

1 IN THE SENATE

BY COMMITTEE ON LABOR

2 SENATE BILL NO. 64

AND COMMERCE

3 IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4 TWENTY-FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to supplement Title 43, Chapter 3,  
7 ACIA 1949, the Alaska Workmen's Compensa-  
8 tion Act; amending Sections 43-3-1,  
9 43-3-2, 43-3-8 pertaining to coverage,  
10 benefits, care of injured workmen, and  
11 providing for rehabilitation."

12 Section 1. Section 43-3-1, of Chapter 3, ACIA 1949,  
13 is hereby amended to read as follows:

14 Section 43-3-1. EMPLOYMENTS COVERED: COMPENSATION  
15 ALLOWED: DEATH BENEFITS: TOTAL AND PERMANENT DISABILITY: PARTIAL  
16 PERMANENT DISABILITY: DISFIGUREMENT: TEMPORARY DISABILITY: LOSS  
17 OF MEMBERS: AMPUTATIONS: OTHER PERMANENT PARTIAL INJURIES:  
18 PAYMENTS TO SECOND INJURY FUND: FUND BENEFICIARIES: REFUND OF  
19 PAYMENTS TO FUND: INJURY CAUSING PERMANENT DISABILITY WHEN  
20 COMBINED WITH PREVIOUS DISABILITY. Any person, or persons,  
21 partnership, joint stock company, association or corporation,  
22 employing (THREE) one or more employees in connection with any  
23 business, occupation, work, employment or industry, carried on  
24 in this Territory, including any department, agency or  
25 instrumentality of the Territorial Government, Municipality or  
26 Public Utility District, except domestic service, agriculture,  
27 dairying, or the operation of railroads as common carriers,  
28 shall be liable to pay compensation in accordance with the  
29 schedule herein adopted, to each of his, her, their or its

1 employees who receives a personal injury arising out of and in  
2 the course of his or her employment or to the beneficiaries  
3 named herein, as the same are hereinafter designated and  
4 defined in all cases where the employee shall be so injured and  
5 such injuries shall result in his or her death.

6 A. COMPENSATION ALLOWED. The compensation to which such  
7 employee so injured, or, in case of his or her death, if death  
8 results from such injury, such beneficiaries shall be entitled,  
9 and for which such employer shall be legally liable, shall be  
10 as follows:

11 1. Reasonable funeral expenses not exceeding Three  
12 Hundred Fifty Dollars (\$350.00).

13 ((1)) 2. AMOUNT OF DEATH BENEFITS. In the event of  
14 the death of any such employee resulting from such injury,  
15 where such employee at the time of his death was married,  
16 ~~his widow~~ shall be entitled to receive the sum of (FOUR  
17 THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00)) Nine Thousand  
18 Dollars (\$9,000.00).

19 ((2)) 3. CHILDREN. In those cases where such married  
20 employee had a child or children under the age of eighteen  
21 (18) years at the time of his death, his widow shall be  
22 entitled to receive in addition to the sum above specified,  
23 the sum of (NINE HUNDRED DOLLARS (\$900.00)) One Thousand  
24 Eight Hundred Dollars (\$1,800.00) for each child under the  
25 age of eighteen (18) years, or child wholly dependent on  
26 his or her parents for support by reason of mental or  
27 physical incompetency, or unborn or posthumous child, which  
28 such employee left at the time of his decease, but not to  
29 exceed in all the sum of (NINE THOUSAND DOLLARS (\$9,000.00)).

Page 2, line 16, delete "his widow" insert "the surviving spouse"

1 Six Thousand Dollars (\$6,000.00) for such dependent  
2 children.

3 ((3)) 4. DEPENDENT PARENTS. In those cases where  
4 such employee left either father or mother or both,  
5 dependent upon him for support at the time of his death,  
6 the sum of (NINE HUNDRED DOLLARS (\$900.00)) One Thousand  
7 Eight Hundred Dollars (\$1,800.00) each shall be paid to  
8 such father or mother or both, in addition to the sum  
9 provided for and made payable to the widow. In no case,  
10 however, is the total sum to be paid hereunder to exceed  
11 the sum of (NINE THOUSAND DOLLARS (\$9,000.00)) Fifteen  
12 Thousand Dollars (\$15,000.00) and the payments to which  
13 the widow and children may be entitled shall be first paid  
14 out of said sum of (NINE THOUSAND DOLLARS (\$9,000.00))  
15 Fifteen Thousand Dollars (\$15,000.00).

