
HOUSE BILL 2123

State of Washington 62nd Legislature 2011 1st Special Session

By Representatives Green and Condotta; by request of Governor Gregoire

1 AN ACT Relating to stabilizing workers' compensation premium rates
2 and claim costs through the limited means of creating the stay-at-work
3 program, suspending cost-of-living adjustments for fiscal year 2012
4 with no catch-up and delaying the initial adjustment, allowing claim
5 resolution structured settlements for injured workers age fifty-five
6 and older effective 2012, fifty-three and older effective 2015, and
7 fifty and older effective 2016, adjusting pension benefits for prior
8 permanent partial disability awards, eliminating the interest on
9 permanent partial disability award schedules, providing safety and
10 health investment grants, creating the industrial insurance rainy day
11 fund, directing the department of labor and industries to increase its
12 employer, worker, and provider fraud prevention efforts, requiring a
13 performance audit by the joint legislative audit and review committee
14 of workers' compensation claims management in the workers' compensation
15 system to include self-insured claims, and studying occupational
16 disease claims in the workers' compensation system; amending RCW
17 51.32.072, 51.32.075, 51.52.120, 51.32.080, 51.04.110, 51.44.100, and
18 43.79A.040; reenacting and amending RCW 51.32.090; adding new sections
19 to chapter 51.04 RCW; adding a new section to chapter 49.17 RCW; adding
20 a new section to chapter 51.44 RCW; creating new sections; providing
21 effective dates; providing an expiration date; and declaring an

1 emergency.

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

3 NEW SECTION. **Sec. 1.** The legislature finds that Washington
4 state's workers' compensation system should be designed to focus on
5 achieving the best outcomes for injured workers. The state must ensure
6 that the workers' compensation system remains financially healthy in
7 order to provide needed resources for injured workers. Further, the
8 legislature recognizes that reducing the number and cost of long-term
9 disability and pension claims, while strengthening safety programs;
10 addressing workers' compensation system fraud by employers, workers,
11 and providers; finding ways to improve claims management processes;
12 studying occupational disease claims in the workers' compensation
13 system; and establishing a fund for purposes of maintaining low,
14 stable, and predictable premium rate increases are all key to ensuring
15 productive worker outcomes and a financially sound system for
16 Washington workers and employers.

17 **PART 1. CREATING THE WASHINGTON STAY-AT-WORK PROGRAM**

18 **Sec. 101.** RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are
19 each reenacted and amended to read as follows:

20 (1) When the total disability is only temporary, the schedule of
21 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
22 the total disability continues.

23 (2) Any compensation payable under this section for children not in
24 the custody of the injured worker as of the date of injury shall be
25 payable only to such person as actually is providing the support for
26 such child or children pursuant to the order of a court of record
27 providing for support of such child or children.

28 (3)(a) As soon as recovery is so complete that the present earning
29 power of the worker, at any kind of work, is restored to that existing
30 at the time of the occurrence of the injury, the payments shall cease.
31 If and so long as the present earning power is only partially restored,
32 the payments shall:

33 (i) For claims for injuries that occurred before May 7, 1993,

1 continue in the proportion which the new earning power shall bear to
2 the old; or

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

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

15 (c) The prior closure of the claim or the receipt of permanent
16 partial disability benefits shall not affect the rate at which loss of
17 earning power benefits are calculated upon reopening the claim.

18 (4)(a) The legislature finds that long-term disability and the cost
19 of injuries is significantly reduced when injured workers remain at
20 work following their injury. To encourage employers at the time of
21 injury to provide light duty or transitional work for their workers,
22 wage subsidies and other incentives are made available to employers
23 insured with the department.

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

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

12 ~~((b))~~ (c) To further encourage employers to maintain the
13 employment of their injured workers, an employer insured with the
14 department and that offers work to a worker pursuant to this subsection
15 (4) shall be eligible for reimbursement of the injured worker's wages
16 for light duty or transitional work equal to fifty percent of the
17 basic, gross wages paid for that work, for a maximum of sixty-six work
18 days within a consecutive twenty-four month period. In no event may
19 the wage subsidies paid to an employer on a claim exceed ten thousand
20 dollars. Wage subsidies shall be calculated using the worker's basic
21 hourly wages or basic salary, and no subsidy shall be paid for any
22 other form of compensation or payment to the worker such as tips,
23 commissions, bonuses, board, housing, fuel, health care, dental care,
24 vision care, per diem, reimbursements for work-related expenses, or any
25 other payments. An employer may not, under any circumstances, receive
26 a wage subsidy for a day in which the worker did not actually perform
27 any work, regardless of whether or not the employer paid the worker
28 wages for that day.

