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HOUSE BILL 1674

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State of Washington

59th Legislature

2005 Regular Session

**By** Representatives Condotta, Armstrong, Holmquist, Schindler, Serben, Kretz, Clements, Shabro, Skinner, McDonald, Haler, McCune, Ericksen, Newhouse, Alexander, Woods, Kristiansen, Dunn, Strow, Crouse, Bailey, Pearson, Rodne, Hinkle and Talcott

Read first time 02/01/2005. Referred to Committee on Commerce & Labor.

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 51.32.090, 51.32.095, 51.32.095, and 51.36.020; reenacting and amending  
5 RCW 51.32.090; adding new sections to chapter 51.08 RCW; adding a new  
6 section to chapter 51.32 RCW; providing effective dates; providing an  
7 expiration date; and declaring an emergency.

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

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

11 "Inflation" means the percentage change in the implicit price  
12 deflator for personal consumption expenditures for the United States as  
13 published for the most recent twelve-month period by the bureau of  
14 economic analysis of the federal department of commerce in September of  
15 the year before a July 1st determination.

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

18 ~~((1) For the purposes of this title, the monthly wages the worker~~

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

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

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

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

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

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

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

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

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

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

37 (3) If, within the twelve months immediately preceding the injury,

1 the worker has received from the employer at the time of injury a bonus  
2 as part of the contract of hire, the average monthly value of such  
3 bonus shall be included in determining the worker's monthly wages.

4 (4) In cases where a wage has not been fixed or cannot be  
5 reasonably and fairly determined, the monthly wage shall be computed on  
6 the basis of the usual wage paid other employees engaged in like or  
7 similar occupations where the wages are fixed.) (1) "Wages" means the  
8 gross remuneration paid in cash by the employer to the worker for  
9 services performed with respect to a pay period, before any deductions.  
10 "Paid in cash" means payment in cash, by check, by electronic transfer,  
11 or by other means made directly to the worker.

12 (2) 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. This  
22 subsection does not apply during any period in which the employer  
23 continues to provide, through a past or current payment, board,  
24 housing, and/or fuel that were provided to the employee at the time of  
25 the injury or manifestation of occupational disease.

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

37 (3) Notwithstanding subsection (2) of this section, in cases where  
38 (a) the worker sustains an injury or occupational disease less than one

1 year after beginning an employment relationship that both the worker  
2 and the employer intend to be continuous and lasting without limit into  
3 the foreseeable future and which provides wages, on an annualized  
4 basis, of greater than one hundred fifty percent of wages earned by the  
5 worker in the twelve months before beginning such employment, or (b)  
6 the worker sustains an injury or occupational disease less than one  
7 year after beginning an employment relationship that either the worker  
8 or the employer does not intend to be continuous and lasting without  
9 limit into the foreseeable future and represents a substantial change  
10 from the worker's previous occupation and recent wage earning history,  
11 the monthly wage shall be computed on the basis of the usual wage paid  
12 other employees of the employer at the time of injury or manifestation  
13 of occupational disease who perform like job duties with like work  
14 patterns, or, if none exist, other workers in the worker's labor market  
15 who perform like job duties with like work patterns.

16 (4) If the department or self-insurer cannot obtain sufficient  
17 accurate information to calculate the worker's wages pursuant to  
18 subsection (2) of this section before the first payment of monthly  
19 compensation is due, payments may be made provisionally based upon the  
20 usual wage paid other employees of the employer at the time of injury  
21 or manifestation of occupational disease who perform like job duties  
22 with like work patterns, or, if none exist, other workers in the  
23 worker's labor market who perform like job duties with like work  
24 patterns. The department or self-insurer shall promptly calculate the  
25 worker's wage rate, and shall issue a determination of the worker's  
26 wage no later than ninety days from the date of injury based on wage  
27 information submitted.

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

30 ~~((If change of circumstances warrants an increase or rearrangement~~  
31 ~~of compensation, like application shall be made therefor.))~~ Where the  
32 worker's application to reopen a claim has been granted under RCW  
33 51.32.160, compensation and other benefits if in order shall be allowed  
34 for periods of time up to sixty days prior to the receipt of such  
35 application.

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

3       (1)(a) For claims with date of injury or manifestation of  
4 occupational disease before July 1, 2005, where death results from the  
5 injury, the expenses of burial not to exceed two hundred percent of the  
6 average monthly wage in the state as defined in RCW 51.08.018 shall be  
7 paid.

