
SUBSTITUTE SENATE BILL 5378

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Commerce & Trade (originally sponsored by Senators Honeyford, Hewitt, T. Sheldon, Mulliken, Rasmussen and Hale)

READ FIRST TIME 02/06/03.

1 AN ACT Relating to simplifying and adding certainty to the
2 calculation of workers' compensation benefits; amending RCW 51.08.178,
3 51.28.040, 51.32.050, 51.32.060, 51.32.072, 51.32.075, 51.32.080,
4 51.32.095, and 51.36.020; reenacting and amending RCW 51.32.090; adding
5 new sections to chapter 51.08 RCW; adding a new section to chapter
6 51.32 RCW; providing an effective date; and declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08 RCW
9 to read as follows:

10 "Inflation" means the percentage change in the implicit price
11 deflator for personal consumption expenditures for the United States as
12 published for the most recent twelve-month period by the bureau of
13 economic analysis of the federal department of commerce in September of
14 the year before a June 30th determination.

15 **Sec. 2.** RCW 51.08.178 and 1988 c 161 s 12 are each amended to read
16 as follows:

17 ~~((1) For the purposes of this title, the monthly wages the worker~~
18 ~~was receiving from all employment at the time of injury shall be the~~

1 ~~basis upon which compensation is computed unless otherwise provided~~
2 ~~specifically in the statute concerned. In cases where the worker's~~
3 ~~wages are not fixed by the month, they shall be determined by~~
4 ~~multiplying the daily wage the worker was receiving at the time of the~~
5 ~~injury:~~

6 ~~(a) By five, if the worker was normally employed one day a week;~~

7 ~~(b) By nine, if the worker was normally employed two days a week;~~

8 ~~(c) By thirteen, if the worker was normally employed three days a~~
9 ~~week;~~

10 ~~(d) By eighteen, if the worker was normally employed four days a~~
11 ~~week;~~

12 ~~(e) By twenty two, if the worker was normally employed five days a~~
13 ~~week;~~

14 ~~(f) By twenty six, if the worker was normally employed six days a~~
15 ~~week;~~

16 ~~(g) By thirty, if the worker was normally employed seven days a~~
17 ~~week.~~

18 ~~The term "wages" shall include the reasonable value of board,~~
19 ~~housing, fuel, or other consideration of like nature received from the~~
20 ~~employer as part of the contract of hire, but shall not include~~
21 ~~overtime pay except in cases under subsection (2) of this section.~~
22 ~~However, tips shall also be considered wages only to the extent such~~
23 ~~tips are reported to the employer for federal income tax purposes. The~~
24 ~~daily wage shall be the hourly wage multiplied by the number of hours~~
25 ~~the worker is normally employed. The number of hours the worker is~~
26 ~~normally employed shall be determined by the department in a fair and~~
27 ~~reasonable manner, which may include averaging the number of hours~~
28 ~~worked per day.~~

29 ~~(2) In cases where (a) the worker's employment is exclusively~~
30 ~~seasonal in nature or (b) the worker's current employment or his or her~~
31 ~~relation to his or her employment is essentially part time or~~
32 ~~intermittent, the monthly wage shall be determined by dividing by~~
33 ~~twelve the total wages earned, including overtime, from all employment~~
34 ~~in any twelve successive calendar months preceding the injury which~~
35 ~~fairly represent the claimant's employment pattern.~~

36 ~~(3) If, within the twelve months immediately preceding the injury,~~
37 ~~the worker has received from the employer at the time of injury a bonus~~

1 ~~as part of the contract of hire, the average monthly value of such~~
2 ~~bonus shall be included in determining the worker's monthly wages.~~

3 ~~(4) In cases where a wage has not been fixed or cannot be~~
4 ~~reasonably and fairly determined, the monthly wage shall be computed on~~
5 ~~the basis of the usual wage paid other employees engaged in like or~~
6 ~~similar occupations where the wages are fixed.)) (1) "Wages" means the~~
7 ~~gross cash compensation paid by the employer for services performed.~~

8 (2) "Cash" means payment in cash, by check, by electronic transfer,
9 or by other means made directly to the worker at the end of each pay
10 period before any mandatory deductions required by state or federal
11 law.

12 (3) The worker's monthly wage shall be determined by dividing by
13 twelve the total wages earned from all employment, including cash
14 bonuses and overtime pay, in any four successive quarters in the
15 twenty-four months preceding the injury or manifestation of
16 occupational disease that most reasonably represents the worker's
17 wages.

18 (a) Tips shall be considered wages only to the extent that such
19 tips are reported to the employer for federal income tax purposes.

20 (b) Wages shall include the actual value of board, housing, and
21 fuel received from the employer as part of the contract of hire and for
22 which an internal revenue service form 1099 is required. This
23 subsection does not apply during any period in which the employer
24 continues to provide, through a past or current payment, board,
25 housing, and/or fuel that were provided to the employee at the time of
26 the injury or manifestation of occupational disease.

27 (c) Wages shall not include fringe benefits. Fringe benefits are
28 any consideration given to a worker in addition to wages including, but
29 not limited to: Retirement and financial benefit plans of whatever
30 nature; mental and physical health insurance and treatment of whatever
31 nature; life, disability, and wage-replacement insurance of whatever
32 nature; unused, accrued leave of whatever nature; memberships of
33 whatever nature; employee discounts or use or consumption of employer
34 services, materials, equipment, and facilities of whatever nature;
35 training and education of whatever nature; and other employee or
36 beneficiary benefit plan for the employee's or beneficiaries' benefit
37 resulting from the employment relationship.

1 (4) In cases where the worker is self-employed or the worker's
2 monthly wage cannot be reasonably determined under subsection (3) of
3 this section due to the worker sustaining an injury or occupational
4 disease less than one year after beginning an employment relationship
5 that both the worker and the employer intend to be continuous and
6 lasting without limit into the foreseeable future, and which provides
7 wages, on an annualized basis, of greater than one hundred fifty
8 percent of wages earned by the worker in the twelve months before
9 beginning such employment, the monthly wage shall be computed on the
10 basis of the usual wage paid other employees of the employer at the
11 time of injury or manifestation of occupational disease who perform
12 like job duties with like work patterns or, if none exist, other
13 employees in the worker's labor market who perform like job duties with
14 like work patterns.

15 (5) In cases where the worker's monthly wage cannot be reasonably
16 determined under subsection (3) of this section due to the worker
17 sustaining an injury or occupational disease less than one year after
18 beginning an employment relationship that either the worker or the
19 employer do not intend to be continuous and lasting without limit into
20 the foreseeable future, or which provides wages, on an annualized
21 basis, of fifty percent or less of wages earned by the worker in the
22 twelve months before beginning such employment, the monthly wage shall
23 be computed on the basis of the usual wage paid other employees of the
24 employer at the time of injury or manifestation of occupational disease
25 who perform like job duties with like work patterns, or, if none exist,
26 other employees in the worker's labor market who perform like job
27 duties with like work patterns.