29 (d) If an employer insured with the department offers a worker work
30 pursuant to this subsection (4) and the worker must be provided with
31 training or instruction to be qualified to perform the offered work,
32 the employer shall be eligible for a reimbursement from the department
33 for any tuition, books, fees, and materials required for that training
34 or instruction, up to a maximum of one thousand dollars. Reimbursing
35 an employer for the costs of such training or instruction does not
36 constitute a determination by the department that the worker is
37 eligible for vocational services authorized by RCW 51.32.095 and
38 51.32.099.

1 (e) If an employer insured with the department offers a worker work
2 pursuant to this subsection (4), and the employer provides the worker
3 with clothing that is necessary to allow the worker to perform the
4 offered work, the employer shall be eligible for reimbursement for such
5 clothing from the department, up to a maximum of four hundred dollars.
6 However, an employer shall not receive reimbursement for any clothing
7 it provided to the worker that it normally provides to its workers.
8 The clothing purchased for the worker shall become the worker's
9 property once the work comes to an end.

10 (f) If an employer insured with the department offers a worker work
11 pursuant to this subsection (4) and the worker must be provided with
12 tools or equipment to perform the offered work, the employer shall be
13 eligible for a reimbursement from the department for such tools and
14 equipment and related costs as determined by department rule, up to a
15 maximum of two thousand five hundred dollars. An employer shall not be
16 reimbursed for any tools or equipment purchased prior to offering the
17 work to the worker pursuant to this subsection (4). An employer shall
18 not be reimbursed for any tools or equipment that it normally provides
19 to its workers. The tools and equipment shall be the property of the
20 employer.

21 (g) An employer may offer work to a worker pursuant to this
22 subsection (4) more than once, but in no event may the employer receive
23 wage subsidies for more than sixty-six days of work in a consecutive
24 twenty-four month period under one claim. An employer may continue to
25 offer work pursuant to this subsection (4) after the worker has
26 performed sixty-six days of work, but the employer shall not be
27 eligible to receive wage subsidies for such work.

28 (h) An employer shall not receive any wage subsidies or
29 reimbursement of any expenses pursuant to this subsection (4) unless
30 the employer has completed and submitted the reimbursement request on
31 forms developed by the department, along with all related information
32 required by department rules. No wage subsidy or reimbursement shall
33 be paid to an employer who fails to submit a form for such payment
34 within one year of the date the work was performed. In no event shall
35 an employer receive wage subsidy payments or reimbursements of any
36 expenses pursuant to this subsection (4) unless the worker's physician
37 or licensed advanced registered nurse practitioner has restricted him

1 or her from performing his or her usual work and the worker's physician
2 or licensed advanced registered nurse practitioner has released him or
3 her to perform the work offered.

4 (i) Payments made under (b) through (g) of this subsection are
5 subject to penalties under RCW 51.32.240(5) in cases where the funds
6 were obtained through willful misrepresentation.

7 (j) Once the worker returns to work under the terms of this
8 subsection (4), he or she shall not be assigned by the employer to work
9 other than the available work described without the worker's written
10 consent, or without prior review and approval by the worker's physician
11 or licensed advanced registered nurse practitioner. An employer who
12 directs a claimant to perform work other than that approved by the
13 attending physician and without the approval of the worker's physician
14 or licensed advanced registered nurse practitioner shall not receive
15 any wage subsidy or other reimbursements for such work.

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

23 ~~((d))~~ (l) In the event of any dispute as to the validity of the
24 work offered or as to the worker's ability to perform the available
25 work offered by the employer, the department shall make the final
26 determination pursuant to an order that contains the notice required by
27 RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

28 (5) An employer's experience rating shall not be affected by the
29 employer's request for or receipt of wage subsidies.