8       (b) For claims with date of injury or manifestation of occupational  
9 disease on or after July 1, 2005, where death results from the injury,  
10 the expenses of burial shall be paid, not to exceed an amount  
11 determined by the department on July 1, 2004, and each July 1st  
12 thereafter, and applicable to claims filed with respect to injuries  
13 occurring in the twelve-month period following the July 1st  
14 determination. The amount is determined by adjusting the amount  
15 applicable during the previous twelve-month period to account for  
16 inflation.

17       (2)(a)(i) For claims with date of injury or manifestation of  
18 occupational disease before July 1, 2005, where death results from the  
19 injury, a surviving spouse of a deceased worker eligible for benefits  
20 under this title shall receive monthly for life or until remarriage  
21 payments according to the following schedule:

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

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

28       ~~((+iii))~~ (C) If there are two children of the deceased worker and  
29 in the legal custody of such spouse, sixty-four percent of the wages of  
30 the deceased worker but not less than two hundred fifty-three dollars;

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

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

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

5        (ii) For claims with date of injury or manifestation of  
6 occupational disease on or after July 1, 2005, where death results from  
7 the injury, a surviving spouse of a deceased worker eligible for  
8 benefits under this title shall receive monthly for life or until  
9 remarriage payments of sixty-five and five-tenths percent of the wages  
10 of the deceased worker, but not less than two hundred seventy-six  
11 dollars.

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

28        (c) Payments to the surviving spouse of the deceased worker shall  
29 cease at the end of the month in which remarriage occurs: PROVIDED,  
30 That a monthly payment shall be made to the child or children of the  
31 deceased worker from the month following such remarriage in a sum equal  
32 to five percent of the wages of the deceased worker for one child and  
33 a sum equal to five percent for each additional child up to a maximum  
34 of five such children. Payments to such child or children shall be  
35 apportioned equally among such children. Such sum shall be in place of  
36 any payments theretofore made for the benefit of or on account of any  
37 such child or children. If the surviving spouse does not have legal  
38 custody of any child or children of the deceased worker, or if after

1 the death of the worker, legal custody of such child or children passes  
2 from such surviving spouse to another, any payment on account of such  
3 child or children not in the legal custody of the surviving spouse  
4 shall be made to the person or persons having legal custody of such  
5 child or children.

6 ~~(d) ((In no event shall))~~ (i) For claims with date of injury or  
7 manifestation of occupational disease before July 1, 2005, the monthly  
8 payments provided in subsection (2) of this section may not exceed the  
9 applicable percentage of the average monthly wage in the state as  
10 computed under RCW 51.08.018 as follows:

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

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16 (ii) On July 1, 2005, and on each July 1st thereafter, the  
17 department shall determine the maximum amount of the monthly payment  
18 provided in this subsection for claims with date of injury or  
19 manifestation of occupational disease in the twelve-month period  
20 beginning on the date of the department's determination. The  
21 department shall determine the maximum amount for the twelve-month  
22 period beginning on July 1st of each year by adjusting the maximum  
23 amount for the previous twelve-month period by the rate of inflation.

24 (e) In addition to the monthly payments provided for in subsection  
25 (2)(a) through (c) of this section, a surviving spouse or child or  
26 children of such worker if there is no surviving spouse, or dependent  
27 parent or parents, if there is no surviving spouse or child or children  
28 of any such deceased worker shall be forthwith paid a sum equal to one  
29 hundred percent of the average monthly wage in the state as defined in  
30 RCW 51.08.018, any such children, or parents to share and share alike  
31 in said sum.

32 (f) Upon remarriage of a surviving spouse the monthly payments for  
33 the child or children shall continue as provided in this section, but  
34 the monthly payments to such surviving spouse shall cease at the end of  
35 the month during which remarriage occurs. However, after September 8,

1 1975, an otherwise eligible surviving spouse of a worker who died at  
2 any time prior to or after September 8, 1975, shall have an option of:

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

13 (ii) If a surviving spouse does not choose the option specified in  
14 subsection (2)(f)(i) of this section to accept the lump sum payment,  
15 the remarriage of the surviving spouse of a worker shall not bar him or  
16 her from claiming the lump sum payment authorized in subsection  
17 (2)(f)(i) of this section during the life of the remarriage, or shall  
18 not prevent subsequent monthly payments to him or to her if the  
19 remarriage has been terminated by death or has been dissolved or  
20 annulled by valid court decree provided he or she has not previously  
21 accepted the lump sum payment.

22 (g) If the surviving spouse during the remarriage should die  
23 without having previously received the lump sum payment provided in  
24 subsection (2)(f)(i) of this section, his or her estate shall be  
25 entitled to receive the sum specified under subsection (2)(f)(i) of  
26 this section or fifty percent of the then remaining annuity value of  
27 his or her pension whichever is the lesser.

