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<td>Régine Biscoe Lee</td>
<td>AN ACT TO AMEND §§ 9107(b), 9109(c)(2), 9110(a) and (e) AND 9115(m) of Chapter 9, Title 22, Guam Code Annotated, Relative to Updating Guam's Thirty-Year Old Rates for Workers' Compensation.</td>
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IMINA'ITRENTAI SINGKO NA LIHESLURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 200-35 (coer)

Introduced by: Régine Biscoe Lee

AN ACT TO AMEND §§ 9107(b), 9109(c)(20), 9110(a) and (e) AND 9115(m), OF CHAPTER 9, TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO UPDATING GUAM'S THIRTY-YEAR OLD RATES FOR WORKERS’ COMPENSATION.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. Workers’ compensation programs are a product of the late 1800s and early 1900s. They are built on the principle that society benefits when workers injured on the job have access to benefits of medical treatment and financial compensation without regard to fault while employers, in exchange, receive liability protection in the form of elimination of negligence cause of actions which would otherwise be brought against them in costly court cases. I Lihesluran Guåhan finds that this protection for both workers and employers remains good public policy because it provides a certain extent of stability and predictability when dealing with the unfortunate reality that workplace injuries do occur. However, for this principle to be purposeful, the compensation afforded must be meaningful.

I Lihesluran Guåhan finds that while the oldest update to weekly compensation rates across the fifty states was made three years ago, in 2016; Guam’s last rate adjustment was three decades ago, in 1989. Then-senator Elizabeth P. Arriola’s Bill No. 97 in the Nineteenth (19th) Guam Legislature, enacted as Public Law No. 19-35 on December 30, 1988, amended certain sections of the Government Code relative to workers’ Compensation; the relevant
provisions of this public law became effective in 1989. The minimum and
maximum weekly compensation rates were set between One Hundred Fifty Dollars
($150) and Two Hundred Fifty Dollars ($250); the maximum compensation for
serious disfigurement was set at Ten Thousand Dollars ($10,000). In cases where
an injury resulted in death, the maximum award for funeral expenses was set at
$3,600; in computing death benefits for the individual’s family, the average weekly
wages of the deceased was limited to the range of $225 to $375. And whether a
worker’s injury resulted in temporary injury, permanent injury, or death, the total
amount of benefits an individual or his or her survivors could receive was capped
at One Hundred Thousand Dollars ($100,000).

It is, therefore, the intent of I Liheslaturan Guåhan to breathe meaning back
into the purpose of the workers’ compensation program. This bill offers to achieve
that through updating compensation rates, and the corresponding lifetime
maximum payout, for injury, disfigurement, and death benefits based on the
reasonable measure of standard inflation.

Section 2. Section 9107(b) of Chapter 9, Title 22, Guam Code Annotated,
is hereby amended to read:

“§ 9107. Time for Commencement of Compensation: Maximum and
Minimum Compensation.

(a) No compensation shall be allowed for the first three (3) days of the
disability, except for the benefits provided for in § 9108; provided, however,
that in case the injury results in disability of more than fourteen (14) days,
the compensation shall be allowed from the date of disability.

(b) Compensation for disability shall not exceed Two Hundred Fifty
Dollars ($250) Five Hundred Twenty Dollars ($520) per week; provided that
if the employee’s average weekly wages, as computed under § 9111, are less
than One Hundred Fifty Dollars ($150.00) Three Hundred Ten Dollars
($310) per week, he or she shall receive as compensation for permanent total
disability not less than One Hundred Fifty Dollars ($150.00) Three Hundred
Ten Dollars ($310) per week.”