16 ((4)) (NON-DEPENDENT PARENTS.) IN THOSE CASES WHERE  
17 SUCH DECEASED EMPLOYEE WAS UNMARRIED AT THE TIME OF HIS OR  
18 HER DEATH SURVIVED BY EITHER HIS OR HER FATHER OR MOTHER,  
19 SUCH FATHER OR MOTHER SHALL BE PAID THE SUM OF ONE THOUSAND  
20 EIGHT HUNDRED DOLLARS (\$1,800.00); AND, IN ADDITION THERETO  
21 THE EMPLOYER SHALL BE REQUIRED TO PAY THE FUNERAL EXPENSES  
22 NOT TO EXCEED THE SUM OF ONE HUNDRED NINETY-FIVE DOLLARS  
23 (\$195.00) AND SUCH OTHER EXPENSES, IF ANY, ARISING AFTER  
24 THE INJURY AND BEFORE THE DEATH NOT TO EXCEED ONE HUNDRED  
25 NINETY-FIVE DOLLARS (\$195.00).)

26 ((5)) (NON -DEPENDENT PARENTS.) WHERE SUCH DECEASED  
27 EMPLOYEE WAS UNMARRIED AND WAS SURVIVED BY HIS OR HER  
28 FATHER AND MOTHER, SUCH FATHER AND MOTHER SHALL BE PAID  
29 THE SUM OF ONE THOUSAND EIGHT HUNDRED DOLLARS (\$1,800.00)

2 EACH; AND, IN ADDITION THEREUNTO, THE EMPLOYER SHALL BE  
3 REQUIRED TO PAY THE FUNERAL EXPENSES NOT TO EXCEED THE SUM  
4 OF ONE HUNDRED NINETY-FIVE DOLLARS (\$195.00) AND SUCH OTHER  
5 EXPENSES, IF ANY, ARISING AFTER THE INJURY AND BEFORE HIS  
6 DEATH NOT TO EXCEED ONE HUNDRED NINETY-FIVE DOLLARS  
7 (\$195.00).

8 ((6)) 5. WIDOWER WITH DEPENDENT MINORS: GUARDIAN. In  
9 these cases where such deceased employee was a widower at  
10 the time of his death, but left one or more minor orphan  
11 children or child wholly dependent upon the deceased for  
12 support by reason of mental or physical incompetency,  
13 — there shall be paid the sum of (FOUR THOUSAND FIVE HUNDRED  
14 DOLLARS (\$4,500.00)) Nine Thousand Dollars (\$9,000.00),  
15 and the further sum of (NINE HUNDRED DOLLARS (\$900.00))  
16 One Thousand Eight Hundred Dollars (\$1,800.00) for each  
17 additional orphan child under the age of eighteen (18)  
18 years provided the total amount paid shall not exceed  
19 (NINE THOUSAND DOLLARS (\$9,000.00)) Fifteen Thousand  
20 Dollars (\$15,000.00), and the Judge of the Probate Court  
21 of the precinct wherein such accident or injury occurred,  
22 shall appoint a guardian for all of said children, who  
23 shall be entitled to, and who shall be paid, the amount  
24 specified in this paragraph, for the benefit of said  
25 orphan children, and shall divide (FOUR THOUSAND FIVE  
26 HUNDRED DOLLARS (\$4,500.00)) Nine Thousand Dollars  
27 (\$9,000.00) thereof equally among such children and divide  
28 the surplus, if any, among the children under eighteen (18)  
29 years of age.

30 ((7)) 6. AMOUNTS PAID NON-RESIDENT NON-CITIZEN

1 BENEFICIARIES. (PROVIDED, HOWEVER, THAT) If such benefici-  
2 ary or beneficiaries as described in subdivisions 1 to (6)  
3 5, inclusive, immediately preceding this subsection be  
4 neither resident or a citizen of the United States of  
5 America, then the amount due and payable to such benefi-  
6 cary or beneficiaries shall be in amounts as follows:

7 ((a) AS TO ALL BENEFICIARIES, EXCEPT A WIFE OR  
8 MINOR CHILDREN, FIFTY PER CENTUM (50%) OF THE SUM SET FORTH  
9 IN SUBDIVISIONS 1 TO 6, IMMEDIATELY PRECEDING, AND FIFTY  
10 PER CENTUM (50%) SHALL BE PAID TO THE SECOND INJURY FUND,  
11 FOR THE SOLE BENEFIT OF THOSE ENTITLED TO PARTICIPATE  
12 THEREIN, AS HEREINAFTER PROVIDED.)

