

## LEGISLATIVE BILL 193

Approved by the Governor April 21, 1973

Introduced by Syas, 13

AN ACT to amend section 48-123, Reissue Revised Statutes of Nebraska, 1943, and sections 48-121, 48-122, and 48-124, Revised Statutes Supplement, 1972, relating to workmen's compensation; to increase benefits; to change beneficiary provisions and provide additional beneficiaries; to provide for recomputation of benefits; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-121, Revised Statutes Supplement, 1972, be amended to read as follows:

48-121. The following schedule of compensation is hereby established for injuries resulting in disability:

(1) For the first three hundred weeks of total disability, the compensation during such disability shall be sixty-six and two-thirds per cent of the wages received at the time of injury, but such compensation shall not be more than sixty-two eighty dollars per week, nor less than forty forty-nine dollars per week; Provided, that if at the time of injury the employee receives wages of less than forty forty-nine dollars per week, then he shall receive the full amount of such wages per week as compensation. ~~After the first three hundred weeks of total disability, for the remainder of the life of the employee, he shall receive forty-five per cent of the wages received at the time of injury, but the compensation shall not be more than forty-seven dollars per week nor less than thirty-six dollars per week; Provided, that if at the time of the injury the employee receives wages of less than thirty-six dollars per week, then he shall receive the full amount of such wages as compensation; Nothing in this subdivision shall require payment of compensation after disability shall cease. Should partial disability be followed by total disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for partial disability.~~

(2) For disability partial in character, except the particular cases mentioned in subdivision (3) of this section, the compensation shall be sixty-six and two-thirds per cent of the difference between the wages received at the time of the injury and the earning power of the employee thereafter, but such compensation shall not be more than ~~sixty-two~~ eighty dollars per week. This compensation shall be paid during the period of such partial disability, but not beyond three hundred weeks. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total disability.

(3) For disability resulting from permanent injury of the following classes, the compensation shall be in addition to the amount paid for temporary disability; Provided, the compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable, viz: For the loss of a thumb, sixty-six and two-thirds per cent of daily wages during sixty weeks. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds per cent of daily wages during thirty-five weeks. For the loss of a second finger, sixty-six and two-thirds per cent of daily wages during thirty weeks. For the loss of a third finger, sixty-six and two-thirds per cent of daily wages during twenty weeks. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds per cent of daily wages during fifteen weeks. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one half of such thumb or finger and compensation shall be for one half of the periods of time above specified, and the compensation for the loss of one half of the first phalange shall be for one-fourth of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; Provided, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand. For the loss of a great toe, sixty-six and two-thirds per cent of daily wages during thirty weeks. For the loss of one of the toes other than the great toe, sixty-six and two-thirds per cent of daily wages during ten weeks. The loss of the first phalange of any toe shall be considered equal to the loss of one half of such toe, and compensation shall be for one half of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire toe. For the loss of a hand, sixty-six and two-thirds per cent of daily wages during one hundred seventy-five weeks. For

the loss of an arm, sixty-six and two-thirds per cent of daily wages during two hundred twenty-five weeks. For the loss of a foot, sixty-six and two-thirds per cent of daily wages during one hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds per cent of daily wages during two hundred fifteen weeks. For the loss of an eye, sixty-six and two-thirds per cent of daily wages during one hundred twenty-five weeks. For the loss of an ear, sixty-six and two-thirds per cent of daily wages during twenty-five weeks. For the loss of hearing in one ear, sixty-six and two-thirds per cent of daily wages during fifty weeks. For the loss of hearing in both ears, sixty-six and two-thirds per cent of daily wages during one hundred weeks. For the loss of the nose, sixty-six and two-thirds per cent of daily wages during fifty weeks. The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability and be compensated for according to the provisions of subdivision (1) of this section. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the compensation shall bear such relation to the amounts named in said subdivision as the disabilities bear to those produced by the injuries named therein. Should the employer and the employee be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to the provisions of sections 48-173 to 48-185. Compensation under this subdivision shall not be more than sixty-two eighty dollars per week, nor less than forty forty-nine dollars per week; Provided, that if at the time of the injury the employee received wages of less than forty forty-nine dollars per week, then he shall receive the full amount of such wages per week as compensation.

(4) For disability resulting from permanent disability, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee the weekly wages shall be taken to be computed upon the basis of a work week of a minimum of five days, if the wages are paid by the day, or upon the

basis of a work week of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a work week of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

(5) In determining earning power or the loss of earning power or in determining disability, any increase in earning power or earning capacity or any decrease in disability which is the result of vocational rehabilitation undertaken under the provisions of this act shall be taken into consideration and given effect. The employee shall be entitled to compensation for temporary disability while undergoing rehabilitation.