Section 3. Section 9109(c)(20) of Chapter 9, Title 22, Guam Code
Annotated, is amended to read:

“§ 9109. Compensation for Disfigurement. Compensation for
disability shall be paid to the employee as follows:

(a) Permanent total disability. In case of total disability, adjudged
to be permanent, sixty-six and two-thirds (66-2/3) per centum of his or her
average weekly wages shall be paid to the employee during the continuance
of such total disability. Loss of both hands, or both arms, or both feet, or
both legs, or both eyes, or of any two (2) thereof shall, in the absence of
conclusive proof to the contrary, constitute permanent total disability. In all
other cases, permanent total disability shall be determined in accordance
with the facts.

(b) Temporary total disability. In case of disability total in
character but temporary in quality, sixty-six and two-third (66-2/3) per
centum of the average weekly wages shall be paid to the employee during
the continuance thereof.

(c) Permanent partial disability. In case of disability partial in
character but permanent in quality, the compensation shall be sixty-six and
two-thirds (66-2/3) per centum of the average weekly wages, which shall be
in addition to compensation for temporary total disability or temporary
partial disability paid in accordance with subsection (b) or subsection (e) of
this section respectively and shall be paid to the employee as follows:

(1) Arm lost, two hundred eighty (280) weeks compensation.
(2) Leg lost, two hundred forty-eight (248) weeks compensation.

(3) Hand lost, two hundred twelve (212) weeks compensation.

(4) Foot lost, one hundred seventy-three (173) weeks compensation.

(5) Eye lost, one hundred forty (140) weeks compensation.

(6) Thumb lost, fifty-one (51) weeks compensation.

(7) First finger lost, twenty-eight (28) weeks compensation.

(8) Great toe lost, twenty-six (26) weeks compensation.

(9) Second finger lost, eighteen (18) weeks compensation.

(10) Third finger lost, seventeen (17) weeks compensation.

(11) Toe other than great toe lost, eight (8) weeks compensation.

(12) Fourth finger lost, seven (7) weeks compensation.

(13) Loss of hearing. Compensation for loss of hearing of one (1) ear, fifty-two (52) weeks. Compensation for loss of hearing of both ears, two hundred (200) weeks.

(14) Phalanges. Compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange of a digit shall be one-half (1/2) of the compensation for loss of the entire digit.

(15) Amputated arm or leg. Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but, if amputated between the elbow and the wrist or the knee and the ankle, compensation shall be the same as for loss of a hand or foot.
(16) Binocular vision or per centum of vision. Compensation for loss of binocular vision or for eighty (80) per centum or more of the vision of an eye shall be the same as for loss of the eye.

(17) Two (2) or more digits. Compensation for loss of two (2) or more digits, or one (1) or more phalanges of two (2) or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot.

(18) Total loss of use. Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use. Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(20) Disfigurement. The Commissioner shall award proper and equitable compensation for serious, permanent disfigurement of the face, head or other parts of the body that are customarily visible in the course of employment, not to exceed Ten-Twenty-Five Thousand Dollars ($10,000.00-$25,000).

(21) Other cases. In all other cases of permanent partial disability the compensation shall be two-thirds (2/3) of the difference between the employee's average weekly wages and his or her wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability; provided that, compensation payments shall be subject to reconsideration as to the degree of such impairment by the Commissioner on his or her own motion or upon application of any party in interest.

(22) In any case in which there shall be a loss of, or loss of use of, more than one (1) member or parts of more than one member
set forth in paragraphs (1) to (19) of this subsection, not amounting to
permanent total disability, the award of compensation shall be for the
loss of, or loss of use of, each such member or part thereof, which
awards shall run consecutively, except that where the injury affects
only two (2) or more digits of the same hand or foot, paragraph (17)
of this subsection shall apply.”

Section 4. Section 9110(a) and (e) of Chapter 9, Title 22, Guam Code
Annotated, is amended to read:

“§ 9110. Compensation for Death. If the injury causes death, the
compensation shall be known as a death benefit and shall be payable in the
amount and to or for the benefit of the persons following:

(a) Reasonable funeral expenses not exceeding Three Thousand
Six Hundred Dollars ($3,600.00) Seven Thousand Four Hundred Thirty-Five
Dollars ($7,435).