30 (6) The department shall create a Washington stay-at-work account
31 which shall be funded by assessments of employers insured through the
32 state fund for the costs of the payments authorized by subsection (4)
33 of this section and for the cost of creating a reserve for anticipated
34 liabilities. Employers may collect up to one-half the fund assessment
35 from workers.

36 (7) No worker shall receive compensation for or during the day on
37 which injury was received or the three days following the same, unless
38 his or her disability shall continue for a period of fourteen

1 consecutive calendar days from date of injury: PROVIDED, That attempts
2 to return to work in the first fourteen days following the injury shall
3 not serve to break the continuity of the period of disability if the
4 disability continues fourteen days after the injury occurs.

5 ~~((+6+))~~ (8) Should a worker suffer a temporary total disability and
6 should his or her employer at the time of the injury continue to pay
7 him or her the wages which he or she was earning at the time of such
8 injury, such injured worker shall not receive any payment provided in
9 subsection (1) of this section during the period his or her employer
10 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
11 sick leave, or other similar benefits shall not be deemed to be
12 payments by the employer for the purposes of this subsection.

13 ~~((+7+))~~ (9) In no event shall the monthly payments provided in this
14 section:

15 (a) Exceed the applicable percentage of the average monthly wage in
16 the state as 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%

22 (b) For dates of injury or disease manifestation after July 1,
23 2008, be less than fifteen percent of the average monthly wage in the
24 state as computed under RCW 51.08.018 plus an additional ten dollars
25 per month if the worker is married and an additional ten dollars per
26 month for each child of the worker up to a maximum of five children.
27 However, if the monthly payment computed under this subsection ~~((+7+))~~
28 (9)(b) is greater than one hundred percent of the wages of the worker
29 as determined under RCW 51.08.178, the monthly payment due to the
30 worker shall be equal to the greater of the monthly wages of the worker
31 or the minimum benefit set forth in this section on June 30, 2008.

32 ~~((+8+))~~ (10) If the supervisor of industrial insurance determines
33 that the worker is voluntarily retired and is no longer attached to the
34 workforce, benefits shall not be paid under this section.

1 (11) The department shall adopt rules as necessary to implement
2 this section.

3 **PART 2. ONE-YEAR COST-OF-LIVING ADJUSTMENT FREEZE WITH NO**
4 **CATCH-UP, AND DELAY IN FIRST COST-OF-LIVING ADJUSTMENTS**

5 **Sec. 201.** RCW 51.32.072 and 1987 c 185 s 34 are each amended to
6 read as follows:

7 (1) Notwithstanding any other provision of law, every surviving
8 spouse and every permanently totally disabled worker or temporarily
9 totally disabled worker, if such worker was unmarried at the time of
10 the worker's injury or was then married but the marriage was later
11 terminated by judicial action, receiving a pension or compensation for
12 temporary total disability under this title pursuant to compensation
13 schedules in effect prior to July 1, 1971, shall after July 1, 1975,
14 through June 30, 2011, be paid fifty percent of the average monthly
15 wage in the state as computed under RCW 51.08.018 per month and an
16 amount equal to five percent of such average monthly wage per month to
17 such totally disabled worker if married at the time of the worker's
18 injury and the marriage was not later terminated by judicial action,
19 and an additional two percent of such average monthly wage for each
20 child of such totally disabled worker at the time of injury in the
21 legal custody of such totally disabled worker or such surviving spouse
22 up to a maximum of five such children. The monthly payments such
23 surviving spouse or totally disabled worker are receiving pursuant to
24 compensation schedules in effect prior to July 1, 1971 shall be
25 deducted from the monthly payments above specified.

26 Where such a surviving spouse has remarried, or where any such
27 child of such worker, whether living or deceased, is not in the legal
28 custody of such worker or such surviving spouse there shall be paid for
29 the benefit of and on account of each such child a sum equal to two
30 percent of such average monthly wage up to a maximum of five such
31 children in addition to any payments theretofore paid under
32 compensation schedules in effect prior to July 1, 1971 for the benefit
33 of and on account of each such child. In the case of any child or
34 children of a deceased worker not leaving a surviving spouse or where
35 the surviving spouse has later died, there shall be paid for the
36 benefit of and on account of each such child a sum equal to two percent

1 of such average monthly wage up to a maximum of five such children in
2 addition to any payments theretofore paid under such schedules for the
3 benefit of and on account of each such child.