28 (h) The effective date of resumption of payments under subsection  
29 (2)(f)(ii) of this section to a surviving spouse based upon termination  
30 of a remarriage by death, annulment, or dissolution shall be the date  
31 of the death or the date the judicial decree of annulment or  
32 dissolution becomes final and when application for the payments has  
33 been received.

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



1 (3) If there is a child or children and no surviving spouse of the  
2 deceased worker or the surviving spouse is not eligible for benefits  
3 under this title, a sum equal to thirty-five percent of the wages of  
4 the deceased worker shall be paid monthly for one child and a sum  
5 equivalent to fifteen percent of such wage shall be paid monthly for  
6 each additional child, the total of such sum to be divided among such  
7 children, share and share alike(~~(:—PROVIDED, That)~~), subject to the  
8 following:

9 (a) For claims with date of injury or manifestation of occupational  
10 disease before July 1, 2005, benefits under this subsection or  
11 subsection (4) of this section shall not exceed the lesser of sixty-  
12 five percent of the wages of the deceased worker at the time of his or  
13 her death or the applicable percentage of the average monthly wage in  
14 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%

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20 (b) On July 1, 2005, and on each July 1st thereafter, the  
21 department shall determine the maximum amount of the monthly payment  
22 provided in this subsection for claims with date of injury or  
23 manifestation of occupational disease in the twelve-month period  
24 beginning on the date of the department's determination. The  
25 department shall determine the maximum amount for the twelve-month  
26 period beginning on July 1st of each year by adjusting the maximum  
27 amount for the previous twelve-month period by the rate of inflation.

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

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

34 (i) For claims with date of injury or manifestation of occupational  
35 disease before July 1, 2005, the monthly payment shall be equal to  
36 fifty percent of the average monthly support actually received by such

1 dependent from the worker during the twelve months next preceding the  
2 occurrence of the injury, but the total payment to all dependents in  
3 any case shall not exceed the lesser of sixty-five percent of the wages  
4 of the deceased worker at the time of his or her death or the  
5 applicable percentage of the average monthly wage in the state as  
6 defined in RCW 51.08.018 as follows:

7	AFTER	PERCENTAGE
8	June 30, 1993	105%
9	June 30, 1994	110%
10	June 30, 1995	115%
11	June 30, 1996	120%

12 (ii) On July 1, 2005, and on each July 1st thereafter, the  
13 department shall determine the maximum amount of the monthly payment  
14 provided in this subsection for claims with date of injury or  
15 manifestation of occupational disease in the twelve-month period  
16 beginning on the date of the department's determination. The  
17 department shall determine the maximum amount for the twelve-month  
18 period beginning on July 1st of each year by adjusting the maximum  
19 amount for the previous twelve-month period by the rate of inflation.

20 (b) If any dependent is under the age of eighteen years at the time  
21 of the occurrence of the injury, the payment to such dependent shall  
22 cease when such dependent reaches the age of eighteen years except such  
23 payments shall continue until the dependent reaches age twenty-three  
24 while permanently enrolled at a full time course in an accredited  
25 school. The payment to any dependent shall cease if and when, under  
26 the same circumstances, the necessity creating the dependency would  
27 have ceased if the injury had not happened.

28 (6) For claims filed prior to July 1, 1986, if the injured worker  
29 dies during the period of permanent total disability, whatever the  
30 cause of death, leaving a surviving spouse, or child, or children, the  
31 surviving spouse or child or children shall receive benefits as if  
32 death resulted from the injury as provided in subsections (2) through  
33 (4) of this section. Upon remarriage or death of such surviving  
34 spouse, the payments to such child or children shall be made as  
35 provided in subsection (2) of this section when the surviving spouse of  
36 a deceased worker remarries.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (2) For any claim with date of injury or manifestation of  
8 occupational disease on or after July 1, 2005, when the supervisor of  
9 industrial insurance determines that permanent total disability results  
10 from the injury, the worker shall receive monthly during the period of  
11 such disability sixty-five and five-tenths percent of his or her wages  
12 as determined under RCW 51.08.178, but not less than two hundred  
13 seventy-six dollars per month.

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

19 ~~((+3))~~ (4) In case of permanent total disability, if the character  
20 of the injury is such as to render the worker so physically helpless as  
21 to require the hiring of the services of an attendant, the department  
22 shall make monthly payments to such attendant for such services as long  
23 as such requirement continues, but such payments shall not obtain or be  
24 operative while the worker is receiving care under or pursuant to the  
25 provisions of chapter 51.36 RCW and RCW 51.04.105.

26 ~~((+4))~~ (5) Should any further accident result in the permanent  
27 total disability of an injured worker, he or she shall receive the  
28 pension to which he or she would be entitled, notwithstanding the  
29 payment of a lump sum for his or her prior injury.