Sec. 2. That section 48-122, Revised Statutes Supplement, 1972, be amended to read as follows:

48-122. (1) If death results from injuries and the deceased employee leaves one or more dependents wholly dependent upon his earnings for support at the time of the accident causing the injury, the compensation, subject to the provisions of section 48-123, shall be ~~sixty-six-and-two-thirds-per-cent-of-the-wages-received-at-the-time-of-the-injury, but-the-compensation-shall not be more than sixty-two~~ eighty dollars per week nor less than ~~forty~~ forty-nine dollars per week; Provided, that if at the time of injury the employee receives wages of less than ~~forty~~ forty-nine dollars per week, then the compensation shall be the full amount of such wages per week, ~~---This compensation shall be paid during dependency, not exceeding three hundred twenty-five weeks except when such dependent is the widow of the deceased employee, in which case compensation shall be paid for the remainder of the life of such widow, or until she remarries, and the compensation shall cease upon her remarriage.~~ payable in the amount and to the persons enumerated in section 3 of this act subject to the maximum limits specified in this section and section 5 of this act.

(2) When death results from injuries suffered in employment, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee the weekly wages shall be taken to be computed upon the basis of a work week of a minimum of five days, if the wages are paid by the day, or upon the basis of a work week of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a work week of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

(3) ~~if at the time of the accident, which resulted in his death, the deceased employee leaves no persons wholly dependent, but leaves persons partially dependent upon his earnings for support, compensation shall be paid on account of the benefits provided in subsection (4) of this section for persons wholly dependent, in the proportion that the average amount regularly contributed by the deceased from his wages for a reasonable time immediately prior to the accident, to such persons who were partially dependent, bears to the total wages of the deceased during the time; Provided, that for the purpose of this subsection, the wages shall not in any case be considered to exceed the maximum compensation rate for total disability.~~

(4) [3] Upon the death of an employee, resulting through personal injuries as herein defined, whether or not there be dependents entitled to compensation, the reasonable expenses of burial, not exceeding one thousand dollars, without deduction of any amount previously paid or to be paid for compensation or for medical expenses, shall be paid to his dependents, or if there be no dependents, then to his personal representative.

(5) [4] Compensation under this act to alien dependents, widows, children, and parents who are not residents of the United States, shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employee the employer may at his option commute all future installments of compensation to be paid to such alien dependents. The amount of the commuted payment shall be determined as provided in section 48-138, by paying to them two-thirds of the total amount of such future installments of compensation. ~~Alien widowers, brothers, and sisters not residents of the United States shall not be entitled to any compensation.~~

(6) [5] The consul-general, consul, vice-consul-general, or vice-consul of the nation of which the employee, whose injury results in death, is a citizen, or the representative of such consul-general, consul, vice-consul-general, or vice-consul residing within the State of Nebraska shall be regarded as the sole legal representative of any alien dependents of the employee residing outside of the United States and representing the nationality of the employee. Such consular officer, or his representative, residing in the State of Nebraska, shall have in behalf of such nonresident dependents, the exclusive right to adjust and settle all claims for compensation provided by this act, and to receive the distribution to such nonresident alien dependents of all compensation arising thereunder.

Sec. 3. Compensation under section 48-122 shall be payable in the amount and to the following persons subject to the maximum limits specified in section 48-122 and section 5 of this act:

(1) If there is a widow or widower and no children of the deceased, as defined in section 48-124, to such widow or widower, sixty-six and two-thirds per cent of the average weekly wage of the deceased, during widowhood or widowerhood;

(2) To the widow or widower, if there is a child or children living with the widow or widower, sixty per cent of the average weekly wage of the deceased, or fifty-five per cent, if such child is not or such children are not living with a widow or widower, and, in addition thereto, fifteen per cent for each child. When there are two or more such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike;

(3) Two years' indemnity benefits in one lump sum shall be payable to a widow or widower upon remarriage;

(4) To the children, if there is no widow or widower, sixty-six and two-thirds per cent of such wage for one child, and fifteen per cent for each additional child, divided among such children, share and share alike;

(5) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen, or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of twenty-five. A child who originally qualified as a dependent by virtue of being less than eighteen years of age may, upon reaching age eighteen, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution;

(6) To each parent, if actually dependent, twenty-five per cent;

(7) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, twenty-five per cent to each such dependent. If there should be more than one of such dependents, the total income benefits payable on account of such dependents shall be divided

share and share alike:

(8) The income benefits of each beneficiary under subdivisions (6) and (7) of this section shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent; and

(9) A person ceases to be actually dependent when his income from all sources exclusive of workmen's compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workmen's compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workmen's compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subdivision and section 48-124.