28 (6) If the employer or department cannot obtain sufficient accurate
29 information to calculate the worker's wages pursuant to subsection (3)
30 of this section before the first payment of temporary total disability
31 compensation is due, payments may be made provisionally based upon the
32 worker's wages on the date of injury or manifestation of occupational
33 disease. For purposes of this subsection only, "wages" means the gross
34 cash compensation paid by the employer for services performed. "Cash"
35 means payment in cash, by check, by electronic transfer, or by other
36 means made directly to the worker at the end of each pay period before
37 any mandatory deductions required by state or federal law.

1 **Sec. 3.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended to
2 read as follows:

3 ~~((If change of circumstances warrants an increase or rearrangement~~
4 ~~of compensation, like application shall be made therefor.))~~ Where the
5 worker's application to reopen a claim has been granted under RCW
6 51.32.160, compensation and other benefits if in order shall be allowed
7 for periods of time up to sixty days prior to the receipt of such
8 application.

9 **Sec. 4.** RCW 51.32.050 and 1995 c 199 s 6 are each amended to read
10 as follows:

11 (1)(a) For claims with date of injury or manifestation of
12 occupational disease before July 1, 2003, where death results from the
13 injury, the expenses of burial not to exceed two hundred percent of the
14 average monthly wage in the state as defined in RCW 51.08.018 shall be
15 paid.

16 (b) For claims with date of injury or manifestation of occupational
17 disease on or after July 1, 2003, where death results from the injury,
18 the expenses of burial shall be paid, not to exceed an amount
19 determined by the department on June 30, 2002, and each June 30th
20 thereafter, and applicable to claims filed with respect to injuries
21 occurring in the twelve-month period following the June 30th
22 determination. The amount is determined by adjusting the amount
23 applicable during the previous twelve-month period to account for
24 inflation.

25 (2)(a)(i) For claims with date of injury or manifestation of
26 occupational disease before July 1, 2003, where death results from the
27 injury, a surviving spouse of a deceased worker eligible for benefits
28 under this title shall receive monthly for life or until remarriage
29 payments according to the following schedule:

30 ~~((i))~~ (A) If there are no children of the deceased worker, sixty
31 percent of the wages of the deceased worker but not less than one
32 hundred eighty-five dollars;

33 ~~((ii))~~ (B) If there is one child of the deceased worker and in
34 the legal custody of such spouse, sixty-two percent of the wages of the
35 deceased worker but not less than two hundred twenty-two dollars;

36 ~~((iii))~~ (C) If there are two children of the deceased worker and

1 in the legal custody of such spouse, sixty-four percent of the wages of
2 the deceased worker but not less than two hundred fifty-three dollars;

3 ~~((iv))~~ (D) If there are three children of the deceased worker and
4 in the legal custody of such spouse, sixty-six percent of the wages of
5 the deceased worker but not less than two hundred seventy-six dollars;

6 ~~((v))~~ (E) If there are four children of the deceased worker and
7 in the legal custody of such spouse, sixty-eight percent of the wages
8 of the deceased worker but not less than two hundred ninety-nine
9 dollars; or

10 ~~((vi))~~ (F) If there are five or more children of the deceased
11 worker and in the legal custody of such spouse, seventy percent of the
12 wages of the deceased worker but not less than three hundred twenty-two
13 dollars.

14 (ii) For claims with date of injury or manifestation of
15 occupational disease on or after July 1, 2003, where death results from
16 the injury, a surviving spouse of a deceased worker eligible for
17 benefits under this title shall receive monthly for life or until
18 remarriage payments of sixty-five and five-tenths percent of the wages
19 of the deceased worker, but not less than two hundred seventy-six
20 dollars.

21 (b) Where the surviving spouse does not have legal custody of any
22 child or children of the deceased worker or where after the death of
23 the worker legal custody of such child or children passes from such
24 surviving spouse to another, any payment on account of such child or
25 children not in the legal custody of the surviving spouse shall be made
26 to the person or persons having legal custody of such child or
27 children. The amount of such payments shall be five percent of the
28 monthly benefits payable as a result of the worker's death for each
29 such child but such payments shall not exceed twenty-five percent.
30 Such payments on account of such child or children shall be subtracted
31 from the amount to which such surviving spouse would have been entitled
32 had such surviving spouse had legal custody of all of the children and
33 the surviving spouse shall receive the remainder after such payments on
34 account of such child or children have been subtracted. Such payments
35 on account of a child or children not in the legal custody of such
36 surviving spouse shall be apportioned equally among such children.

37 (c) Payments to the surviving spouse of the deceased worker shall
38 cease at the end of the month in which remarriage occurs: PROVIDED,

1 That a monthly payment shall be made to the child or children of the
2 deceased worker from the month following such remarriage in a sum equal
3 to five percent of the wages of the deceased worker for one child and
4 a sum equal to five percent for each additional child up to a maximum
5 of five such children. Payments to such child or children shall be
6 apportioned equally among such children. Such sum shall be in place of
7 any payments theretofore made for the benefit of or on account of any
8 such child or children. If the surviving spouse does not have legal
9 custody of any child or children of the deceased worker, or if after
10 the death of the worker, legal custody of such child or children passes
11 from such surviving spouse to another, any payment on account of such
12 child or children not in the legal custody of the surviving spouse
13 shall be made to the person or persons having legal custody of such
14 child or children.

15 ~~(d) ((In no event shall))~~ (i) For claims with date of injury or
16 manifestation of occupational disease before July 1, 2003, the monthly
17 payments provided in subsection (2) of this section may not exceed the
18 applicable percentage of the average monthly wage in the state as
19 computed under RCW 51.08.018 as follows:

20	AFTER	PERCENTAGE
21	June 30, 1993	105%
22	June 30, 1994	110%
23	June 30, 1995	115%
24	June 30, 1996	120%

25 (ii) For claims with date of injury or manifestation of
26 occupational disease on or after July 1, 2002, but before June 30,
27 2004, the monthly payments provided in this subsection may not exceed
28 one hundred twenty percent of the average monthly wage in the state on
29 June 30, 2003. For all claims with the date of injury or manifestation
30 of occupational disease on or after July 1, 2004, the monthly payments
31 provided in this subsection may not exceed an amount determined by the
32 department on June 30, 2003, and each June 30th thereafter, and
33 applicable to claims with date of injury or manifestation of
34 occupational disease in the twelve-month period following the June 30th
35 determination. The amount is determined by adjusting the June 30,

1 2003, amount for inflation on June 30, 2004. In subsequent years, the
2 department shall adjust the amount applicable during the previous
3 twelve-month period to account for inflation.

4 (e) In addition to the monthly payments provided for in subsection
5 (2)(a) through (c) of this section, a surviving spouse or child or
6 children of such worker if there is no surviving spouse, or dependent
7 parent or parents, if there is no surviving spouse or child or children
8 of any such deceased worker shall be forthwith paid a sum equal to one
9 hundred percent of the average monthly wage in the state as defined in
10 RCW 51.08.018, any such children, or parents to share and share alike
11 in said sum.