30 ~~((+5) In no event shall))~~ (6)(a)(i) For claims filed before July 1,  
31 2005, the monthly payments provided in this section may not exceed the  
32 applicable percentage of the average monthly wage in the state as  
33 computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%

1 June 30, 1995 115%

2 June 30, 1996 120%

3 (ii) On July 1, 2005, and on each July 1st thereafter, the  
4 department shall determine the maximum amount of the monthly payment  
5 provided in this section for claims with date of injury or  
6 manifestation of occupational disease in the twelve-month period  
7 beginning on the date of the department's determination. The  
8 department shall determine the maximum amount for the twelve-month  
9 period beginning on July 1st of each year by adjusting the maximum  
10 amount for the previous twelve-month period by the rate of inflation.

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

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

18 ~~((+7))~~ (8) The benefits provided by this section are subject to  
19 modification under RCW 51.32.067.

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

22 (1)(a) Notwithstanding any other provision of law, every surviving  
23 spouse and every permanently totally disabled worker or temporarily  
24 totally disabled worker, if such worker was unmarried at the time of  
25 the worker's injury or was then married but the marriage was later  
26 terminated by judicial action, receiving a pension or compensation for  
27 temporary total disability under this title pursuant to compensation  
28 schedules in effect prior to July 1, 1971, shall after July 1, 1975,  
29 and before July 1, 2005, be paid fifty percent of the average monthly  
30 wage in the state as computed under RCW 51.08.018 per month and an  
31 amount equal to five percent of such average monthly wage per month to  
32 such totally disabled worker if married at the time of the worker's  
33 injury and the marriage was not later terminated by judicial action,  
34 and an additional two percent of such average monthly wage for each  
35 child of such totally disabled worker at the time of injury in the  
36 legal custody of such totally disabled worker or such surviving spouse  
37 up to a maximum of five such children. The monthly payments such

1 surviving spouse or totally disabled worker are receiving pursuant to  
2 compensation schedules in effect prior to July 1, 1971 shall be  
3 deducted from the monthly payments above specified.

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

19 (2) On July 1, 2005, and on each July 1st thereafter, the  
20 department shall determine the amounts of the monthly payments and the  
21 additional payments for the injured worker's spouse or children  
22 provided in this section and made in the twelve-month period beginning  
23 on the date of the department's determination. The department shall  
24 determine the amounts for the twelve-month period beginning on July 1st  
25 of each year by adjusting the amounts for the previous twelve-month  
26 period by the rate of inflation.

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

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

1       (4) The director shall pay monthly from the supplemental pension  
2 fund such an amount as will, when added to the compensation theretofore  
3 paid under compensation schedules in effect prior to July 1, 1971,  
4 equal the amounts hereinabove specified.

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

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

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

16       ~~((1))~~(a) On July 1, 1982, there shall be an adjustment for those  
17 whose right to compensation was established on or after July 1, 1971,  
18 and before July 1, 1982. The adjustment shall be determined by  
19 multiplying the amount of compensation to which they are entitled by a  
20 fraction, the denominator of which shall be the average monthly wage in  
21 the state under RCW 51.08.018 for the fiscal year in which such  
22 person's right to compensation was established, and the numerator of  
23 which shall be the average monthly wage in the state under RCW  
24 51.08.018 on July 1, 1982.

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

35       ~~((3))~~ (c) In addition to the adjustments under ~~((subsections (1)~~  
36 ~~and (2)))~~ (a) and (b) of this ~~((section))~~ subsection, further  
37 adjustments shall be made beginning on July 1, 1984, and on each July

1 1st thereafter for those whose right to compensation was established on  
2 or after July 1, 1971. The adjustment shall be determined by  
3 multiplying the amount of compensation to which they are entitled by a  
4 fraction, the denominator of which shall be the average monthly wage in  
5 the state under RCW 51.08.018 for the fiscal year in which such  
6 person's right to compensation was established, and the numerator of  
7 which shall be the average monthly wage in the state under RCW  
8 51.08.018 on July 1st of the year in which the adjustment is being  
9 made. The department or self-insurer shall adjust the resulting  
10 compensation rate to the nearest whole cent, not to exceed the average  
11 monthly wage in the state as computed under RCW 51.08.018.

12 (2) On July 1, 2005, and on each July 1st thereafter, the  
13 department shall determine the amount of the annual adjustments  
14 provided for in this section for payments made in the twelve-month  
15 period beginning on the date of the department's determination. The  
16 department shall determine the amount for the twelve-month period  
17 beginning on July 1st of each year by adjusting the amount for the  
18 previous twelve-month period by the rate of inflation.