Sec. 4. Upon the cessation of income benefits under section 3 of this act to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

Sec. 5. The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed seventy-five per cent of the average weekly wage of the deceased, subject to the maximum limits in section 48-122. The maximum aggregate limitation shall not operate in case of payment of two years' income benefits to the widow or widower upon remarriage, as provided under subdivision (3) of section 3 of this act, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under section 4 of this act. The classes of beneficiaries specified in subdivisions (1), (2), and (4) of section 3 of this act shall have priority over all other

beneficiaries in the apportionment of income benefits. If the provisions of this section should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in subdivision (7) of section 3 of this act in another class.

Sec. 6. That section 48-123, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-123. The death of an injured employee prior to the expiration of the period within which he would receive such disability payment, shall be deemed to end such disability, and all liability for the remainder of such payment which he would have received in case he had lived shall be terminated, but the employer shall thereupon be liable for the following death benefit in lieu of any further disability indemnity: If the injury so received by such employee was the cause of his death and such deceased employee leaves dependents as hereinbefore specified, ~~wholly or partially dependent on him for support~~, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of this act to such deceased employee, to make the total compensation for the injury and death equal to the full amount which such dependents would have been entitled to receive under the provisions of section 48-122, in case the accident had resulted in immediate death; and such benefits shall be payable in the same manner and subject to the same terms and conditions in all respects as payments made under the provisions of said section. No deduction shall be made for the amount which may have been paid for medical and hospital services and medicines or for the expenses of burial. If the employee dies from some cause other than the injury, there shall be no liability for compensation to accrue after his death.

Sec. 7. That section 48-124, Revised Statutes Supplement, 1972, be amended to read as follows:

48-124. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee: (1) A wife upon a husband with whom she is living or upon whom she is actually dependent at the time of his injury or death; (2) a husband upon a wife with whom he is living or upon whom he is actually



dependent at the time of her injury or death; and (3) a child or children under the age of eighteen years, or over said age, if physically or mentally incapacitated for earning; upon the parent with whom he is or they are living at the time of death of such parent; there being no surviving parent entitled to compensation; in case there is more than one child thus dependent; the death benefit shall be divided equally among them incapable of self-support, or any child eighteen years of age or over who is actually dependent, or any child between eighteen and twenty-five years of age who is enrolled as a full-time student in any accredited educational institution.

Compensation shall be payable under sections 48-122 and 48-123 to or on account of any child, brother, or sister only if and while such child, brother, or sister is under the age of eighteen. No compensation shall be payable under this section to a widow, unless she was living with her husband at the time of his death; Provided, a wife or husband living in a state of abandonment for more than two years at the time of the injury, or subsequently, shall not be a beneficiary under this act. The terms term child and children shall include stepchildren and adopted children if members of the deceased's household at the time of his death; and shall include posthumous children a posthumous child, a child legally adopted or for whom adoption proceedings are pending at the time of death, an actually dependent child in relation to whom the deceased employee stood in the place of a parent for at least one year prior to the time of death, an actually dependent stepchild or an actually dependent illegitimate child. Child shall not include a married child unless receiving substantially entire support from the employee. Grandchild shall mean a child, as above defined, of a child, as above defined, except that as to the latter child, the limitations as to age in the above definition do not apply.

Brother or sister shall mean a brother or sister under eighteen years of age, or eighteen years of age or over and physically or mentally incapable of self-support, or eighteen years of age or over and actually dependent. The terms brother and sister shall include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption; but shall not include married brothers or married sisters unless receiving substantially entire support from the employee.

Parent shall mean a mother or father, a stepparent, a parent by adoption, a parent-in-law, and any person who for more than one year immediately prior

to the death of the employee stood in the place of a parent to him, if actually dependent in each case.

Actually dependent shall mean dependent in fact upon the employee, and shall refer only to a person who received more than half of his support from the employee and whose dependency is not the result of failure to make reasonable efforts to secure suitable employment. When used as a noun, the word dependent shall mean any person entitled to death benefits. If the compensation payable under said sections to any person shall for any cause cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased. If a widow or a widower of a deceased employee shall remarry, then the compensation benefits shall become payable to the child or children of such widow or widower; if there be any such child or children, but if there be no such child or children of such dependent widow or widower, the rights of such widow or widower to compensation shall cease upon such remarriage. In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury, and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency. No person shall be considered a dependent, unless he or she be a member of the family of the deceased employee, or bears to him the relation of widow, widower, lineal descendant, ancestor, brother, or sister. Questions as to who constitute dependents and the extent of their dependency shall initially be determined as of the date of the accident to the employee, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or their legal guardians or trustees. No dependent of any injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employee.

Sec. 8. That original section 48-123, Reissue Revised Statutes of Nebraska, 1943, and sections 48-121, 48-122, and 48-124, Revised Statutes Supplement, 1972, are repealed.

Sec. 9. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.