13 ((b)) a. As to a wife or minor children, sixty  
14 per centum (60%) of the sums set forth in subdivisions  
15 1 to (6) 5 immediately preceding, and forty per centum  
16 (40%) to the second injury fund, for the sole benefit of  
17 those entitled to participate therein, as hereinafter  
18 provided.

19 ((8)) 7. FUNERAL EXPENSES: PAYMENT TO SECOND INJURY  
20 FUND. In those cases where such deceased employee was, at  
21 the time of his or her death unmarried, and leaves no  
22 children nor dependent father nor dependent mother, the  
23 employer shall be required to pay the funeral expenses of  
24 the deceased not to exceed the sum of (ONE HUNDRED NINETY-  
25 FIVE DOLLARS (\$195.00)) Three Hundred Fifty Dollars  
26 (\$350.00) (, AND SUCH OTHER EXPENSES, IF ANY, ARISING  
27 AFTER THE INJURY AND BEFORE THE DEATH, NOT TO EXCEED THE  
28 FURTHER SUM OF ONE HUNDRED NINETY-FIVE DOLLARS (\$195.00),)  
29 and in addition thereto shall pay to the second injury

1 fund the sum of One Thousand Five Hundred Dollars  
2 (\$1,500.00), for the sole benefit of those entitled to  
3 participate therein, as hereinafter provided.

4 SECOND INJURY FUND. There is hereby created a Second  
5 Injury Fund, to be administered by the Commissioner of  
6 Labor in accordance with the orders and awards of the  
7 Alaska Industrial Board.

8 B. TOTAL AND PERMANENT DISABILITY. Where any such employee  
9 receiving an injury arising out of, and in the course of his or  
10 her employment, as the result of which he or she is totally or  
11 permanently disabled, he or she shall be entitled to receive  
12 compensation as follows:

13 ((a)) 1. MARRIED PERSON. If such employee was at the  
14 time of his injury married he shall be entitled to receive  
15 (SEVEN THOUSAND TWO HUNDRED DOLLARS (\$7,200.00)) Fourteen  
16 Thousand Four Hundred Dollars (\$14,400.00). (WITH NINE  
17 HUNDRED DOLLARS (\$900.00) ADDITIONAL FOR EACH CHILD UNDER  
18 THE AGE OF EIGHTEEN (18) YEARS, BUT THE TOTAL TO BE PAID  
19 SHALL NOT EXCEED NINE THOUSAND DOLLARS (\$9,000.00).)

20 ((b)) (FATHER AND MOTHER.) IF SUCH EMPLOYEE AT THE  
21 TIME OF HIS INJURY HAD NO WIFE OR CHILDREN, BUT HAS A  
22 MOTHER OR FATHER, SIX THOUSAND THREE HUNDRED DOLLARS  
23 (\$6,300.00).)

24 ((c)) (FATHER AND MOTHER.) IN CASES, WHERE SUCH  
25 EMPLOYEE WHO AT THE TIME OF HIS INJURY HAD BOTH FATHER  
26 AND MOTHER, SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00).)

27 ((d)) 2. MINOR CHILDREN. In those cases, where such  
28 employee was at the time of his injury, a widower, or was  
29 divorced, but had minor children, he shall receive the sum

1 of (SIX THOUSAND DOLLARS (\$6,000.00)) Twelve Thousand  
2 Dollars (\$12,000.00) , with an additional sum of (NINE  
3 HUNDRED DOLLARS (\$900.00)) One Thousand Eight Hundred  
4 Dollars (\$1,800.00) for each child below the age of  
5 eighteen (18) years, provided that the total sum to be  
6 paid such employee shall not in any case exceed the sum of  
7 (NINE THOUSAND DOLLARS (\$9,000.00)) Fifteen Thousand  
8 Dollars (\$15,000.00).

9 ((e)) 3. NO DEPENDENTS. In those cases where such  
10 employee so injured at the time of his injury was unmarried  
11 (AND HAD NO CHILDREN NOR FATHER NOR MOTHER), he shall  
12 receive the sum of (SIX THOUSAND DOLLARS (\$6,000.00))  
13 Twelve Thousand Dollars (\$12,000.00).