12 (f) Upon remarriage of a surviving spouse the monthly payments for
13 the child or children shall continue as provided in this section, but
14 the monthly payments to such surviving spouse shall cease at the end of
15 the month during which remarriage occurs. However, after September 8,
16 1975, an otherwise eligible surviving spouse of a worker who died at
17 any time prior to or after September 8, 1975, shall have an option of:

18 (i) Receiving, once and for all, a lump sum of twenty-four times
19 the monthly compensation rate in effect on the date of remarriage
20 allocable to the spouse for himself or herself pursuant to subsection
21 (2)(a)(i)(A) of this section and subject to any modifications specified
22 under subsection (2)(d) of this section and RCW 51.32.075(~~(+3)~~) (1)(c)
23 or fifty percent of the then remaining annuity value of his or her
24 pension, whichever is the lesser: PROVIDED, That if the injury
25 occurred prior to July 28, 1991, the remarriage benefit lump sum
26 available shall be as provided in the remarriage benefit schedules then
27 in effect; or

28 (ii) If a surviving spouse does not choose the option specified in
29 subsection (2)(f)(i) of this section to accept the lump sum payment,
30 the remarriage of the surviving spouse of a worker shall not bar him or
31 her from claiming the lump sum payment authorized in subsection
32 (2)(f)(i) of this section during the life of the remarriage, or shall
33 not prevent subsequent monthly payments to him or to her if the
34 remarriage has been terminated by death or has been dissolved or
35 annulled by valid court decree provided he or she has not previously
36 accepted the lump sum payment.

37 (g) If the surviving spouse during the remarriage should die
38 without having previously received the lump sum payment provided in

1 subsection (2)(f)(i) of this section, his or her estate shall be
2 entitled to receive the sum specified under subsection (2)(f)(i) of
3 this section or fifty percent of the then remaining annuity value of
4 his or her pension whichever is the lesser.

5 (h) The effective date of resumption of payments under subsection
6 (2)(f)(ii) of this section to a surviving spouse based upon termination
7 of a remarriage by death, annulment, or dissolution shall be the date
8 of the death or the date the judicial decree of annulment or
9 dissolution becomes final and when application for the payments has
10 been received.

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

16 (3) If there is a child or children and no surviving spouse of the
17 deceased worker or the surviving spouse is not eligible for benefits
18 under this title, a sum equal to thirty-five percent of the wages of
19 the deceased worker shall be paid monthly for one child and a sum
20 equivalent to fifteen percent of such wage shall be paid monthly for
21 each additional child, the total of such sum to be divided among such
22 children, share and share alike(~~(:—PROVIDED, That)~~), subject to the
23 following:

24 (a) For claims with date of injury or manifestation of occupational
25 disease before July 1, 2003, benefits under this subsection or
26 subsection (4) of this section shall not exceed the lesser of sixty-
27 five percent of the wages of the deceased worker at the time of his or
28 her death or the applicable percentage of the average monthly wage in
29 the state as defined in RCW 51.08.018, as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

35 (b) For claims with date of injury or manifestation of occupational
36 disease on or after July 1, 2003, but before June 30, 2004, the monthly

1 payments provided in this subsection may not exceed one hundred twenty
2 percent of the average monthly wage in the state on June 30, 2003. For
3 all claims with date of injury or manifestation of occupational disease
4 on or after July 1, 2004, the monthly payments provided in this
5 subsection may not exceed an amount determined by the department on
6 June 30, 2003, and each June 30th thereafter, and applicable to claims
7 with date of injury or manifestation of occupational disease in the
8 twelve-month period following the June 30th determination. The amount
9 is determined by adjusting the June 30, 2003, amount for inflation on
10 June 30, 2004. In subsequent years, the department shall adjust the
11 amount applicable during the previous twelve-month period to account
12 for inflation.

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

16 (5)(a) If the worker leaves no surviving spouse or child, but
17 leaves a dependent or dependents, a monthly payment shall be made to
18 each dependent as follows:

19 (i) For claims with date of injury or manifestation of occupational
20 disease before July 1, 2003, the monthly payment shall be equal to
21 fifty percent of the average monthly support actually received by such
22 dependent from the worker during the twelve months next preceding the
23 occurrence of the injury, but the total payment to all dependents in
24 any case shall not exceed the lesser of sixty-five percent of the wages
25 of the deceased worker at the time of his or her death or the
26 applicable percentage of the average monthly wage in the state as
27 defined in RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
28		
29	June 30, 1993	105%
30	June 30, 1994	110%
31	June 30, 1995	115%
32	June 30, 1996	120%

33 (ii) For claims with date of injury or manifestation of
34 occupational disease on or after July 1, 2003, but before June 30,
35 2004, the monthly payments provided in this subsection may not exceed
36 one hundred twenty percent of the average monthly wage in the state on

1 June 30, 2003. For all claims with date of injury or manifestation of
2 occupational disease on or after July 1, 2004, the monthly payments
3 provided in this subsection may not exceed an amount determined by the
4 department on June 30, 2003, and each June 30th thereafter, and
5 applicable to claims with date of injury or manifestation of
6 occupational disease occurring in the twelve-month period following the
7 June 30th determination. The amount is determined by adjusting the
8 June 30, 2003, amount for inflation on June 30, 2004. In subsequent
9 years, the department shall adjust the amount applicable during the
10 previous twelve-month period to account for inflation.

11 (b) If any dependent is under the age of eighteen years at the time
12 of the occurrence of the injury, the payment to such dependent shall
13 cease when such dependent reaches the age of eighteen years except such
14 payments shall continue until the dependent reaches age twenty-three
15 while permanently enrolled at a full time course in an accredited
16 school. The payment to any dependent shall cease if and when, under
17 the same circumstances, the necessity creating the dependency would
18 have ceased if the injury had not happened.

19 (6) For claims filed prior to July 1, 1986, if the injured worker
20 dies during the period of permanent total disability, whatever the
21 cause of death, leaving a surviving spouse, or child, or children, the
22 surviving spouse or child or children shall receive benefits as if
23 death resulted from the injury as provided in subsections (2) through
24 (4) of this section. Upon remarriage or death of such surviving
25 spouse, the payments to such child or children shall be made as
26 provided in subsection (2) of this section when the surviving spouse of
27 a deceased worker remarries.

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

31 **Sec. 5.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read
32 as follows:

33 (1) Except as provided in subsection (2) of this section, when the
34 supervisor of industrial insurance (~~shall~~) determines that permanent
35 total disability results from the injury, the worker shall receive
36 monthly during the period of such disability:

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

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

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

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

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

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

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

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

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

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

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

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

35 (2) For any claim with date of injury or manifestation of
36 occupational disease on or after July 1, 2003, when the supervisor of
37 industrial insurance determines that permanent total disability results
38 from the injury, the worker shall receive monthly during the period of

1 such disability sixty-five and five-tenths percent of his or her wages
2 as determined under RCW 51.08.178, but not less than two hundred
3 seventy-six dollars per month.