(b) If there be a surviving spouse and no surviving dependent child
of the deceased; to the surviving spouse thirty-five (35) per_centum of the
average wages of the deceased until death or remarriage; and if there be a
surviving dependent child or dependent children of the deceased, the
additional amount of fifteen (15) per_centum of such wage for each child. In
the case of the death or remarriage of such surviving spouse, if there be one
(1) surviving dependent child of the deceased employee, such child shall
have his or her compensation increased to thirty-five (35) per_centum of
such wages; and if there be more than one (1) surviving dependent child of
the deceased employee, to such dependent children in equal parts, thirty-five
(35) per_centum of such wages, increased by fifteen (15) per_centum of such
wages for each dependent child in excess of one (1); provided that, the total
amount payable shall in no case exceed two-thirds (2/3rds) of such wages.
The Commissioner, may, at his or her discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary.

(c) If there be one (1) surviving dependent child of the deceased, but no surviving spouse, then for the support of such dependent child, thirty-five (35) per centum of the wages of the deceased. If there be more than one (1) surviving dependent child of the deceased, but no surviving spouse, then for the support of such wages for each dependent child in excess of one. The total amount payable under this Section shall in no case exceed two-thirds (2/3rds) of such wages.

(d) If there be no surviving spouse or dependent children, or if the amount payable to a surviving spouse or to the dependent children shall be less in the aggregate than sixty-six (66) and two-thirds (2/3rd) per centum of the average wages of the deceased; then for the support of surviving dependent grandchildren or surviving dependent brothers and sisters, if they were dependent upon the deceased at the time of the injury, fifteen (15) per centum of such wages for the support of each such person; and for the support of each surviving dependent parent, or grandparent of the deceased if they were dependent upon him at the time of the injury, twenty-five (25) per centum of such wages during such dependence. But in no case shall the aggregate amount payable under this Section exceed the difference between two-thirds (2/3rds) of such wages and the amount payable as hereinbefore provided to surviving spouse and for the support of surviving dependent child or children.

(e) In computing death benefits, the average weekly wages of the deceased shall be considered to have been not more than Three Hundred
Seventy-Five Dollars ($375.00) Seven Hundred Seventy-Five Dollars ($775) per week nor less than Two Hundred Twenty-Five Dollars ($225.00) Four Hundred Sixty-Five Dollars ($465) per week.

(f) All questions of dependency shall be determined as of the time of the injury.

(g) Aliens. Compensation under this Title to aliens, not resident (or about to become non-residents) of the United States, the Territory of Guam, or Canada, shall be the same amount as provided for residents; provided that, dependents in any foreign country shall be limited to the surviving spouse and surviving dependent child or children, or if there be no surviving spouse or dependent child or children, to surviving dependent parents whom the employee has supported, either wholly or in part, for the period of one (1) year prior to the date of the injury; and provided that, the Commissioner may, at his or her option or upon the application of an insurance carrier, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half (1/2) of the commuted amounts of such future installments of compensation as determined by the Commission.

Section 5. Section 9115(m) of Chapter 9, Title 22, Guam Code Annotated, is amended to read:

§ 9115. Payment of Compensation.

(a) Compensation under this Title shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The first installment of compensation shall become due on the fourteenth (14th) day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter,
compensation shall be paid in semi-monthly installments except where the
Commissioner determines that payment in installments should be made
monthly or at some other interval.

(c) Upon making the first payment, and upon suspension of
payment for any cause, the employer shall immediately notify the
Commissioner, in accordance with a form prescribed by the Commission,
that payment of compensation has begun or has been suspended, as the case
may be.

(d) If the employer controverts the right to compensation, he or she
shall file with the Commissioner, on or before the fourteenth (14th) day after
he or she has knowledge of the alleged injury or death, a notice in
accordance with a form prescribed by the Commission, stating that the right
to compensation is controverted, the name of the claimant, the name of the
employer, the date of the alleged injury or death, and the grounds upon
which the right to compensation is controverted.