14 4. DEPENDENT PARENT. In those cases where such  
15 employee so injured at the time of his injury had a  
16 dependent mother or father, Fourteen Thousand Four Hundred  
17 Dollars (\$14,400.00).

18 C. PARTIAL PERMANENT DISABILITY. Where any such employee  
19 receives an injury arising out of, and in the course of his or  
20 her employment, resulting in his or her partial permanent  
21 disability, he or she shall be paid in accordance with the  
22 following schedule:

23 1. For the loss of a Thumb:

24 (1 (a) IN CASE THE EMPLOYEE WAS AT THE TIME OF  
25 THE INJURY UNMARRIED, \$720.00.)

26 (1 (b) IN CASE THE EMPLOYEE WAS MARRIED BUT HAD  
27 NO CHILDREN, \$900.00.)

28 (1 (c) IN CASE THE EMPLOYEE WAS EITHER MARRIED OR  
29 A WIDOWER, BUT HAD ONE OR MORE CHILDREN, \$1,080.00.)

1 One Thousand Eight Hundred Dollars (\$1,800.00).

2 2. For the loss of an Index Finger:

3 (2 (a) IN CASE THE EMPLOYEE WAS AT THE TIME OF THE  
4 INJURY UNMARRIED, \$450.00.)

5 (2 (b) IN CASE THE EMPLOYEE WAS MARRIED BUT HAD  
6 NO CHILDREN, \$585.00.)

7 (2 (c) IN CASE THE EMPLOYEE WAS EITHER MARRIED OR  
8 A WIDOWER, BUT HAD ONE OR MORE CHILDREN, \$720.00.)

9 One Thousand Two Hundred Dollars (\$1,200.00).

10 3. For the loss of any other finger than the Index  
11 Finger and Thumb, (\$270.00) Five Hundred Dollars  
12 (\$500.00).

13 4. For the loss of a Great Toe, (\$450.00) Nine  
14 Hundred Dollars (\$900.00).

15 5. For the loss of any other Toe other than the  
16 Great Toe, (\$180.00) Three Hundred Dollars (\$300.00).

17 6. For the loss of a Hand:

18 (3 (a) IN CASE THE EMPLOYEE WAS AT THE TIME OF THE  
19 INJURY UNMARRIED, \$2,160.00.)

20 (3 (b) IN CASE THE EMPLOYEE WAS MARRIED BUT HAD NO  
21 CHILDREN, \$2,880.00.)

22 (3 (c) IN CASE THE EMPLOYEE WAS EITHER MARRIED, OR  
23 A WIDOWER AND HAD ONE CHILD, \$2,880.00 AND \$360.00  
24 ADDITIONAL FOR EACH ADDITIONAL CHILD, NOT TO EXCEED,  
25 HOWEVER, THE TOTAL SUM OF \$3,600.00.)

26 Five Thousand Eight Hundred Dollars (\$5,800.00).

27 7. For the loss of an Arm:

28 (4 (a) IN CASE THE EMPLOYEE WAS AT THE TIME OF THE  
29 INJURY UNMARRIED, \$2,700.00.)

1 (4 (b) IN CASE THE EMPLOYEE WAS MARRIED BUT HAD  
2 NO CHILDREN, \$3,600.00.)

3 (4 (c) IN CASE THE EMPLOYEE WAS EITHER MARRIED, OR  
4 A WIDOWER AND HAD ONE CHILD, \$3,600.00 AND \$450.00  
5 ADDITIONAL FOR EACH SUCH ADDITIONAL CHILD, THE TOTAL  
6 AMOUNT NOT TO EXCEED, HOWEVER, \$4,500.00.)

7 Seven Thousand Two Hundred Dollars (\$7,200.00).

8 8. For the loss of a Foot:

9 (5 (a) IN CASE THE EMPLOYEE WAS AT THE TIME OF THE  
10 INJURY UNMARRIED, \$2,160.00.)

11 (5 (b) IN CASE THE EMPLOYEE WAS MARRIED BUT HAD NO  
12 CHILDREN, \$2,700.00.)

13 (5 (c) IN CASE THE EMPLOYEE WAS EITHER MARRIED, OR  
14 A WIDOWER AND HAD ONE CHILD, \$2,880.00 AND \$360.00  
15 ADDITIONAL FOR EACH ADDITIONAL CHILD, BUT NOT TO  
16 EXCEED THE TOTAL SUM OF \$3,600.00.)