4 (3) For any period of time where both husband and wife are entitled
5 to compensation as temporarily or totally disabled workers, only that
6 spouse having the higher wages of the two shall be entitled to claim
7 their child or children for compensation purposes under subsection (1)
8 of this section.

9 ~~((+3))~~ (4) In case of permanent total disability, if the character
10 of the injury is such as to render the worker so physically helpless as
11 to require the hiring of the services of an attendant, the department
12 shall make monthly payments to such attendant for such services as long
13 as such requirement continues, but such payments shall not obtain or be
14 operative while the worker is receiving care under or pursuant to the
15 provisions of chapter 51.36 RCW and RCW 51.04.105.

16 ~~((+4))~~ (5) Should any further accident result in the permanent
17 total disability of an injured worker, he or she shall receive the
18 pension to which he or she would be entitled, notwithstanding the
19 payment of a lump sum for his or her prior injury.

20 ~~((+5) In no event shall))~~ (6)(a)(i) For claims filed before July 1,
21 2003, the monthly payments provided in this section may not exceed the
22 applicable percentage of the average monthly wage in the state as
23 computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

24
25
26
27
28
29 (ii) For claims with date of injury or manifestation of
30 occupational disease on or after July 1, 2003, but before June 30,
31 2004, the monthly payments provided in this subsection may not exceed
32 one hundred twenty percent of the average monthly wage in the state on
33 June 30, 2003. For all claims with date of injury or manifestation of
34 occupational disease on or after July 1, 2004, the monthly payments
35 provided in this subsection may not exceed an amount determined by the
36 department on June 30, 2003, and each June 30th thereafter, and

1 applicable to claims with date of injury or manifestation of
2 occupational disease occurring in the twelve-month period following the
3 June 30th determination. The amount is determined by adjusting the
4 June 30, 2003, amount for inflation on June 30, 2004. In subsequent
5 years, the department shall adjust the amount applicable during the
6 previous twelve-month period to account for inflation.

7 (b) The limitations under this subsection shall not apply to the
8 payments provided for in subsection (~~(3)~~) (4) of this section.

9 (~~(6)~~) (7) In the case of new or reopened claims, if the
10 supervisor of industrial insurance determines that, at the time of
11 filing or reopening, the worker is voluntarily retired and is no longer
12 attached to the work force, benefits shall not be paid under this
13 section.

14 (~~(7)~~) (8) The benefits provided by this section are subject to
15 modification under RCW 51.32.067.

16 **Sec. 6.** RCW 51.32.072 and 1987 c 185 s 34 are each amended to read
17 as follows:

18 (1)(a) Notwithstanding any other provision of law, every surviving
19 spouse and every permanently totally disabled worker or temporarily
20 totally disabled worker, if such worker was unmarried at the time of
21 the worker's injury or was then married but the marriage was later
22 terminated by judicial action, receiving a pension or compensation for
23 temporary total disability under this title pursuant to compensation
24 schedules in effect prior to July 1, 1971, shall after July 1, 1975,
25 and until July 1, 2003, be paid fifty percent of the average monthly
26 wage in the state as computed under RCW 51.08.018 per month and an
27 amount equal to five percent of such average monthly wage per month to
28 such totally disabled worker if married at the time of the worker's
29 injury and the marriage was not later terminated by judicial action,
30 and an additional two percent of such average monthly wage for each
31 child of such totally disabled worker at the time of injury in the
32 legal custody of such totally disabled worker or such surviving spouse
33 up to a maximum of five such children. The monthly payments such
34 surviving spouse or totally disabled worker are receiving pursuant to
35 compensation schedules in effect prior to July 1, 1971 shall be
36 deducted from the monthly payments above specified.

1 (b) Subject to subsection (2) of this section, where such a
2 surviving spouse has remarried, or where any such child of such worker,
3 whether living or deceased, is not in the legal custody of such worker
4 or such surviving spouse there shall be paid for the benefit of and on
5 account of each such child a sum equal to two percent of such average
6 monthly wage up to a maximum of five such children in addition to any
7 payments theretofore paid under compensation schedules in effect prior
8 to July 1, 1971 for the benefit of and on account of each such child.
9 In the case of any child or children of a deceased worker not leaving
10 a surviving spouse or where the surviving spouse has later died, there
11 shall be paid for the benefit of and on account of each such child a
12 sum equal to two percent of such average monthly wage up to a maximum
13 of five such children in addition to any payments theretofore paid
14 under such schedules for the benefit of and on account of each such
15 child.

16 (2) Beginning July 1, 2003, the monthly payments and the additional
17 payments for the injured worker's spouse or children provided in this
18 section may not exceed an amount determined by the department on June
19 30, 2002, adjusted for inflation on June 30, 2003, and each June 30th
20 thereafter, and applicable to payments made during the twelve-month
21 period following the June 30th determination. The amount is determined
22 by adjusting the amount applicable during the previous twelve-month
23 period to account for inflation.

24 (3)(a) If the character of the injury or occupational disease is
25 such as to render the worker so physically helpless as to require the
26 hiring of the services of an attendant, the department shall make
27 monthly payments to such attendant for such services as long as such
28 requirement continues but such payments shall not obtain or be
29 operative while the worker is receiving care under or pursuant to the
30 provisions of this title except for care granted at the discretion of
31 the supervisor pursuant to RCW 51.36.010: PROVIDED, That such payments
32 shall not be considered compensation nor shall they be subject to any
33 limitation upon total compensation payments.

34 (b) No part of such additional payments shall be payable from the
35 accident fund.

36 (4) The director shall pay monthly from the supplemental pension
37 fund such an amount as will, when added to the compensation theretofore

1 paid under compensation schedules in effect prior to July 1, 1971,
2 equal the amounts hereinabove specified.

3 (5) In cases where money has been or shall be advanced to any such
4 person from the pension reserve, the additional amount to be paid under
5 this section shall be reduced by the amount of monthly pension which
6 was or is predicated upon such advanced portion of the pension reserve.

7 **Sec. 7.** RCW 51.32.075 and 1988 c 161 s 7 are each amended to read
8 as follows:

9 (1) Subject to subsection (2) of this section, the compensation or
10 death benefits payable pursuant to the provisions of this chapter for
11 temporary total disability, permanent total disability, or death
12 arising out of injuries or occupational diseases shall be adjusted as
13 follows:

14 ~~((1))~~ (a) On July 1, 1982, there shall be an adjustment for those
15 whose right to compensation was established on or after July 1, 1971,
16 and before July 1, 1982. The adjustment shall be determined by
17 multiplying the amount of compensation to which they are entitled by a
18 fraction, the denominator of which shall be the average monthly wage in
19 the state under RCW 51.08.018 for the fiscal year in which such
20 person's right to compensation was established, and the numerator of
21 which shall be the average monthly wage in the state under RCW
22 51.08.018 on July 1, 1982.

