worker's surviving spouse, child, children, or others.

14          (b) **Option II.** An injured worker selecting this option shall  
15 receive an actuarially reduced benefit which upon death shall be  
16 continued throughout the life of and paid to the surviving spouse,  
17 child, children, or other dependent as the worker has nominated by  
18 written designation duly executed and filed with the department.

19          (c) **Option III.** An injured worker selecting this option shall  
20 receive an actuarially reduced benefit and, upon death, one-half of the  
21 reduced benefit shall be continued throughout the life of and paid to  
22 the surviving spouse, child, children, or other dependent as the worker  
23 has nominated by written designation duly executed and filed with the  
24 department.

25           (2) The worker shall make the election in writing and the worker's  
26 spouse, if any, shall consent in writing as a prerequisite to the  
27 election of Option I.

28           (3) The department shall adopt such rules as may be necessary to  
29 implement this section.

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