17 Five Thousand Four Hundred Dollars (\$5,400.00).

18 9. For the loss of a Leg:

19 (6 (a) IN CASE THE EMPLOYEE WAS AT THE TIME OF THE  
20 INJURY UNMARRIED, \$2,700.00.)

21 (6 (b) IN CASE THE EMPLOYEE WAS MARRIED BUT HAD NO  
22 CHILDREN, \$3,600.00.)

23 (6 (c) IN CASE THE EMPLOYEE WAS EITHER MARRIED, OR  
24 A WIDOWER AND HAD BUT ONE CHILD, \$3,600.00 WITH  
25 \$450.00 FOR EACH SUCH ADDITIONAL CHILD, NOT TO EXCEED  
26 THE TOTAL SUM OF \$4,500.00.)

27 Seven Thousand Two Hundred Dollars (\$7,200.00).

28 10. For the loss of an Eye:

29 (7 (a) IN CASE THE EMPLOYEE WAS AT THE TIME OF THE

INJURY UNMARRIED, \$2,160.00.)

(7 (b) IN CASE THE EMPLOYEE WAS MARRIED BUT HAD NO CHILDREN, \$2,880.00.)

(7 (c) IN CASE THE EMPLOYEE WAS EITHER MARRIED, OR A WIDOWER AND HAD ONE CHILD, \$2,880.00 PLUS \$360.00 FOR EACH ADDITIONAL CHILD, NOT TO EXCEED, HOWEVER, THE TOTAL SUM OF \$3,600.00.)

Five Thousand Six Hundred Dollars (\$5,600.00).

(FOR THE LOSS OF AN EAR: \$360.00.)

11. For the loss of hearing in one Ear: (\$720.00)

One Thousand Five Hundred Dollars (\$1,500.00).

(FOR THE LOSS OF THE NOSE: \$720.00.)

12. Compensation for permanent total loss of use of a member shall be the same as for the loss of such member.

D. DISFIGUREMENT. The Industrial Board may award proper and equitable compensation for serious head, neck, facial, or other disfigurement, not exceeding, however, the sum of (TWO THOUSAND DOLLARS (\$2,000.00)) Four Thousand Dollars (\$4,000.00).

E. TEMPORARY DISABILITY. For all injuries causing temporary disability, the employer shall pay the employee, during the period of such disability, sixty-five per centum (65%) of his (DAILY) <sup>gross</sup> weekly average wages. <sup>(delete new not direct But amend)</sup> Such compensation for temporary total disability shall not exceed the sum of <sup>per month</sup> Three Hundred Fifty Dollars (\$350.00) and such period of temporary total disability shall not exceed twenty-four months from and after date of injury. And in all cases where the injury develops or proves to be such as to entitle the employee to compensation under some provision in this schedule, relating to cases other

1 than temporary disability, the amount so paid or due him shall  
2 be in addition to the amount to which he shall be entitled under  
3 such provision in this schedule.

4 Payment for such temporary disability shall be made at the  
5 time compensation is customarily paid for labor performed or  
6 services rendered at the plant or establishment of the employer  
7 liable therefor and not less than once a month in any event.

8 ( THE AVERAGE DAILY WAGE EARNING CAPACITY OF AN INJURED  
9 EMPLOYEE IN CASE OF TEMPORARY DISABILITY SHALL BE DETERMINED BY  
10 HIS ACTUAL EARNINGS IF SUCH ACTUAL EARNINGS FAIRLY AND REASONABLY  
11 REPRESENT HIS DAILY WAGE EARNING CAPACITY. IF SUCH EARNINGS DO  
12 NOT FAIRLY AND REASONABLY REPRESENT HIS DAILY WAGE EARNING  
13 CAPACITY, THE INDUSTRIAL BOARD SHALL FIX SUCH DAILY WAGE EARNING  
14 CAPACITY AS SHALL BE REASONABLE AND HAVE A DUE REGARD FOR THE  
15 NATURE OF HIS INJURY, THE DEGREE OF TEMPORARY IMPAIRMENT, HIS  
16 USUAL EMPLOYMENT AND ANY OTHER FACTOR OR CIRCUMSTANCE IN THE CASE  
17 WHICH MAY AFFECT HIS CAPACITY TO EARN WAGES IN HIS TEMPORARY  
18 DISABLED CONDITION.)