23 ~~((2))~~ (b) In addition to the adjustment established by
24 ~~((subsection (1)))~~ (a) of this ~~((section))~~ subsection, there shall be
25 another adjustment on July 1, 1983, for those whose right to
26 compensation was established on or after July 1, 1971, and before July
27 1983, which shall be determined by multiplying the amount of
28 compensation to which they are entitled by a fraction, the denominator
29 of which shall be the average monthly wage in the state under RCW
30 51.08.018 for the fiscal year in which such person's right to
31 compensation was established, and the numerator of which shall be the
32 average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

33 ~~((3))~~ (c) In addition to the adjustments under ~~((subsections (1)~~
34 ~~and (2)))~~ (a) and (b) of this ~~((section))~~ subsection, further
35 adjustments shall be made beginning on July 1, 1984, and on each July
36 1st thereafter for those whose right to compensation was established on
37 or after July 1, 1971. The adjustment shall be determined by

1 multiplying the amount of compensation to which they are entitled by a
 2 fraction, the denominator of which shall be the average monthly wage in
 3 the state under RCW 51.08.018 for the fiscal year in which such
 4 person's right to compensation was established, and the numerator of
 5 which shall be the average monthly wage in the state under RCW
 6 51.08.018 on July 1st of the year in which the adjustment is being
 7 made. The department or self-insurer shall adjust the resulting
 8 compensation rate to the nearest whole cent, not to exceed the average
 9 monthly wage in the state as computed under RCW 51.08.018.

10 (2) Beginning July 1, 2003, the annual adjustments provided for in
 11 this section shall be an amount determined by the department on June
 12 30, 2002, adjusted for inflation on June 30, 2003, and each June 30th
 13 thereafter, and applicable to payments made during the twelve-month
 14 period following the June 30th determination. The amount is determined
 15 by adjusting the amount applicable during the previous twelve-month
 16 period to account for inflation.

17 **Sec. 8.** RCW 51.32.080 and 1993 c 520 s 1 are each amended to read
 18 as follows:

19 (1)(a) Until July 1, 1993, for the permanent partial disabilities
 20 here specifically described, the injured worker shall receive
 21 compensation as follows:

22 LOSS BY AMPUTATION

23	Of leg above the knee joint with short	
24	thigh stump (3" or less below the	
25	tuberosity of ischium).....	\$54,000.00
26	Of leg at or above knee joint with	
27	functional stump.....	48,600.00
28	Of leg below knee joint.....	43,200.00
29	Of leg at ankle (Syme).....	37,800.00
30	Of foot at mid-metatarsals.....	18,900.00
31	Of great toe with resection of metatarsal	
32	bone.....	11,340.00
33	Of great toe at metatarsophalangeal	
34	joint.....	6,804.00
35	Of great toe at interphalangeal joint.....	3,600.00

1	Of lesser toe (2nd to 5th) with resection of	
2	metatarsal bone	4,140.00
3	Of lesser toe at metatarsophalangeal	
4	joint	2,016.00
5	Of lesser toe at proximal interphalangeal	
6	joint	1,494.00
7	Of lesser toe at distal interphalangeal	
8	joint	378.00
9	Of arm at or above the deltoid insertion or	
10	by disarticulation at the shoulder	54,000.00
11	Of arm at any point from below the deltoid	
12	insertion to below the elbow joint at	
13	the insertion of the biceps tendon	51,300.00
14	Of arm at any point from below the elbow	
15	joint distal to the insertion of the	
16	biceps tendon to and including	
17	mid-metacarpal amputation of the	
18	hand	48,600.00
19	Of all fingers except the thumb at	
20	metacarpophalangeal joints	29,160.00
21	Of thumb at metacarpophalangeal joint or	
22	with resection of carpometacarpal	
23	bone	19,440.00
24	Of thumb at interphalangeal joint	9,720.00
25	Of index finger at metacarpophalangeal	
26	joint or with resection of metacarpal	
27	bone	12,150.00
28	Of index finger at proximal	
29	interphalangeal joint	9,720.00
30	Of index finger at distal interphalangeal	
31	joint	5,346.00
32	Of middle finger at metacarpophalangeal	
33	joint or with resection of metacarpal	
34	bone	9,720.00
35	Of middle finger at proximal	
36	interphalangeal joint	7,776.00

1	Of middle finger at distal interphalangeal	
2	joint	4,374.00
3	Of ring finger at metacarpophalangeal	
4	joint or with resection of metacarpal	
5	bone	4,860.00
6	Of ring finger at proximal interphalangeal	
7	joint	3,888.00
8	Of ring finger at distal interphalangeal	
9	joint	2,430.00
10	Of little finger at metacarpophalangeal	
11	joint or with resection of metacarpal	
12	bone	2,430.00
13	Of little finger at proximal interphalangeal	
14	joint	1,944.00
15	Of little finger at distal interphalangeal	
16	joint	972.00

17 MISCELLANEOUS

18	Loss of one eye by enucleation	21,600.00
19	Loss of central visual acuity in one eye ...	18,000.00
20	Complete loss of hearing in both ears	43,200.00
21	Complete loss of hearing in one ear	7,200.00

22 (b) Beginning on July 1, 1993, compensation under this subsection
 23 shall be computed as follows:

24 (i) Beginning on July 1, 1993, the compensation amounts for the
 25 specified disabilities listed in (a) of this subsection shall be
 26 increased by thirty-two percent; (~~and~~)

27 (ii) Beginning on July 1, 1994, and (~~each July 1 thereafter~~)
 28 ending on June 30, 2003, the compensation amounts for the specified
 29 disabilities listed in (a) of this subsection, as adjusted under (b)(i)
 30 of this subsection, shall be readjusted to reflect the percentage
 31 change in the consumer price index, calculated as follows: The index
 32 for the calendar year preceding the year in which the July calculation
 33 is made, to be known as "calendar year A," is divided by the index for
 34 the calendar year preceding calendar year A, and the resulting ratio is
 35 multiplied by the compensation amount in effect on June 30 immediately
 36 preceding the July 1st on which the respective calculation is made.

1 For the purposes of this subsection, "index" means the same as the
2 definition in RCW 2.12.037(1); and

3 (iii) Beginning on July 1, 2003, and each July 1st thereafter, the
4 compensation amounts of the specified disabilities listed in (a) of
5 this subsection, as adjusted under (b)(ii) of this subsection, shall be
6 adjusted to account for inflation.

7 (2) Compensation for amputation of a member or part thereof at a
8 site other than those specified in subsection (1) of this section, and
9 for loss of central visual acuity and loss of hearing other than
10 complete, shall be in proportion to that which such other amputation or
11 partial loss of visual acuity or hearing most closely resembles and
12 approximates. Compensation shall be calculated based on the adjusted
13 schedule of compensation in effect for the respective time period as
14 prescribed in subsection (1) of this section.

