

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1248

Chapter 521, Laws of 1993

53rd Legislature
1993 Regular Session

WORKERS' COMPENSATION--DEATH AND DISABILITY BENEFITS

EFFECTIVE DATE: 7/1/93

Passed by the House April 20, 1993
Yeas 56 Nays 41

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate April 15, 1993
Yeas 25 Nays 20

JOEL PRITCHARD
President of the Senate

Approved May 18, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1248** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 18, 1993 - 11:59 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1248

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

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 providing an effective date; and declaring an emergency.

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

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

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

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

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

16 (ii) If there is one child of the deceased worker and in the legal
17 custody of such spouse, sixty-two percent of the wages of the deceased
18 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 percent~~) the applicable
8 percentage of the average monthly wage in the state as computed under
9 RCW 51.08.018(~~-~~) as follows:

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

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

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

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

37 (ii) If a surviving spouse does not choose the option specified in
38 (2)(f)(i) of this section to accept the lump sum payment, the

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

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

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

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

24 (3) If there is a child or children and no surviving spouse of the
25 deceased worker or the surviving spouse is not eligible for benefits
26 under this title, a sum equal to thirty-five percent of the wages of
27 the deceased worker shall be paid monthly for one child and a sum
28 equivalent to fifteen percent of such wage shall be paid monthly for
29 each additional child, the total of such sum to be divided among such
30 children, share and share alike: PROVIDED, That benefits under this
31 subsection or subsection (4) of this section shall not exceed the
32 lesser of sixty-five percent of the wages of the deceased worker at the
33 time of his or her death or ((one hundred percent)) the applicable
34 percentage of the average monthly wage in the state as defined in RCW
35 51.08.018, ((whichever is the lesser of the two sums.)) as follows:

36	<u>AFTER</u>	<u>PERCENTAGE</u>
37	<u>June 30, 1993</u>	<u>105%</u>
38	<u>June 30, 1994</u>	<u>110%</u>

1 June 30, 1995 115%
2 June 30, 1996 120%

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

6 (5) If the worker leaves no surviving spouse or child, but leaves
7 a dependent or dependents, a monthly payment shall be made to each
8 dependent equal to fifty percent of the average monthly support
9 actually received by such dependent from the worker during the twelve
10 months next preceding the occurrence of the injury, but the total
11 payment to all dependents in any case shall not exceed the lesser of
12 sixty-five percent of the wages of the deceased worker at the time of
13 ((the)) his or her death or ((one hundred percent)) the applicable
14 percentage of the average monthly wage in the state as defined in RCW
15 51.08.018(~~(, whichever is the lesser of the two sums.)~~) as follows:

16	<u>AFTER</u>	<u>PERCENTAGE</u>
17	<u>June 30, 1993</u>	<u>105%</u>
18	<u>June 30, 1994</u>	<u>110%</u>
19	<u>June 30, 1995</u>	<u>115%</u>
20	<u>June 30, 1996</u>	<u>120%</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (3) In case of permanent total disability, if the character of the
12 injury is such as to render the worker so physically helpless as to
13 require the hiring of the services of an attendant, the department
14 shall make monthly payments to such attendant for such services as long
15 as such requirement continues, but such payments shall not obtain or be
16 operative while the worker is receiving care under or pursuant to the
17 provisions of chapter 51.36 RCW and RCW 51.04.105.

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

22 (5) In no event shall the monthly payments provided in this section
23 exceed (~~one hundred percent~~) the applicable percentage of the average
24 monthly wage in the state as computed under the provisions of RCW
25 51.08.018(~~(, except that this)~~) as follows:

26	<u>AFTER</u>	<u>PERCENTAGE</u>
27	<u>June 30, 1993</u>	<u>105%</u>
28	<u>June 30, 1994</u>	<u>110%</u>
29	<u>June 30, 1995</u>	<u>115%</u>
30	<u>June 30, 1996</u>	<u>120%</u>

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

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

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

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

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

6 (2) Any compensation payable under this section for children not in
7 the custody of the injured worker as of the date of injury shall be
8 payable only to such person as actually is providing the support for
9 such child or children pursuant to the order of a court of record
10 providing for support of such child or children.

11 (3) As soon as recovery is so complete that the present earning
12 power of the worker, at any kind of work, is restored to that existing
13 at the time of the occurrence of the injury, the payments shall cease.
14 If and so long as the present earning power is only partially restored,
15 the payments shall continue in the proportion which the new earning
16 power shall bear to the old. No compensation shall be payable unless
17 the loss of earning power shall exceed five percent.

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

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

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

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

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

17 (7) In no event shall the monthly payments provided in this section
18 exceed (~~one hundred percent~~) the applicable percentage of the average
19 monthly wage in the state as computed under the provisions of RCW
20 51.08.018(~~(-)~~) 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 (8) If the supervisor of industrial insurance determines that the
27 worker is voluntarily retired and is no longer attached to the work
28 force, benefits shall not be paid under this section.

29 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and shall take
32 effect July 1, 1993.

Passed the House April 20, 1993.
Passed the Senate April 15, 1993.
Approved by the Governor May 18, 1993.
Filed in Office of Secretary of State May 18, 1993.