19 F. LOSS OF MEMBERS AS TOTAL PERMANENT DISABILITY. The loss  
20 of both hands, or both arms, or both feet, or both legs, or both  
21 eyes, or any two thereof, (OR HEARING IN BOTH EARS,) shall  
22 constitute total and permanent disability and be compensated  
23 according to the provisions of this Act with reference to total  
24 and permanent disability.

25 G. AMPUTATIONS. Amputation between the elbow and the  
26 wrist shall be considered equivalent to the loss of an arm, and  
27 amputation between the knee and ankle shall be considered  
28 equivalent to the loss of a leg.

29 H. OTHER PERMANENT PARTIAL INJURIES. Whenever such

1 employee receives an injury, arising out of and in the course of  
2 employment, as a result of which he or she is partially disabled,  
3 and the disability so received is such as to be permanent in  
4 character and such as not to come wholly within any of the  
5 specific cases for which provision is herein made, such employee  
6 shall be entitled to receive as compensation a sum which bears  
7 the same relation to the amount he or she would be entitled to  
8 receive hereunder if he or she were totally and permanently  
9 disabled that the loss of earning capacity such employee by  
10 reason of the injury, bears to the earning capacity such employee  
11 would have had had he or she not been injured, the amount to be  
12 paid in no case to exceed (SEVEN THOUSAND TWO HUNDRED DOLLARS  
13 (\$7,200.00)) Fourteen Thousand Four Hundred Dollars (\$14,400.00).

14 To illustrate: If said employee were of a class that would  
15 entitle him or her to <sup>Seven</sup> Thousand <sup>Two</sup> Hundred Dollars  
16 <sup>14,400.</sup> (\$7,200.00) under this schedule, if he or she were totally and  
17 permanently disabled, and his or her injury would be such as to  
18 reduce his or her earning capacity twenty-five per centum (25%),  
19 he or she would be entitled to receive <sup>Three</sup> Thousand <sup>Eight</sup> Hundred  
20 Dollars (\$3,600.00), it being the amount that bears the same  
21 relation to <sup>Seven</sup> Thousand <sup>Two</sup> Hundred Dollars <sup>14,400.00</sup> (\$7,200.00) that  
22 twenty-five per centum (25%) does to one hundred per centum (100%).  
23 Should such employee receive an injury that would impair his or  
24 her earning capacity seventy-five per centum (75%), he or she  
25 would be entitled to receive <sup>Five</sup> Thousand <sup>Four</sup> Hundred Dollars  
26 <sup>10,800.00</sup> (\$5,400.00), it being the amount that bears the same relation to  
27 <sup>Seven</sup> Thousand <sup>Two</sup> Hundred Dollars <sup>14,400.00</sup> (\$7,200.00) that seventy-five  
28 per centum (75%) does to one hundred per centum (100%).

29 ((9)) I. PAYMENTS TO SECOND INJURY FUND. Whenever an

1 Employee shall suffer a compensable injury which results in  
2 permanent partial disability (BY REASON OF THE TOTAL OR PARTIAL  
3 LOSS OR LOSS OF USE OF A MEMBER OR MEMBERS, AS PROVIDED IN  
4 PARAGRAPH (8) HEREOF, AND WHICH INJURY ENTITLED HIM OR HER TO  
5 COMPENSATION PURSUANT TO SUCH PARAGRAPH (8),) the employer, or  
6 his insurance carrier, shall, in addition to the compensation  
7 provided for (IN SAID PARAGRAPH (8),) pay into the second injury  
8 fund a lump sum, (WITHOUT INTEREST DEDUCTIONS,) equal to two per  
9 centum (2%) of the total compensation to which the employee is  
10 entitled (UNDER SAID PARAGRAPH (8) OF THIS SECTION) for the said  
11 permanent partial disability, the said sum to be paid into such  
12 second injury fund as soon as the total amount of the permanent  
13 partial disability payable for the particular injury is determin-  
14 ed by the Industrial Board.

15 ((10)) J. SECOND INJURY FUND BENEFICIARIES. The sums  
16 required to be paid into the second injury fund (UNDER THE  
17 PROVISIONS OF PARAGRAPH (7), (8) AND (9) OF THIS SECTION) shall  
18 be paid into said second injury fund of the Commissioner of Labor  
19 for the sole benefit of those entitled to participate therein  
20 under the provisions of Paragraphs ((12)) L. and M. of this  
21 section, the same to be paid out by said Commissioner of Labor in  
22 accordance with the orders and awards of the Industrial Board.