15 (3)(a) Compensation for any other permanent partial disability not
16 involving amputation shall be in the proportion which the extent of
17 such other disability, called unspecified disability, shall bear to the
18 disabilities specified in subsection (1) of this section, which most
19 closely resembles and approximates in degree of disability such other
20 disability, and compensation for any other unspecified permanent
21 partial disability shall be in an amount as measured and compared to
22 total bodily impairment. To reduce litigation and establish more
23 certainty and uniformity in the rating of unspecified permanent partial
24 disabilities, the department shall enact rules having the force of law
25 classifying such disabilities in the proportion which the department
26 shall determine such disabilities reasonably bear to total bodily
27 impairment. In enacting such rules, the department shall give
28 consideration to, but need not necessarily adopt, any nationally
29 recognized medical standards or guides for determining various bodily
30 impairments.

31 (b) Until July 1, 1993, for purposes of calculating monetary
32 benefits under (a) of this subsection, the amount payable for total
33 bodily impairment shall be deemed to be ninety thousand dollars.
34 Beginning on July 1, 1993, for purposes of calculating monetary
35 benefits under (a) of this subsection, the amount payable for total
36 bodily impairment shall be adjusted as follows:

37 (i) Beginning on July 1, 1993, the amount payable for total bodily

1 impairment under this section shall be increased to one hundred
2 eighteen thousand eight hundred dollars; (~~and~~)

3 (ii) Beginning on July 1, 1994, and (~~each July 1 thereafter~~)
4 ending on June 30, 2003, the amount payable for total bodily impairment
5 prescribed in (b)(i) of this subsection shall be adjusted as provided
6 in subsection (1)(b)(ii) of this section; and

7 (iii) Beginning on July 1, 2003, and each July 1st thereafter, the
8 amount payable for total bodily impairment prescribed in (b)(i) of this
9 subsection shall be adjusted as provided in subsection (1)(b)(iii) of
10 this section.

11 (c) Until July 1, 1993, the total compensation for all unspecified
12 permanent partial disabilities resulting from the same injury shall not
13 exceed the sum of ninety thousand dollars. Beginning on July 1, 1993,
14 total compensation for all unspecified permanent partial disabilities
15 resulting from the same injury shall not exceed a sum calculated as
16 follows:

17 (i) Beginning on July 1, 1993, the sum shall be increased to one
18 hundred eighteen thousand eight hundred dollars; (~~and~~)

19 (ii) Beginning on July 1, 1994, and (~~each July 1 thereafter~~)
20 ending on June 30, 2003, the sum prescribed in (b)(i) of this
21 subsection shall be adjusted as provided in subsection (1)(b)(ii) of
22 this section; and

23 (iii) Beginning on July 1, 2003, and each July 1st thereafter, the
24 sum prescribed in (b)(i) of this subsection shall be adjusted as
25 provided in subsection (1)(b)(iii) of this section.

26 (4) If permanent partial disability compensation is followed by
27 permanent total disability compensation, any portion of the permanent
28 partial disability compensation which exceeds the amount that would
29 have been paid the injured worker if permanent total disability
30 compensation had been paid in the first instance, shall be deducted
31 from the pension reserve of such injured worker and his or her monthly
32 compensation payments shall be reduced accordingly.

33 (5) Should a worker receive an injury to a member or part of his or
34 her body already, from whatever cause, permanently partially disabled,
35 resulting in the amputation thereof or in an aggravation or increase in
36 such permanent partial disability but not resulting in the permanent
37 total disability of such worker, his or her compensation for such

1 partial disability shall be adjudged with regard to the previous
2 disability of the injured member or part and the degree or extent of
3 the aggravation or increase of disability thereof.

4 (6) When the compensation provided for in subsections (1) through
5 (3) of this section exceeds three times the average monthly wage in the
6 state as computed under the provisions of RCW 51.08.018, payment shall
7 be made in monthly payments in accordance with the schedule of
8 temporary total disability payments set forth in RCW 51.32.090 until
9 such compensation is paid to the injured worker in full, except that
10 the first monthly payment shall be in an amount equal to three times
11 the average monthly wage in the state as computed under the provisions
12 of RCW 51.08.018, and interest shall be paid at the rate of eight
13 percent on the unpaid balance of such compensation commencing with the
14 second monthly payment. However, upon application of the injured
15 worker or survivor the monthly payment may be converted, in whole or in
16 part, into a lump sum payment, in which event the monthly payment shall
17 cease in whole or in part. Such conversion may be made only upon
18 written application of the injured worker or survivor to the department
19 and shall rest in the discretion of the department depending upon the
20 merits of each individual application. Upon the death of a worker all
21 unpaid installments accrued shall be paid according to the payment
22 schedule established prior to the death of the worker to the widow or
23 widower, or if there is no widow or widower surviving, to the dependent
24 children of such claimant, and if there are no such dependent children,
25 then to such other dependents as defined by this title.

26 (7) Awards payable under this section are governed by the schedule
27 in effect on the date of injury.

28 **Sec. 9.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and 1993
29 c 271 s 1 are each reenacted and amended to read as follows:

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

33 (2) Any compensation payable under this section for children not in
34 the custody of the injured worker as of the date of injury shall be
35 payable only to such person as actually is providing the support for
36 such child or children pursuant to the order of a court of record

1 providing for support of such child or children. This subsection does
2 not apply to claims filed on or after July 1, 2003.

3 (3)(a) As soon as recovery is so complete that the worker is
4 capable of gainful employment on a reasonably continuous basis and the
5 present earning power of the worker, at any kind of work, is restored
6 to that existing at the time of the occurrence of the injury, the
7 payments shall cease. If and so long as the present earning power is
8 only partially restored and the worker is working, the payments shall:

9 (i) For claims for injuries that occurred before May 7, 1993,
10 continue in the proportion which the new earning power shall bear to
11 the old; or

12 (ii) For claims for injuries occurring on or after May 7, 1993,
13 equal eighty percent of the actual difference between the worker's
14 present wages and earning power at the time of injury, but: (A) The
15 total of these payments and the worker's present wages may not exceed
16 one hundred fifty percent of the average monthly wage in the state as
17 computed under RCW 51.08.018; (B) the payments may not exceed one
18 hundred percent of the entitlement as computed under subsection (1) of
19 this section; and (C) the payments may not be less than the worker
20 would have received if (a)(i) of this subsection had been applicable to
21 the worker's claim.

22 (b) No compensation shall be payable under this subsection (3)
23 unless the loss of earning power shall exceed five percent.

24 (c) The injured worker remains eligible for the benefits provided
25 in this subsection only until the injured worker's condition is
26 medically fixed and stable.

27 (4)(a) Whenever the employer of injury requests that a worker who
28 is entitled to temporary total disability under this chapter be
29 certified by a physician as able to perform available work other than
30 his or her usual work, the employer shall furnish to the physician,
31 with a copy to the worker, a statement describing the work available
32 with the employer of injury in terms that will enable the physician to
33 relate the physical activities of the job to the worker's disability.
34 The physician shall then determine whether the worker is physically
35 able to perform the work described. The worker's temporary total
36 disability payments shall continue until the worker is released by his
37 or her physician for the work, and begins the work with the employer of
38 injury. If the work thereafter comes to an end before the worker's

1 recovery is sufficient in the judgment of his or her physician to
2 permit him or her to return to his or her usual job, or to perform
3 other available work offered by the employer of injury, the worker's
4 temporary total disability payments shall be resumed. Should the
5 available work described, once undertaken by the worker, impede his or
6 her recovery to the extent that in the judgment of his or her physician
7 he or she should not continue to work, the worker's temporary total
8 disability payments shall be resumed when the worker ceases such work.