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

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

24

25 **LOSS BY AMPUTATION**

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



1	Of great toe at metatarsophalangeal	
2	joint . . . . .	6,804.00
3	Of great toe at interphalangeal joint . . . . .	3,600.00
4	Of lesser toe (2nd to 5th) with resection of	
5	metatarsal bone . . . . .	4,140.00
6	Of lesser toe at metatarsophalangeal	
7	joint . . . . .	2,016.00
8	Of lesser toe at proximal interphalangeal	
9	joint . . . . .	1,494.00
10	Of lesser toe at distal interphalangeal	
11	joint . . . . .	378.00
12	Of arm at or above the deltoid insertion or	
13	by disarticulation at the shoulder . . . . .	54,000.00
14	Of arm at any point from below the deltoid	
15	insertion to below the elbow joint at	
16	the insertion of the biceps tendon . . . . .	51,300.00
17	Of arm at any point from below the elbow	
18	joint distal to the insertion of the	
19	biceps tendon to and including	
20	mid-metacarpal amputation of the	
21	hand . . . . .	48,600.00
22	Of all fingers except the thumb at	
23	metacarpophalangeal joints . . . . .	29,160.00
24	Of thumb at metacarpophalangeal joint or	
25	with resection of carpometacarpal	
26	bone . . . . .	19,440.00
27	Of thumb at interphalangeal joint . . . . .	9,720.00
28	Of index finger at metacarpophalangeal	
29	joint or with resection of metacarpal	
30	bone . . . . .	12,150.00
31	Of index finger at proximal	
32	interphalangeal joint . . . . .	9,720.00
33	Of index finger at distal interphalangeal	
34	joint . . . . .	5,346.00
35	Of middle finger at metacarpophalangeal	
36	joint or with resection of metacarpal	
37	bone . . . . .	9,720.00

1	Of middle finger at proximal	
2	interphalangeal joint.....	7,776.00
3	Of middle finger at distal interphalangeal	
4	joint.....	4,374.00
5	Of ring finger at metacarpophalangeal	
6	joint or with resection of metacarpal	
7	bone.....	4,860.00
8	Of ring finger at proximal interphalangeal	
9	joint.....	3,888.00
10	Of ring finger at distal interphalangeal	
11	joint.....	2,430.00
12	Of little finger at metacarpophalangeal	
13	joint or with resection of metacarpal	
14	bone.....	2,430.00
15	Of little finger at proximal interphalangeal	
16	joint.....	1,944.00
17	Of little finger at distal interphalangeal	
18	joint.....	972.00

19 MISCELLANEOUS

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

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

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

29 (ii) Beginning on July 1, 1994, and (~~each July 1 thereafter~~)  
 30 ending on June 30, 2005, the compensation amounts for the specified  
 31 disabilities listed in (a) of this subsection, as adjusted under (b)(i)  
 32 of this subsection, shall be readjusted to reflect the percentage  
 33 change in the consumer price index, calculated as follows: The index  
 34 for the calendar year preceding the year in which the July calculation  
 35 is made, to be known as "calendar year A," is divided by the index for  
 36 the calendar year preceding calendar year A, and the resulting ratio is  
 37 multiplied by the compensation amount in effect on June 30 immediately

1 preceding the July 1st on which the respective calculation is made.  
2 For the purposes of this subsection, "index" means the same as the  
3 definition in RCW 2.12.037(1); and

4 (iii) Beginning on July 1, 2005, and each July 1st thereafter, the  
5 compensation amounts of the specified disabilities listed in (a) of  
6 this subsection, as adjusted under (b)(ii) of this subsection, shall be  
7 adjusted to account for inflation.

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

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

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

1 (i) Beginning on July 1, 1993, the amount payable for total bodily  
2 impairment under this section shall be increased to one hundred  
3 eighteen thousand eight hundred dollars; (~~and~~)

4 (ii) Beginning on July 1, 1994, and (~~each July 1 thereafter~~)  
5 ending on June 30, 2005, the amount payable for total bodily impairment  
6 prescribed in (b)(i) of this subsection shall be adjusted as provided  
7 in subsection (1)(b)(ii) of this section; and

8 (iii) Beginning on July 1, 2005, and each July 1st thereafter, the  
9 amount payable for total bodily impairment prescribed in (b)(i) of this  
10 subsection shall be adjusted as provided in subsection (1)(b)(iii) of  
11 this section.