4 If the character of the injury or occupational disease is such as
5 to render the worker so physically helpless as to require the hiring of
6 the services of an attendant, the department shall make monthly
7 payments to such attendant for such services as long as such
8 requirement continues but such payments shall not obtain or be
9 operative while the worker is receiving care under or pursuant to the
10 provisions of this title except for care granted at the discretion of
11 the supervisor pursuant to RCW 51.36.010: PROVIDED, That such payments
12 shall not be considered compensation nor shall they be subject to any
13 limitation upon total compensation payments.

14 No part of such additional payments shall be payable from the
15 accident fund.

16 The director shall pay monthly from the supplemental pension fund
17 such an amount as will, when added to the compensation theretofore paid
18 under compensation schedules in effect prior to July 1, 1971, equal the
19 amounts hereinabove specified.

20 In cases where money has been or shall be advanced to any such
21 person from the pension reserve, the additional amount to be paid under
22 this section shall be reduced by the amount of monthly pension which
23 was or is predicated upon such advanced portion of the pension reserve.

24 (2) In addition to the adjustment under subsection (1) of this
25 section, further adjustments shall be made beginning July 1, 2012, and
26 on each July 1st thereafter. The adjustment shall be the percentage
27 change in the average monthly wage in the state under RCW 51.08.018 for
28 the preceding calendar year, rounded to the nearest whole cent.

29 (3) Compensation due for July 1, 2011, through June 30, 2012, must
30 be paid based on the average monthly wage in the state as computed
31 under RCW 51.08.018 on July 1, 2010.

32 **Sec. 202.** RCW 51.32.075 and 1988 c 161 s 7 are each amended to
33 read as follows:

34 The compensation or death benefits payable pursuant to the
35 provisions of this chapter for temporary total disability, permanent
36 total disability, or death arising out of injuries or occupational
37 diseases shall be adjusted as follows:

1 (1) On July 1, 1982, there shall be an adjustment for those whose
2 right to compensation was established on or after July 1, 1971, and
3 before July 1, 1982. The adjustment shall be determined by multiplying
4 the amount of compensation to which they are entitled by a fraction,
5 the denominator of which shall be the average monthly wage in the state
6 under RCW 51.08.018 for the fiscal year in which such person's right to
7 compensation was established, and the numerator of which shall be the
8 average monthly wage in the state under RCW 51.08.018 on July 1, 1982.

9 (2) In addition to the adjustment established by subsection (1) of
10 this section, there shall be another adjustment on July 1, 1983, for
11 those whose right to compensation was established on or after July 1,
12 1971, and before July 1983, which shall be determined by multiplying
13 the amount of compensation to which they are entitled by a fraction,
14 the denominator of which shall be the average monthly wage in the state
15 under RCW 51.08.018 for the fiscal year in which such person's right to
16 compensation was established, and the numerator of which shall be the
17 average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

18 (3) In addition to the adjustments under subsections (1) and (2) of
19 this section, further adjustments shall be made beginning on July 1,
20 1984, and on each July 1st thereafter through July 1, 2010, for those
21 whose right to compensation was established on or after July 1, 1971.
22 The adjustment shall be determined by multiplying the amount of
23 compensation to which they are entitled by a fraction, the denominator
24 of which shall be the average monthly wage in the state under RCW
25 51.08.018 for the fiscal year in which such person's right to
26 compensation was established, and the numerator of which shall be the
27 average monthly wage in the state under RCW 51.08.018 on July 1st of
28 the year in which the adjustment is being made. The department or
29 self-insurer shall adjust the resulting compensation rate to the
30 nearest whole cent, not to exceed the average monthly wage in the state
31 as computed under RCW 51.08.018.

32 (4) In addition to the adjustments under subsections (1), (2), and
33 (3) of this section, further adjustments shall be made beginning July
34 1, 2012, and on each July 1st thereafter for those whose right to
35 compensation was established on or after July 1, 1971. The adjustment
36 shall be the percentage change in the average monthly wage in the state
37 under RCW 51.08.018 for the preceding calendar year, rounded to the
38 nearest whole cent. For claims whose right to compensation was

1 established on or after July 1, 2011, no adjustment shall be made under
2 this subsection until the second July 1st following the date of injury
3 or occupational disease manifestation.