23 ((11)) K. REFUND OF PAYMENTS TO SECOND INJURY FUND. In  
24 case a deposit or payment has been made into such second injury  
25 fund, (AS PROVIDED IN PARAGRAPH (7) OF THIS SECTION,) and it is  
26 later shown that there are other beneficiaries or that the  
27 beneficiaries designated are entitled to further or greater  
28 benefits, or, (AS PROVIDED IN PARAGRAPH (8) OF THIS SECTION, AND  
29 IT IS LATER SHOWN THAT THERE ARE BENEFICIARIES ENTITLED TO

1 COMPENSATION, OR,) if deposits or payment has been made (PURSUANT  
2 TO PARAGRAPH (9) HEREOF) by mistake or inadvertence or under  
3 such circumstances that justice requires a refund thereof, the  
4 Industrial Board is hereby authorized to refund such deposit or  
5 payment.

6 ((12)) L. INJURY CAUSING TOTAL PERMANENT DISABILITY WHEN  
7 COMBINED WITH PREVIOUS DISABILITY. In those cases where an  
8 employee receives an injury arising out of and in the course of  
9 his or her employment which, of itself, would cause only  
10 permanent partial disability but which, combined with a previous  
11 disability or injury, does in fact cause permanent total dis-  
12 ability, the employer shall only be liable for the permanent  
13 partial disability caused by the subsequent injury; provided,  
14 however, that in addition to compensation for such permanent  
15 partial disability and after the cessation of the payments for  
16 the amounts prescribed therefor, the injured employee shall be  
17 paid the remainder of the compensation that would be due for  
18 permanent total disability out of the second injury fund herein-  
19 before created and provided.

20 M. The Industrial Board is authorized to direct and provide  
21 the vocational retraining and rehabilitation of permanently  
22 disabled persons, whose condition is the result of an injury  
23 compensable under the Act, by making cooperative arrangements  
24 with insurance carriers, private organizations and institutions  
25 or Territorial, State or Federal agencies. The expense of such  
26 retraining or rehabilitation shall be paid out of that portion of  
27 the Second Injury Fund as shall exceed the sum of Ten Thousand  
28 Dollars (\$10,000.00).

29 Such persons shall be entitled to receive compensation

1 necessary for maintenance, during the period of retraining and  
2 rehabilitation, not exceeding Fifty Dollars (\$50.00) per month.  
3 Provided, however, that the total expenditure for additional  
4 compensation, treatment, instruction, and necessary transport-  
5 ation shall not exceed Three Thousand Dollars (\$3,000.00) for any  
6 one person.

7 H. DETERMINATION OF PAY. The average weekly wage of the  
8 injured employee at the time of the injury shall be taken as the  
9 basis upon which to compute compensation and shall be determined  
10 as follows:

11 (a) If the injured employee shall have worked in the  
12 employment in which he was working at the time of the injury,  
13 whether for the same or another employer, during substantially  
14 the whole of the year immediately preceding his injury, his  
15 average annual earnings shall consist of three hundred times the  
16 average daily wage or salary for a six-day worker and two hundred  
17 and sixty times the average daily wage or salary for a five-day  
18 worker, which he shall have earned in such employment during the  
19 days when so employed.

20 (b) If the injured employee shall not have worked in  
21 such employment during substantially the whole of such year, his  
22 average annual earnings if a six-day worker, shall consist of  
23 three hundred times the average daily wage or salary, and, if a  
24 five-day worker, two hundred and sixty times the average daily  
25 wage or salary, which an employee of the same class working  
26 substantially the whole of such immediately preceding year in  
27 the same or in similar employment in the same or a neighboring  
28 place shall have earned in such employment during the days when  
29 so employed.

1 (c) If either of the foregoing methods of arriving at  
2 the average annual earnings of the injured employee cannot  
3 reasonably and fairly be applied, such average annual earnings  
4 shall be such sum as, having regard to the previous earnings of  
5 the injured employee in the employment in which he was working at  
6 the time of the injury, and of other employees of the same or most  
7 similar class working in the same or most similar employment in  
8 the same or neighboring locality, or other employment of such  
9 employee, including the reasonable value of the services of the  
10 employee if engaged in self-employment, shall reasonably repre-  
11 sent the annual earning capacity of the injured employee.