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

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

20 (ii) Beginning on July 1, 1994, and (~~each July 1 thereafter~~)  
21 ending on June 30, 2005, the sum prescribed in (b)(i) of this  
22 subsection shall be adjusted as provided in subsection (1)(b)(ii) of  
23 this section; and

24 (iii) Beginning on July 1, 2005, and each July 1st thereafter, the  
25 sum prescribed in (b)(i) of this subsection shall be adjusted as  
26 provided in subsection (1)(b)(iii) of this section.

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

34 (5) Should a worker receive an injury to a member or part of his or  
35 her body already, from whatever cause, permanently partially disabled,  
36 resulting in the amputation thereof or in an aggravation or increase in  
37 such permanent partial disability but not resulting in the permanent  
38 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 2004 c 65 s 9 are each amended to read  
29 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, 2005.

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 or licensed advanced registered nurse  
30 practitioner as able to perform available work other than his or her  
31 usual work, the employer shall furnish to the physician or licensed  
32 advanced registered nurse practitioner, with a copy to the worker, a  
33 statement describing the work available with the employer of injury in  
34 terms that will enable the physician or licensed advanced registered  
35 nurse practitioner to relate the physical activities of the job to the  
36 worker's disability. The physician or licensed advanced registered  
37 nurse practitioner shall then determine whether the worker is  
38 physically able to perform the work described. The worker's temporary

1 total disability payments shall continue until the worker is released  
2 by his or her physician or licensed advanced registered nurse  
3 practitioner for the work, and begins the work with the employer of  
4 injury. If the work thereafter comes to an end before the worker's  
5 recovery is sufficient in the judgment of his or her physician or  
6 licensed advanced registered nurse practitioner to permit him or her to  
7 return to his or her usual job, or to perform other available work  
8 offered by the employer of injury, the worker's temporary total  
9 disability payments shall be resumed. Should the available work  
10 described, once undertaken by the worker, impede his or her recovery to  
11 the extent that in the judgment of his or her physician or licensed  
12 advanced registered nurse practitioner he or she should not continue to  
13 work, the worker's temporary total disability payments shall be resumed  
14 when the worker ceases such work.

15 (b) Once the worker returns to work under the terms of this  
16 subsection (4), he or she shall not be assigned by the employer to work  
17 other than the available work described without the worker's written  
18 consent, or without prior review and approval by the worker's physician  
19 or licensed advanced registered nurse practitioner.

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

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

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

37 (6) Should a worker suffer a temporary total disability and should  
38 his or her employer at the time of the injury continue to pay him or

1 her the wages which he or she was earning at the time of such injury,  
2 such injured worker shall not receive any payment provided in  
3 subsection (1) or (2) of this section during the period his or her  
4 employer shall so pay such wages.

5 (7) (~~In no event shall~~) (a) For claims with date of injury or  
6 manifestation of occupational disease before July 1, 2005, the monthly  
7 payments provided in this section may not exceed the applicable  
8 percentage of the average monthly wage in the state as computed under  
9 the provisions of RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
10		
11	June 30, 1993	105%
12	June 30, 1994	110%
13	June 30, 1995	115%
14	June 30, 1996	120%

15 (b) On July 1, 2005, and on each July 1st thereafter, the  
16 department shall determine the maximum amount of the monthly payment  
17 provided in this section for claims with date of injury or  
18 manifestation of occupational disease in the twelve-month period  
19 beginning on the date of the department's determination. The  
20 department shall determine the maximum amount for the twelve-month  
21 period beginning on July 1st of each year by adjusting the maximum  
22 amount for the previous twelve-month period by the rate of 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 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and  
27 1993 c 271 s 1 are each reenacted and amended to read as follows:

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

31 (2) Any compensation payable under this section for children not in  
32 the custody of the injured worker as of the date of injury shall be  
33 payable only to such person as actually is providing the support for  
34 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, 2005.

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, 2005, 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) On July 1, 2005, and on each July 1st thereafter, the  
10 department shall determine the maximum amount of the monthly payment  
11 provided in this section for claims with date of injury or  
12 manifestation of occupational disease in the twelve-month period  
13 beginning on the date of the department's determination. The  
14 department shall determine the maximum amount for the twelve-month  
15 period beginning on July 1st of each year by adjusting the maximum  
16 amount for the previous twelve-month period by the rate of inflation.