4 **PART 3. CLAIM RESOLUTION STRUCTURED SETTLEMENT AGREEMENTS**

5 NEW SECTION. **Sec. 301.** A new section is added to chapter 51.04
6 RCW to read as follows:

7 The legislature finds that Washington state's workers' compensation
8 system should be designed to focus on achieving the best outcomes for
9 injured workers. Further, the legislature recognizes that controlling
10 pension costs is key to a financially sound workers' compensation
11 system for employers and workers. To these ends, the legislature
12 recognizes that certain workers would benefit from an option that
13 allows them to initiate claim resolution structured settlements in
14 order to pursue work or retirement goals independent of the system,
15 provided that sufficient protections for injured workers are included.

16 NEW SECTION. **Sec. 302.** A new section is added to chapter 51.04
17 RCW to read as follows:

18 (1) Notwithstanding RCW 51.04.060 or any other provision of this
19 title, an injured worker who is at least fifty-five years of age on or
20 after January 1, 2012, fifty-three years of age on or after January 1,
21 2015, or fifty years of age on or after January 1, 2016, may choose
22 from the following: (a) To continue to receive all benefits for which
23 they are eligible under this title, (b) to participate in vocational
24 training if eligible, or (c) to initiate and agree to a resolution of
25 their claim with a structured settlement.

26 (2)(a) As provided in this section, the parties to an allowed claim
27 may initiate and agree to resolve a claim with a structured settlement
28 for all benefits other than medical. Parties as defined in (b) of this
29 subsection may only initiate claim resolution structured settlements if
30 at least one hundred eighty days have passed since the claim was
31 received by the department or self-insurer and the order allowing the
32 claim is final and binding. All requirements of this title regarding
33 entitlement to and payment of benefits will apply during this period.
34 All claim resolution structured settlement agreements must be approved
35 by the board of industrial insurance appeals.

1 (b) For purposes of this section, "parties" means:

2 (i) For a state fund claim, the worker, the employer, and the
3 department. The employer will not be a party if the costs of the claim
4 or claims are no longer included in the calculation of the employer's
5 experience factor used to determine premiums, if they cannot be
6 located, are no longer in business, or they fail to respond or decline
7 to participate after timely notice of the claim resolution settlement
8 process provided by the board and the department.

9 (ii) For a self-insured claim, the worker and the employer.

10 (c) The claim resolution structured settlement agreements shall:

11 (i) Bind the parties with regard to all aspects of a claim except
12 medical benefits unless revoked by one of the parties as provided in
13 subsection (6) of this section;

14 (ii) Provide a periodic payment schedule to the worker equal to at
15 least twenty-five percent but not more than one hundred fifty percent
16 of the average monthly wage in the state pursuant to RCW 51.08.018,
17 except for the initial payment which may be up to six times the average
18 monthly wage in the state pursuant to RCW 51.08.018;

19 (iii) Not set aside or reverse an allowance order;

20 (iv) Not subject any employer who is not a signatory to the
21 agreement to any responsibility or burden under any claim; and

22 (v) Not subject any funds covered under this title to any
23 responsibility or burden without prior approval from the director or
24 designee.

25 (d) For state fund claims, the department shall negotiate the claim
26 resolution structured settlement agreement with the worker or their
27 representative and with the employer or employers and their
28 representative or representatives.

29 (e) For self-insured claims, the self-insured employer shall
30 negotiate the agreement with the worker or their representative.
31 Workers of self-insured employers who are unrepresented may request
32 that the office of the ombudsman for self-insured injured workers
33 provide assistance or be present during negotiations.

34 (f) Terms of the agreement may include the parties' agreement that
35 the claim shall remain open for future necessary medical or surgical
36 treatment related to the injury where there is a reasonable expectation
37 such treatment is necessary. The parties may also agree that specific

1 future treatment shall be provided without the application required in
2 RCW 51.32.160.

3 (g) Any claim resolution structured settlement agreement entered
4 into under this section must be in writing and signed by the parties or
5 their representatives and must clearly state that the parties
6 understand and agree to the terms of the agreement.