(e) If any installment of compensation payable without an award is
not paid within fourteen (14) days after it becomes due, as provided in
subsection (b) of this section, there shall be added to such unpaid installment
an amount equal to ten (10) per centum thereof, which shall be paid at the
same time as, but in addition to, such installment unless notice is filed under
subsection (d) of this section, or unless such nonpayment is excused by the
Commissioner after a showing by the employer that owing to conditions
over which he or she had no control such installment could not be paid
within the period prescribed for the payment.

(f) If any compensation, payable under the terms of an award, is
not paid within ten (10) days after it becomes due, there shall be added to
such unpaid compensation an amount equal to twenty (20) per centum
thereof which shall be paid at the same time as, but in addition to, such
compensation unless review of the compensation order making such award
is had as provided in § 9122, and an interlocutory injunction staying
payment is allowed by the court as provided therein.

(g) Within sixteen (16) days after final payment of compensation
has been made, the employer shall send to the Commissioner a notice, in
accordance with a form prescribed by the Commission, stating that such
final payment has been made, the total amount of compensation paid, the
name of the employee, and of any other person to whom compensation has
been paid, the date of the injury or death, and the date up to which
compensation has been paid. If the employer fails to notify the
commissioner within such time the Commission shall assess against such
employer a civil penalty in the amount of one hundred dollars ($100.00).

(h) The Commissioner (1) may upon his or her own initiative at
any time in a case in which payments are being made without an award and
(2) shall in any case where right to compensation is controverted, or where
payments of compensation have been stopped or suspended, upon receipt of
notice from any person entitled to compensation, or from the employer that
the right to compensation is controverted, or that payment of compensation
has been stopped or suspended, make such investigation, cause such medical
examinations to be made, or hold such hearings, and take such further action
as he or she considers will properly protect the rights of all parties.

(i) Whenever the Commissioner deems it advisable he or she may
require any employer to make a deposit with the Treasurer of Guam to
secure the prompt and convenient payment of such compensation; and
payments from such deposits upon any awards shall be made by the
Treasurer upon order of the Commissioner.
(j) Whenever the Commissioner determines that it is in the interest of justice, the liability of the employer for compensation or any part thereof, as determined by the Commissioner, may, with the approval of the Commission, be discharged by the payment of a lump sum equal to the present value of future compensation payments computed at four (4) per centum true discount compounded annually; provided, however, that with respect to government of Guam employees, no determination for a lump sum payment of compensation which is meant to replace wages may be made, unless a rational basis for such lump sum payment of compensation exists, without which the employee’s or employee’s family’s welfare would suffer from the inability to maintain the level of lifestyle in existence immediately prior to the disability. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which the employee is entitled to compensation shall be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving spouse shall be determined in accordance with the Remarriage Tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(k) If the employer has made advance payments of compensation, he or she shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(l) An injured employee or, in case of death, his or her dependents or personal representative shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the Commissioner, whenever required.
(m) The total compensation, excluding medical services and
supplies, payable under this Title for any injury or death shall in no event
exceed the sum of One Hundred Thousand Dollars ($100,000.00) Two
Hundred Six Thousand Five Hundred Seventy Dollars ($206,570). In cases
of disability compensable under Paragraph 21 of Subsection (c) of § 9109,
the total compensation for such disability, and for any temporary partial
disability sustained in addition therein, shall not exceed in the aggregate the
sum of One Hundred Thousand dollars ($100,000.00) Two Hundred Six
Thousand Five Hundred Seventy Dollars ($206,570).

Section 6. Effective Date. This Act shall become effective upon
enactment.

Section 7. Severability. If any provision of this Act or its application to
any person or circumstance is found to be invalid or contrary to law, such
invalidity shall not affect other provisions or applications of this Act that can be
given effect without the invalid provisions or application, and to this end the
provisions of this Act are severable.