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

20 **Sec. 11.** RCW 51.32.095 and 2004 c 65 s 10 are each amended to read  
21 as follows:

22 (1) One of the primary purposes of this title is to enable the  
23 injured worker to become employable at gainful employment. To this  
24 end, the department or self-insurers shall utilize the services of  
25 individuals and organizations, public or private, whose experience,  
26 training, and interests in vocational rehabilitation and retraining  
27 qualify them to lend expert assistance to the supervisor of industrial  
28 insurance in such programs of vocational rehabilitation as may be  
29 reasonable to make the worker employable consistent with his or her  
30 physical and mental status. Where, after evaluation and recommendation  
31 by such individuals or organizations and prior to final evaluation of  
32 the worker's permanent disability and in the sole opinion of the  
33 supervisor or supervisor's designee, whether or not medical treatment  
34 has been concluded, vocational rehabilitation is both necessary and  
35 likely to enable the injured worker to become employable at gainful

1 employment, the supervisor or supervisor's designee may, in his or her  
2 sole discretion, pay or, if the employer is a self-insurer, direct the  
3 self-insurer to pay the cost as provided in subsection (3) of this  
4 section.

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

9 (a) Return to the previous job with the same employer;

10 (b) Modification of the previous job with the same employer  
11 including transitional return to work;

12 (c) A new job with the same employer in keeping with any  
13 limitations or restrictions;

14 (d) Modification of a new job with the same employer including  
15 transitional return to work;

16 (e) Modification of the previous job with a new employer;

17 (f) A new job with a new employer or self-employment based upon  
18 transferable skills;

19 (g) Modification of a new job with a new employer;

20 (h) A new job with a new employer or self-employment involving on-  
21 the-job training;

22 (i) Short-term retraining and job placement.

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

33 (b) Beginning with vocational rehabilitation plans approved on or  
34 after July 1, 1999, costs for vocational rehabilitation benefits  
35 allowed by the supervisor or supervisor's designee under subsection (1)  
36 of this section may include the cost of books, tuition, fees, supplies,  
37 equipment, child or dependent care, and other necessary expenses for  
38 any such worker in an amount not to exceed (~~four~~) five thousand

1 dollars in any fifty-two week period (~~except as authorized by RCW~~  
2 ~~51.60.060~~), and the cost of transportation and continuing the  
3 temporary total disability compensation under RCW 51.32.090 while the  
4 worker is actively and successfully undergoing a formal program of  
5 vocational rehabilitation.

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

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

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

21 (4) In addition to the vocational rehabilitation expenditures  
22 provided for under subsection (3) of this section, an additional five  
23 thousand dollars may, upon authorization of the supervisor or the  
24 supervisor's designee, be expended for: (a) Accommodations for an  
25 injured worker that are medically necessary for the worker to  
26 participate in an approved retraining plan; and (b) accommodations  
27 necessary to perform the essential functions of an occupation in which  
28 an injured worker is seeking employment, consistent with the retraining  
29 plan or the recommendations of a vocational evaluation. The injured  
30 worker's attending physician or licensed advanced registered nurse  
31 practitioner must verify the necessity of the modifications or  
32 accommodations. The total expenditures authorized in this subsection  
33 and the expenditures authorized under RCW 51.32.250 shall not exceed  
34 five thousand dollars.

35 (5) The department shall establish criteria to monitor the quality  
36 and effectiveness of rehabilitation services provided by the  
37 individuals and organizations used under subsection (1) of this

1 section. The state fund shall make referrals for vocational  
2 rehabilitation services based on these performance criteria.

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

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

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

19 **Sec. 12.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read  
20 as follows:

21 (1) One of the primary purposes of this title is to enable the  
22 injured worker to become employable at gainful employment. To this  
23 end, the department or self-insurers shall utilize the services of  
24 individuals and organizations, public or private, whose experience,  
25 training, and interests in vocational rehabilitation and retraining  
26 qualify them to lend expert assistance to the supervisor of industrial  
27 insurance in such programs of vocational rehabilitation as may be  
28 reasonable to make the worker employable consistent with his or her  
29 physical and mental status. Where, after evaluation and recommendation  
30 by such individuals or organizations and prior to final evaluation of  
31 the worker's permanent disability and in the sole opinion of the  
32 supervisor or supervisor's designee, whether or not medical treatment  
33 has been concluded, vocational rehabilitation is both necessary and  
34 likely to enable the injured worker to become employable at gainful  
35 employment, the supervisor or supervisor's designee may, in his or her  
36 sole discretion, pay or, if the employer is a self-insurer, direct the

1 self-insurer to pay the cost as provided in subsection (3) of this  
2 section.

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

7 (a) Return to the previous job with the same employer;

8 (b) Modification of the previous job with the same employer  
9 including transitional return to work;

10 (c) A new job with the same employer in keeping with any  
11 limitations or restrictions;

12 (d) Modification of a new job with the same employer including  
13 transitional return to work;

14 (e) Modification of the previous job with a new employer;

15 (f) A new job with a new employer or self-employment based upon  
16 transferable skills;

17 (g) Modification of a new job with a new employer;

18 (h) A new job with a new employer or self-employment involving on-  
19 the-job training;

20 (i) Short-term retraining and job placement.