7 (h) If a worker is not represented by an attorney at the time of
8 signing a claim resolution structured settlement agreement, the parties
9 must forward a copy of the signed agreement to the board with a request
10 for a conference with an industrial appeals judge. The industrial
11 appeals judge must schedule a conference with all parties within
12 fourteen days for the purpose of (i) reviewing the terms of the
13 proposed settlement agreement by the parties; and (ii) ensuring the
14 worker has an understanding of the benefits generally available under
15 this title and that a claim resolution structured settlement agreement
16 may alter the benefits payable on the claim or claims. The judge may
17 schedule the initial conference for a later date with the consent of
18 the parties.

19 (i) Before approving the agreement, the industrial appeals judge
20 shall ensure the worker has an adequate understanding of the agreement
21 and its consequences to the worker.

22 (j) The industrial appeals judge may approve a claim resolution
23 structured settlement agreement only if the judge finds that the
24 agreement is in the best interest of the worker. When determining
25 whether the agreement is in the best interest of the worker, the
26 industrial appeals judge shall consider the following factors, taken as
27 a whole, with no individual factor being determinative:

28 (i) The nature and extent of the injuries and disabilities of the
29 worker;

30 (ii) The age and life expectancy of the injured worker;

31 (iii) Other benefits the injured worker is receiving or is entitled
32 to receive and the effect a claim resolution structured settlement
33 agreement might have on those benefits; and

34 (iv) The marital or domestic partnership status of the injured
35 worker.

36 (k) Within seven days after the conference, the industrial appeals
37 judge shall issue an order allowing or rejecting the claim resolution

1 structured settlement agreement. There is no appeal from the
2 industrial appeals judge's decision.

3 (1) If the industrial appeals judge issues an order allowing the
4 claim resolution structured settlement agreement, the order must be
5 submitted to the board.

6 (3) Upon receiving the agreement, the board shall approve it within
7 thirty working days of receipt unless it finds that:

8 (a) The parties have not entered into the agreement knowingly and
9 willingly;

10 (b) The agreement does not meet the requirements of a claim
11 resolution structured settlement agreement;

12 (c) The agreement is the result of a material misrepresentation of
13 law or fact;

14 (d) The agreement is the result of harassment or coercion; or

15 (e) The agreement is unreasonable as a matter of law.

16 (4) If a worker is represented by an attorney at the time of
17 signing a claim resolution structured settlement agreement, the parties
18 shall submit the agreement directly to the board without the conference
19 described in this section.

20 (5) If the board approves the agreement, it shall provide notice to
21 all parties. The department shall place the agreement in the
22 applicable claim file or files.

23 (6) A party may revoke consent to the claim resolution structured
24 settlement agreement by providing written notice to the other parties
25 and the board within thirty days after the date the agreement is
26 approved by the board.

27 (7) To the extent the worker is entitled to any benefits while a
28 claim resolution structured settlement agreement is being negotiated or
29 during the revocation period of an agreement, the benefits must be paid
30 pursuant to the requirements of this title until the agreement becomes
31 final.

32 (8) A claim resolution structured settlement agreement that meets
33 the conditions in this section and that has become final and binding as
34 provided in this section is binding on all parties to the agreement as
35 to its terms and the injuries and occupational diseases to which the
36 agreement applies. A claim resolution structured settlement agreement
37 that has become final and binding is not subject to appeal.

1 (9) All payments made to a worker pursuant to a final claim
2 resolution structured settlement agreement must be reported to the
3 department as claims costs pursuant to this title. If a self-insured
4 employer contracts with a third-party administrator for claim services
5 and the payment of benefits under this title, the third-party
6 administrator shall also disburse the structured settlement payments
7 pursuant to the agreement.

8 (10) Claims closed pursuant to a claim resolution structured
9 settlement agreement can be reopened pursuant to RCW 51.32.160 for
10 medical treatment only. Further temporary total, temporary partial,
11 permanent partial, or permanent total benefits are not payable under
12 the same claim or claims for which a claim resolution structured
13 settlement agreement has been approved by the board and has become
14 final.

15 (11) Parties aggrieved by the failure of any other party to comply
16 with the terms of a claim resolution structured settlement agreement
17 have one year from the date of failure to comply to petition to the
18 board. If the board determines that a party has failed to comply with
19 an agreement, they will order compliance and will impose a penalty
20 payable to the aggrieved party of up to twenty-five percent of the
21 monetary amount unpaid at the time the petition for noncompliance was
22 filed. The board will also decide on any disputes as to attorneys'
23 fees for services related to claim resolution structured settlement
24 agreements.

