Conference Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 271

HOUSE BILL 2195

AN ACT

AMENDING SECTIONS 23-1041 AND 23-1046, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-1041, Arizona Revised Statutes, is amended to read:

23-1041. Basis for computing compensation; definition

A. Every employee of an employer within the provisions of this chapter who is injured by accident arising out of and in the course of employment, or ~~his~~ THE EMPLOYEE'S dependents in the event of ~~his~~ THE EMPLOYEE'S death, shall receive the compensation fixed in this chapter on the basis of ~~such~~ THE employee's average monthly wage at the time of injury.

B. If the injured or killed employee has not been continuously employed for the period of thirty days immediately preceding the injury or death, the average monthly wage shall be such amount as, having regard to the previous wage of the injured employee or of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, reasonably represents the monthly earning capacity of the injured employee in the employment in which ~~he~~ THE INJURED EMPLOYEE is working at the time of the accident.

C. If the employee is working under a contract by which ~~he~~ THE EMPLOYEE is guaranteed an amount per diem or per month, notwithstanding the contract price for such labor, the employee or ~~his~~ THE EMPLOYEE'S subordinates or employees working under the terms of such contract or ~~his~~ THE EMPLOYEE'S or their dependents in case of death shall be entitled to receive compensation on the basis only of the guaranteed wage as set out in the contract of employment, whether paid on a per diem or monthly basis, but in no event shall the basis be less than the wages paid to employees for similar work not under contract.

D. Notwithstanding any other provision of this chapter, in computing the average monthly wage there shall be excluded from such computation all wages or other compensation for services in excess of:

1. One thousand three hundred twenty-five dollars per month for employees injured before January 1, 1988.

2. One thousand six hundred fifty dollars per month for employees injured from and after December 31, 1987 but before July 1, 1989.

3. One thousand eight hundred dollars per month for employees injured from and after June 30, 1989 but before July 1, 1991.

4. Two thousand one hundred dollars per month for employees injured from and after June 30, 1991 but before ~~the effective date of this amendment to this section~~ AUGUST 6, 1999.

5. Two thousand four hundred dollars per month for employees injured ~~from and~~ ON OR after ~~the effective date of this amendment to this section~~ AUGUST 6, 1999 BUT BEFORE JANUARY 1, 2008.

6. THREE THOUSAND DOLLARS PER MONTH FOR EMPLOYEES INJURED FROM AND AFTER DECEMBER 31, 2007 BUT BEFORE JANUARY 1, 2009.

7. THREE THOUSAND SIX HUNDRED DOLLARS PER MONTH FOR EMPLOYEES INJURED FROM AND AFTER DECEMBER 31, 2008 BUT BEFORE JANUARY 1, 2010.

8. THE AMOUNT ADOPTED BY THE COMMISSION UNDER SUBSECTION E FOR EMPLOYEES INJURED ON OR AFTER JANUARY 1, 2010.

~~E. Prior to a determination of the average monthly wage, compensation shall be paid on a basis of a minimum monthly wage of two hundred dollars for employees eighteen years of age or over.~~

~~F. In this section "monthly wage" means the average wage paid during and over the month in which the employee is killed or injured.~~

E. FOR PURPOSES OF SUBSECTION D, PARAGRAPH 8, THE COMMISSION SHALL, NOT LATER THAN AUGUST 1 OF EACH CALENDAR YEAR, BEGINNING AUGUST 1, 2009, ADOPT AN AMOUNT THAT ADJUSTS THE AMOUNT FROM THE PRIOR YEAR TO REFLECT THE ANNUAL PERCENTAGE INCREASE IN THE ARIZONA MEAN WAGE PUBLISHED BY THE DEPARTMENT OF ECONOMIC SECURITY USING THE BUREAU OF LABOR STATISTICS OCCUPATIONAL EMPLOYMENT STATISTICS DATA CODED FOR ALL OCCUPATIONS FOR THE PRIOR CALENDAR YEAR. THE AMOUNT ADOPTED BY THE COMMISSION SHALL BE EFFECTIVE FOR THE FOLLOWING CALENDAR YEAR AND SHALL APPLY TO ALL INJURIES OCCURRING DURING THAT CALENDAR YEAR. IN ADOPTING THE AMOUNT UNDER THIS SUBSECTION, THE COMMISSION SHALL NOT DECREASE THE AMOUNT FROM THE PRIOR YEAR OR INCREASE THE AMOUNT MORE THAN FIVE PER CENT FROM THE PRIOR YEAR.

F. PRIOR TO A DETERMINATION OF THE AVERAGE MONTHLY WAGE, COMPENSATION SHALL BE PAID ON A BASIS OF A MINIMUM MONTHLY WAGE OF TWO HUNDRED DOLLARS FOR EMPLOYEES EIGHTEEN YEARS OF AGE OR OVER.