9 (b) Once the worker returns to work under the terms of this
10 subsection (4), he or she shall not be assigned by the employer to work
11 other than the available work described without the worker's written
12 consent, or without prior review and approval by the worker's
13 physician.

14 (c) If the worker returns to work under this subsection (4), any
15 employee health and welfare benefits that the worker was receiving at
16 the time of injury shall continue or be resumed at the level provided
17 at the time of injury. Such benefits shall not be continued or resumed
18 if to do so is inconsistent with the terms of the benefit program, or
19 with the terms of the collective bargaining agreement currently in
20 force.

21 (d) In the event of any dispute as to the worker's ability to
22 perform the available work offered by the employer, the department
23 shall make the final determination.

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

31 (6) Should a worker suffer a temporary total disability and should
32 his or her employer at the time of the injury continue to pay him or
33 her the wages which he or she was earning at the time of such injury,
34 such injured worker shall not receive any payment provided in
35 subsection (1) or (2) of this section during the period his or her
36 employer shall so pay such wages.

37 (7) (~~In no event shall~~) (a) For claims with date of injury or
38 manifestation of occupational disease before July 1, 2003, the monthly

1 payments provided in this section may not exceed the applicable
2 percentage of the average monthly wage in the state as computed under
3 the provisions of RCW 51.08.018 as follows:

4	AFTER	PERCENTAGE
5	June 30, 1993	105%
6	June 30, 1994	110%
7	June 30, 1995	115%
8	June 30, 1996	120%

9 (b) For claims with date of injury or manifestation of occupational
10 disease on or after July 1, 2003, but before June 30, 2004, the monthly
11 payments provided in this subsection may not exceed one hundred twenty
12 percent of the average monthly wage in the state on June 30, 2003. For
13 all claims with date of injury or manifestation of occupational disease
14 on or after July 1, 2004, the monthly payments provided in this
15 subsection may not exceed an amount determined by the department on
16 June 30, 2003, and each June 30th thereafter, and applicable to claims
17 with date of injury or manifestation of occupational disease occurring
18 in the twelve-month period following the June 30th determination. The
19 amount is determined by adjusting the June 30, 2003, amount for
20 inflation on June 30, 2004. In subsequent years, the department shall
21 adjust the amount applicable during the previous twelve-month period to
22 account for inflation.

23 (8) If the supervisor of industrial insurance determines that the
24 worker is voluntarily retired and is no longer attached to the work
25 force, benefits shall not be paid under this section.

26 **Sec. 10.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read
27 as follows:

28 (1) One of the primary purposes of this title is to enable the
29 injured worker to become employable at gainful employment. To this
30 end, the department or self-insurers shall utilize the services of
31 individuals and organizations, public or private, whose experience,
32 training, and interests in vocational rehabilitation and retraining
33 qualify them to lend expert assistance to the supervisor of industrial
34 insurance in such programs of vocational rehabilitation as may be
35 reasonable to make the worker employable consistent with his or her

1 physical and mental status. Where, after evaluation and recommendation
2 by such individuals or organizations and prior to final evaluation of
3 the worker's permanent disability and in the sole opinion of the
4 supervisor or supervisor's designee, whether or not medical treatment
5 has been concluded, vocational rehabilitation is both necessary and
6 likely to enable the injured worker to become employable at gainful
7 employment, the supervisor or supervisor's designee may, in his or her
8 sole discretion, pay or, if the employer is a self-insurer, direct the
9 self-insurer to pay the cost as provided in subsection (3) of this
10 section.

11 (2) When in the sole discretion of the supervisor or the
12 supervisor's designee vocational rehabilitation is both necessary and
13 likely to make the worker employable at gainful employment, then the
14 following order of priorities shall be used:

- 15 (a) Return to the previous job with the same employer;
- 16 (b) Modification of the previous job with the same employer
17 including transitional return to work;
- 18 (c) A new job with the same employer in keeping with any
19 limitations or restrictions;
- 20 (d) Modification of a new job with the same employer including
21 transitional return to work;
- 22 (e) Modification of the previous job with a new employer;
- 23 (f) A new job with a new employer or self-employment based upon
24 transferable skills;
- 25 (g) Modification of a new job with a new employer;
- 26 (h) A new job with a new employer or self-employment involving on-
27 the-job training;
- 28 (i) Short-term retraining and job placement.

29 (3)(a) Except as provided in (b) of this subsection, costs for
30 vocational rehabilitation benefits allowed by the supervisor or
31 supervisor's designee under subsection (1) of this section may include
32 the cost of books, tuition, fees, supplies, equipment, transportation,
33 child or dependent care, and other necessary expenses for any such
34 worker in an amount not to exceed three thousand dollars in any fifty-
35 two week period (~~except as authorized by RCW 51.60.060~~), and the cost
36 of continuing the temporary total disability compensation under RCW
37 51.32.090 while the worker is actively and successfully undergoing a
38 formal program of vocational rehabilitation.

1 (b) Beginning with vocational rehabilitation plans approved on or
2 after July 1, 1999, costs for vocational rehabilitation benefits
3 allowed by the supervisor or supervisor's designee under subsection (1)
4 of this section may include the cost of books, tuition, fees, supplies,
5 equipment, child or dependent care, and other necessary expenses for
6 any such worker in an amount not to exceed (~~four~~) five thousand
7 dollars in any fifty-two week period (~~except as authorized by RCW~~
8 ~~51.60.060~~), and the cost of transportation and continuing the
9 temporary total disability compensation under RCW 51.32.090 while the
10 worker is actively and successfully undergoing a formal program of
11 vocational rehabilitation.

12 (c) The expenses allowed under (a) or (b) of this subsection may
13 include training fees for on-the-job training and the cost of
14 furnishing tools and other equipment necessary for self-employment or
15 reemployment. However, compensation or payment of retraining with job
16 placement expenses under (a) or (b) of this subsection may not be
17 authorized for a period of more than fifty-two weeks, except that such
18 period may, in the sole discretion of the supervisor after his or her
19 review, be extended for an additional fifty-two weeks or portion
20 thereof by written order of the supervisor.

21 (d) In cases where the worker is required to reside away from his
22 or her customary residence, the reasonable cost of board and lodging
23 shall also be paid.

24 (e) Costs paid under this subsection shall be chargeable to the
25 employer's cost experience or shall be paid by the self-insurer as the
26 case may be.