25 (12) Parties and their representatives may not use settlement
26 offers or the claim resolution structured settlement agreement process
27 to harass or coerce any party. If the department determines that an
28 employer has engaged in a pattern of harassment or coercion, the
29 employer may be subject to penalty or corrective action, and may be
30 removed from the retrospective rating program or be decertified from
31 self-insurance under RCW 51.14.030.

32 NEW SECTION. **Sec. 303.** A new section is added to chapter 51.04
33 RCW to read as follows:

34 The department must maintain copies of all claim resolution
35 structured settlement agreements entered into between the parties and
36 furnish copies of such agreements to any party actively negotiating a
37 subsequent claim resolution structured settlement agreement with the

1 worker on any allowed claim when requested. An employer may not
2 consider a prior agreement when making a decision about hiring or the
3 terms or conditions of employment.

4 **Sec. 304.** RCW 51.52.120 and 2007 c 490 s 3 are each amended to
5 read as follows:

6 (1) Except for claim resolution structured settlement agreements,
7 it shall be unlawful for an attorney engaged in the representation of
8 any worker or beneficiary to charge for services in the department any
9 fee in excess of a reasonable fee, of not more than thirty percent of
10 the increase in the award secured by the attorney's services. Such
11 reasonable fee shall be fixed by the director or the director's
12 designee for services performed by an attorney for such worker or
13 beneficiary, if written application therefor is made by the attorney,
14 worker, or beneficiary within one year from the date the final decision
15 and order of the department is communicated to the party making the
16 application.

17 (2) If, on appeal to the board, the order, decision, or award of
18 the department is reversed or modified and additional relief is granted
19 to a worker or beneficiary, or in cases where a party other than the
20 worker or beneficiary is the appealing party and the worker's or
21 beneficiary's right to relief is sustained by the board, the board
22 shall fix a reasonable fee for the services of his or her attorney in
23 proceedings before the board if written application therefor is made by
24 the attorney, worker, or beneficiary within one year from the date the
25 final decision and order of the board is communicated to the party
26 making the application. In fixing the amount of such attorney's fee,
27 the board shall take into consideration the fee allowed, if any, by the
28 director, for services before the department, and the board may review
29 the fee fixed by the director. Any attorney's fee set by the
30 department or the board may be reviewed by the superior court upon
31 application of such attorney, worker, or beneficiary. The department
32 or self-insured employer, as the case may be, shall be served a copy of
33 the application and shall be entitled to appear and take part in the
34 proceedings. Where the board, pursuant to this section, fixes the
35 attorney's fee, it shall be unlawful for an attorney to charge or
36 receive any fee for services before the board in excess of that fee
37 fixed by the board.

1 (3) For claim resolution structured settlement agreements, fees for
2 attorney services are limited to fifteen percent of the total amount to
3 be paid to the worker after the agreement becomes final. The board
4 will also decide on any disputes as to attorneys' fees for services
5 related to claim resolution structured settlement agreements consistent
6 with the procedures in subsection (2) of this section.

7 (4) In an appeal to the board involving the presumption established
8 under RCW 51.32.185, the attorney's fee shall be payable as set forth
9 under RCW 51.32.185.

10 (~~(4)~~) (5) Any person who violates this section is guilty of a
11 misdemeanor.

12 NEW SECTION. Sec. 305. The department of labor and industries and
13 the board of industrial insurance appeals shall adopt rules as
14 necessary to implement sections 302 and 303 of this act.

15 NEW SECTION. Sec. 306. Sections 301 through 304 of this act take
16 effect January 1, 2012.

17 NEW SECTION. Sec. 307. A new section is added to chapter 51.04
18 RCW to read as follows:

19 On December 1, 2011, and annually thereafter through December 1,
20 2014, the department shall report annually to the appropriate
21 committees of the legislature on the implementation of claim resolution
22 structured settlement agreements. In calendar years 2015, 2019, and
23 2023, the department shall contract for an independent study of claim
24 resolution structured settlement agreements approved by the board under
25 this section. The study must be performed by a researcher with
26 experience in workers' compensation issues. When selecting the
27 independent researcher, the department shall consult with the workers'
28 compensation advisory committee. The study must evaluate the quality
29 and effectiveness of structured settlement agreements of state fund and
30 self-insured claims, provide information on the impact of these
31 agreements to the state fund and to self-insured employers, and
32 evaluate the outcomes of workers who have resolved their claims through
33 the claim resolution structured settlement agreement process. The
34 study must be submitted to the appropriate committees of the
35 legislature.