12 (d) The average weekly wages of an employee shall be  
13 one fifty-second part of his average annual earnings.

14 (e) If it be established that the injured employee was  
15 a minor when injured, and that under normal conditions his wages  
16 should be expected to increase during the period of disability  
17 the fact may be considered in arriving at his average weekly  
18 wages. *add new sentence by Barnes*

19 Section 2. Section 43-3-2, of Chapter 3, ACIA 1949, is  
20 hereby amended to read as follows:

21 Section 43-3-2. TREATMENT AND CARE OF INJURED

22 EMPLOYEES: DUTY AND LIABILITY OF EMPLOYER: DURATION: PREVAILING  
23 FEES: SELECTION OF PHYSICIANS, SURGEONS<sup>and chiropractors, osteopaths</sup> AND HOSPITALS: AGGRAVAT-  
24 ION OF INJURIES BY INCOMPETENCE OR NEGLIGENCE OF PHYSICIAN: <sup>and surgeon, chiropractor</sup> A  
25 LIABILITY: RIGHT OF EMPLOYEE TO PROVIDE PHYSICIAN. <sup>or osteopath</sup> The employer  
26 shall promptly provide for an injured employee such medical,  
27 surgical<sup>chiropractic, osteopathic</sup> or other attendance or treatment, nurse and hospital  
28 service, medicine, crutches and apparatus for such period as the  
29 nature of the injury or the process of recovery may require, not

1 exceeding (ONE) two years from and after the date of injury to  
2 any such employee. The employer shall be liable for the payment  
3 of the expenses of <sup>medical</sup> medical, <sup>chiropractic, osteopathic</sup> surgical, or other attendance or  
4 treatment, nurse, and hospital service, medicine, crutches, and  
5 apparatus necessitated by the injury of an employee, for such  
6 period as the nature of the injury or the process of recovery  
7 may require, not exceeding (ONE) two years from and after the  
8 date of injury to any such employee. All fees and other charges  
9 for such treatment and services shall be limited to such charges  
10 as prevail in the same community for similar treatment of  
11 injured persons of a like standard of living. The employer shall  
12 have the exclusive right, and it shall be his duty to select  
13 and furnish the necessary physicians, surgeons, <sup>chiropractors, osteopaths</sup> and hospitals  
14 and to that end he may enter into all necessary contracts with  
15 such physicians, surgeons, <sup>chiropractors, osteopaths</sup> and hospitals for the furnishing of  
16 such services and treatments. Provided, that if it be made to  
17 appear in any suit, action or proceeding brought against the  
18 employer that the injuries sustained by the employee were  
19 aggravated on account of the <sup>in</sup> incompetence or neglect of the  
20 physician (or) surgeon <sup>chiropractor or osteopath</sup> selected by the employer, it shall be  
21 prima facie evidence that the employer failed to use due care  
22 in the selection of such physician (or) surgeon <sup>chiropractor or osteopath</sup> and in such case  
23 the employer and physician (or) surgeon <sup>chiropractor or osteopath</sup> shall be jointly and  
24 separately liable for all damages resulting from such incompet-  
25 ence or neglect. Nothing contained in this section shall be  
26 construed to limit the right of the employee, to provide in any  
27 case, at his own expense, a consulting physician <sup>or any chiropractor or</sup> or any <sup>osteopath</sup>  
28 attending physician <sup>surgeon, chiropractor or osteopath</sup> whom he may desire.

29 Section 3. Section 43-3-8, of Chapter 3, ACLA 1949, is

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heroby-amended to read as follows:

Section 43-3-8. WHEN RIGHT TO COMPENSATION ACCRUES:  
PERIOD OF INCAPACITY: REPORT TO EMPLOYER: COMPENSATION NOT TO  
BE PAID PRIOR TO REPORT. No compensation shall be paid hereunder  
for any injury which does not incapacitate the employee from  
earning full wages for a period of at least (ONE) three days in  
addition to the day on which the injury occurred, but if  
incapacity extends beyond such period compensation shall commence  
on the (SECOND) third day after the injury. It shall be the duty  
of every person claiming compensation under the provisions of  
this Act for any injury sustained by him to make or cause to be  
made, a report thereof to his employer as soon as practicable  
after sustaining the same, and no compensation shall be paid  
prior to the day on which such report is made.

*Section 43-3-8  
Add new section - amended 2/12/44*