27 (4) In addition to the vocational rehabilitation expenditures
28 provided for under subsection (3) of this section, an additional five
29 thousand dollars may, upon authorization of the supervisor or the
30 supervisor's designee, be expended for: (a) Accommodations for an
31 injured worker that are medically necessary for the worker to
32 participate in an approved retraining plan; and (b) accommodations
33 necessary to perform the essential functions of an occupation in which
34 an injured worker is seeking employment, consistent with the retraining
35 plan or the recommendations of a vocational evaluation. The injured
36 worker's attending physician must verify the necessity of the
37 modifications or accommodations. The total expenditures authorized in

1 this subsection and the expenditures authorized under RCW 51.32.250
2 shall not exceed five thousand dollars.

3 (5) The department shall establish criteria to monitor the quality
4 and effectiveness of rehabilitation services provided by the
5 individuals and organizations used under subsection (1) of this
6 section. The state fund shall make referrals for vocational
7 rehabilitation services based on these performance criteria.

8 (6) The department shall engage in, where feasible and cost-
9 effective, a cooperative program with the state employment security
10 department to provide job placement services under this section.

11 (7) The benefits in this section shall be provided for the injured
12 workers of self-insured employers. Self-insurers shall report both
13 benefits provided and benefits denied under this section in the manner
14 prescribed by the department by rule adopted under chapter 34.05 RCW.
15 The director may, in his or her sole discretion and upon his or her own
16 initiative or at any time that a dispute arises under this section,
17 promptly make such inquiries as circumstances require and take such
18 other action as he or she considers will properly determine the matter
19 and protect the rights of the parties.

20 (8) Except as otherwise provided in this section, the benefits
21 provided for in this section are available to any otherwise eligible
22 worker regardless of the date of industrial injury. However, claims
23 shall not be reopened solely for vocational rehabilitation purposes.

24 **Sec. 11.** RCW 51.36.020 and 1999 c 395 s 1 are each amended to read
25 as follows:

26 (1) When the injury to any worker is so serious as to require his
27 or her being taken from the place of injury to a place of treatment,
28 his or her employer shall, at the expense of the medical aid fund, or
29 self-insurer, as the case may be, furnish transportation to the nearest
30 place of proper treatment.

31 (2) Every worker whose injury results in the loss of one or more
32 limbs or eyes shall be provided with proper artificial substitutes and
33 every worker, who suffers an injury to an eye producing an error of
34 refraction, shall be once provided proper and properly equipped lenses
35 to correct such error of refraction and his or her disability rating
36 shall be based upon the loss of sight before correction.

1 (3) Every worker whose accident results in damage to or destruction
2 of an artificial limb, eye, or tooth, shall have same repaired or
3 replaced.

4 (4) Every worker whose hearing aid or eyeglasses or lenses are
5 damaged, destroyed, or lost as a result of an industrial accident shall
6 have the same restored or replaced. The department or self-insurer
7 shall be liable only for the cost of restoring damaged hearing aids or
8 eyeglasses to their condition at the time of the accident.

9 (5) All mechanical appliances necessary in the treatment of an
10 injured worker, such as braces, belts, casts, and crutches, shall be
11 provided and all mechanical appliances required as permanent equipment
12 after treatment has been completed shall continue to be provided or
13 replaced without regard to the date of injury or date treatment was
14 completed, notwithstanding any other provision of law.

15 (6) A worker, whose injury is of such short duration as to bring
16 him or her within the time limit provisions of RCW 51.32.090, shall
17 nevertheless receive during the omitted period medical, surgical, and
18 hospital care and service and transportation under the provisions of
19 this chapter.

20 (7) Whenever in the sole discretion of the supervisor it is
21 reasonable and necessary to provide residence modifications necessary
22 to meet the needs and requirements of the worker who has sustained
23 catastrophic injury, the department or self-insurer may be ordered to
24 pay an amount determined as follows:

25 (a) For claims with date of injury or manifestation of occupational
26 disease before July 1, 2003, the amount may not ((~~to~~)) exceed the
27 state's average annual wage for one year as determined under RCW
28 50.04.355(~~(, as now existing or hereafter amended,~~)) toward the cost of
29 such modifications or construction. ((Such))

30 (b) For claims with date of injury or manifestation of occupational
31 disease on or after July 1, 2003, but before June 30, 2004, the amount
32 provided for in this subsection may not exceed one hundred twenty
33 percent of the average annual wage in the state on June 30, 2003. For
34 all claims with date of injury or manifestation of occupational disease
35 on or after July 1, 2004, the amount provided in this subsection may
36 not exceed an amount determined by the department on June 30, 2003, and
37 each June 30th thereafter, and applicable to claims with date of injury
38 or manifestation of occupational disease occurring in the twelve-month

1 period following the June 30th determination. The amount is determined
2 by adjusting the June 30, 2003, amount for inflation on June 30, 2004.
3 In subsequent years, the department shall adjust the amount applicable
4 during the previous twelve-month period to account for inflation.
5 Payment shall ((only)) be made under this subsection only for the
6 construction or modification of a residence in which the injured worker
7 resides. Only one residence of any worker may be modified or
8 constructed under this subsection, although the supervisor may order
9 more than one payment for any one home, up to the maximum amount
10 permitted by this section.

11 (8)(a) Whenever in the sole discretion of the supervisor it is
12 reasonable and necessary to modify a motor vehicle owned by a worker
13 who has become an amputee or becomes paralyzed because of an industrial
14 injury, the supervisor may pay or order a self-insurer to pay as
15 follows:

16 (i) For claims with date of injury or manifestation of occupational
17 disease before July 1, 2003, up to fifty percent of the state's average
18 annual wage for one year, as determined under RCW 50.04.355((, to be
19 paid by the department or self-insurer)) toward the costs thereof.

20 (ii) For claims with date of injury or manifestation of
21 occupational disease on or after July 1, 2003, but before June 30,
22 2004, the amount will be up to fifty percent of the state's average
23 annual wage as of June 30, 2003, adjusted for inflation. For all
24 claims with date of injury or manifestation of occupational disease on
25 or after July 1, 2004, the amount provided in this subsection may not
26 exceed an amount determined by the department on June 30, 2003, and
27 each June 30th thereafter, and applicable to claims with date of injury
28 or manifestation of occupational disease occurring in the twelve-month
29 period following the June 30th determination. The amount is determined
30 by adjusting the June 30, 2003, amount for inflation on June 30, 2004.
31 In subsequent years, the department shall adjust the amount applicable
32 during the previous twelve-month period to account for inflation.

33 (b) In the sole discretion of the supervisor after his or her
34 review, the amount paid under this subsection may be increased by no
35 more than four thousand dollars by written order of the supervisor.

36 (9) The benefits provided by subsections (7) and (8) of this
37 section are available to any otherwise eligible worker regardless of
38 the date of industrial injury.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 51.08 RCW
2 to read as follows:

3 The department may adopt rules necessary to implement section 2 of
4 this act.

5 NEW SECTION. **Sec. 13.** A new section is added to chapter 51.32 RCW
6 to read as follows:

7 The department may adopt rules necessary to implement section 9 of
8 this act.

9 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 July 1, 2003.

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