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

31 (b) Beginning with vocational rehabilitation plans approved on or  
32 after July 1, 1999, costs for vocational rehabilitation benefits  
33 allowed by the supervisor or supervisor's designee under subsection (1)  
34 of this section may include the cost of books, tuition, fees, supplies,  
35 equipment, child or dependent care, and other necessary expenses for  
36 any such worker in an amount not to exceed (~~((four))~~) five thousand  
37 dollars in any fifty-two week period (~~((except as authorized by RCW~~  
38 ~~51.60.060))~~), and the cost of transportation and continuing the

1 temporary total disability compensation under RCW 51.32.090 while the  
2 worker is actively and successfully undergoing a formal program of  
3 vocational rehabilitation.

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

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

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

19 (4) In addition to the vocational rehabilitation expenditures  
20 provided for under subsection (3) of this section, an additional five  
21 thousand dollars may, upon authorization of the supervisor or the  
22 supervisor's designee, be expended for: (a) Accommodations for an  
23 injured worker that are medically necessary for the worker to  
24 participate in an approved retraining plan; and (b) accommodations  
25 necessary to perform the essential functions of an occupation in which  
26 an injured worker is seeking employment, consistent with the retraining  
27 plan or the recommendations of a vocational evaluation. The injured  
28 worker's attending physician must verify the necessity of the  
29 modifications or accommodations. The total expenditures authorized in  
30 this subsection and the expenditures authorized under RCW 51.32.250  
31 shall not exceed five thousand dollars.

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

37 (6) The department shall engage in, where feasible and cost-



1 effective, a cooperative program with the state employment security  
2 department to provide job placement services under this section.

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

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

16 **Sec. 13.** RCW 51.36.020 and 1999 c 395 s 1 are each amended to read  
17 as follows:

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

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

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

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

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

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

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

17 (a) For requests for residence modifications received before July  
18 1, 2005, the amount may not ((to)) exceed the state's average annual  
19 wage for one year as determined under RCW 50.04.355((, as now existing  
20 or hereafter amended,)) toward the cost of such modifications or  
21 construction. ((Such))

22 (b) On July 1, 2005, and on each July 1st thereafter, the  
23 department shall determine the maximum amount provided in this  
24 subsection for requests for residence modifications received in the  
25 twelve-month period beginning on the date of the department's  
26 determination. The department shall determine the maximum amount for  
27 the twelve-month period beginning on July 1st by adjusting the maximum  
28 amount for the previous twelve-month period by the rate of inflation.  
29 Payment shall ((only)) be made under this subsection only for the  
30 construction or modification of a residence in which the injured worker  
31 resides. Only one residence of any worker may be modified or  
32 constructed under this subsection, although the supervisor may order  
33 more than one payment for any one home, up to the maximum amount  
34 permitted by this section.

35 (8)(a) Whenever in the sole discretion of the supervisor it is  
36 reasonable and necessary to modify a motor vehicle owned by a worker  
37 who has become an amputee or becomes paralyzed because of an industrial

1 injury, the supervisor may pay or order a self-insurer to pay as  
2 follows:

3 (i) For requests for motor vehicle modifications received before  
4 July 1, 2005, up to fifty percent of the state's average annual wage  
5 for one year, as determined under RCW 50.04.355(~~(, to be paid by the~~  
6 ~~department or self-insurer))~~) toward the costs thereof.

7 (ii) On July 1, 2005, and on each July 1st thereafter, the  
8 department shall determine the maximum amount provided in this  
9 subsection for requests for motor vehicle modifications received in the  
10 twelve-month period beginning on the date of the department's  
11 determination. The department shall determine the maximum amount for  
12 the twelve-month period beginning on July 1st by adjusting the maximum  
13 amount for the previous twelve-month period by the rate of inflation.

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

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

20 NEW SECTION. Sec. 14. A new section is added to chapter 51.08 RCW  
21 to read as follows:

22 The department may adopt rules necessary to implement section 2 of  
23 this act.

24 NEW SECTION. Sec. 15. A new section is added to chapter 51.32 RCW  
25 to read as follows:

26 The department may adopt rules necessary to implement sections 9  
27 and 10 of this act.

28 NEW SECTION. Sec. 16. This act is necessary for the immediate  
29 preservation of the public peace, health, or safety, or support of the  
30 state government and its existing public institutions, and takes effect  
31 July 1, 2005, except for sections 10 and 12 of this act which take  
32 effect June 30, 2007.

1        NEW SECTION.   **Sec. 17.**   Sections 9 and 11 of this act expire June  
2   30, 2007.

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