G. FOR THE PURPOSES OF THIS SECTION, "MONTHLY WAGE" MEANS THE AVERAGE WAGE PAID DURING AND OVER THE MONTH IN WHICH THE EMPLOYEE IS KILLED OR INJURED.

Sec. 2. Section 23-1046, Arizona Revised Statutes, is amended to read:

23-1046. Death benefits

A. In case of an injury causing death, the compensation therefor shall be known as a death benefit and shall be payable in the amount, for the period, and to and for the benefit of the following:

1. Burial expenses, not to exceed five thousand dollars, in addition to the compensation.

2. To the surviving spouse, if there are no children, sixty-six and two-thirds per cent of the average monthly wage of the deceased, to be paid until such spouse's death or remarriage, with two years' compensation in one sum upon remarriage. To the surviving spouse if there are surviving children, thirty-five per cent of the average monthly wage of the deceased, to be paid until such spouse's death or remarriage with two years' compensation in one sum upon remarriage, and to the surviving children, an additional thirty-one and two-thirds per cent of the average monthly wage, to be divided equally among them until the age of eighteen years, until the age of twenty-two years if the child is enrolled as a full-time student in any accredited educational institution, or if over eighteen years and incapable of self-support when the child becomes capable of self-support. When all

surviving children are no longer eligible for benefits, the surviving spouse's benefits shall be paid as if there were no children. In the event of the subsequent death or remarriage of the surviving spouse, the surviving child's or children's benefits shall be computed pursuant to paragraph 3.

3. To a single surviving child, in the case of the subsequent death or remarriage of a surviving husband or wife, or if there is no surviving husband or wife, ~~twenty-five~~ SIXTY-SIX AND TWO-THIRDS per cent of ~~such~~ THE average ~~wages~~ MONTHLY WAGE OF THE DECEASED, or if there is more than one surviving child, ~~twenty-five~~ SIXTY-SIX AND TWO-THIRDS per cent ~~for one child, and fifteen per cent for each additional child, to be divided among such children share and share alike, but not exceeding a total of sixty-six and two-thirds per cent of the average wage~~ TO BE DIVIDED EQUALLY AMONG THE SURVIVING CHILDREN. Compensation to any such child shall cease upon death, upon marriage or upon reaching the age of eighteen years, except, if over eighteen years and incapable of self-support, when he becomes capable of self-support, or if over eighteen years of age and enrolled as a full-time student in any accredited educational institution, when the child reaches age twenty-two.

4. To a parent, if there is no surviving husband, wife or child under the age of eighteen years, if wholly dependent for support upon the deceased employee at the time of his death, twenty-five per cent of the average monthly wage of the deceased during dependency, with an added allowance of fifteen per cent if two dependent parents survive, and, if neither parent is wholly dependent, but one or both partly dependent, fifteen per cent divided between them share and share alike.

5. To brothers or sisters under the age of eighteen years, if there is no surviving husband or wife, dependent children under the age of eighteen years or dependent parent, the following shall govern:

(a) If one of the brothers or sisters is wholly dependent upon the deceased employee for support at the time of injury causing death, twenty-five per cent of the average monthly wage until the age of eighteen years.

(b) If more than one brother or sister is wholly dependent, thirty-five per cent of the average monthly wage at the time of injury causing death, divided among such dependents share and share alike.

(c) If none of the brothers or sisters is wholly dependent, but one or more are partly dependent, fifteen per cent divided among such dependents share and share alike.

B. If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury, the monthly compensation shall be equal to such proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the employee to such partial dependents bears to the average wage of the deceased at the time of the injury resulting in his death. The duration of compensation to partial dependents shall be fixed by the commission in

accordance with the facts shown, and in accordance with the provisions of section 23-1047, but shall in no case exceed compensation for one hundred months.

C. In the event of death of a dependent before expiration of the time named in the award, the funeral expenses of such person, not to exceed eight hundred dollars, shall be paid.

APPROVED BY THE GOVERNOR JULY 2, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 2, 2007.

Passed the House March 15, 20 07

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Pro Tempore

Chief Clerk of the House

Passed the Senate June 11, 20 07

by the following vote: 24 Ayes,

2 Nays, 4 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2195

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House June 20, 20 07

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Speaker of the House

Thomas L. Moore
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate June 20, 20 07

by the following vote: 21 Ayes,

1 Nays, 8 Not Voting

Timothy S. Bee
President of the Senate

Christina Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

21st day of June, 20 07

at 8:20 o'clock a. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 2 day of

July

at 11:05 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 2 day of July, 20 07

at 2:43 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2195