**PART 4. DEDUCTING PRIOR PERMANENT PARTIAL DISABILITY
AWARDS FROM PENSIONS, AND ELIMINATING INTEREST ON UNPAID PERMANENT
PARTIAL DISABILITY BENEFITS**

Sec. 401. RCW 51.32.080 and 2007 c 172 s 1 are each amended to read as follows:

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

LOSS BY AMPUTATION

Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium).....	\$54,000.00
Of leg at or above knee joint with functional stump.....	48,600.00
Of leg below knee joint.....	43,200.00
Of leg at ankle (Syme).....	37,800.00
Of foot at mid-metatarsals.....	18,900.00
Of great toe with resection of metatarsal bone.....	11,340.00
Of great toe at metatarsophalangeal joint.....	6,804.00
Of great toe at interphalangeal joint.....	3,600.00
Of lesser toe (2nd to 5th) with resection of metatarsal bone.....	4,140.00
Of lesser toe at metatarsophalangeal joint.....	2,016.00
Of lesser toe at proximal interphalangeal joint.....	1,494.00
Of lesser toe at distal interphalangeal joint.....	378.00
Of arm at or above the deltoid insertion or by disarticulation at the shoulder.....	54,000.00
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon.....	51,300.00

1	Of arm at any point from below the elbow	48,600.00
2	joint distal to the insertion of the	
3	biceps tendon to and including	
4	mid-metacarpal amputation of the	
5	hand.....	
6	Of all fingers except the thumb at	29,160.00
7	metacarpophalangeal joints.....	
8	Of thumb at metacarpophalangeal joint or	19,440.00
9	with resection of carpometacarpal	
10	bone.....	
11	Of thumb at interphalangeal joint.....	9,720.00
12	Of index finger at metacarpophalangeal	12,150.00
13	joint or with resection of metacarpal	
14	bone.....	
15	Of index finger at proximal	9,720.00
16	interphalangeal joint.....	
17	Of index finger at distal interphalangeal	5,346.00
18	joint.....	
19	Of middle finger at metacarpophalangeal	9,720.00
20	joint or with resection of metacarpal	
21	bone.....	
22	Of middle finger at proximal	7,776.00
23	interphalangeal joint.....	
24	Of middle finger at distal interphalangeal	4,374.00
25	joint.....	
26	Of ring finger at metacarpophalangeal	4,860.00
27	joint or with resection of metacarpal	
28	bone.....	
29	Of ring finger at proximal interphalangeal	3,888.00
30	joint.....	
31	Of ring finger at distal interphalangeal	2,430.00
32	joint.....	
33	Of little finger at metacarpophalangeal	2,430.00
34	joint or with resection of metacarpal	
35	bone.....	
36	Of little finger at proximal interphalangeal	1,944.00
37	joint.....	

1 disabilities specified in subsection (1) of this section, which most
2 closely resembles and approximates in degree of disability such other
3 disability, and compensation for any other unspecified permanent
4 partial disability shall be in an amount as measured and compared to
5 total bodily impairment. To reduce litigation and establish more
6 certainty and uniformity in the rating of unspecified permanent partial
7 disabilities, the department shall enact rules having the force of law
8 classifying such disabilities in the proportion which the department
9 shall determine such disabilities reasonably bear to total bodily
10 impairment. In enacting such rules, the department shall give
11 consideration to, but need not necessarily adopt, any nationally
12 recognized medical standards or guides for determining various bodily
13 impairments.

14 (b) Until July 1, 1993, for purposes of calculating monetary
15 benefits under (a) of this subsection, the amount payable for total
16 bodily impairment shall be deemed to be ninety thousand dollars.
17 Beginning on July 1, 1993, for purposes of calculating monetary
18 benefits under (a) of this subsection, the amount payable for total
19 bodily impairment shall be adjusted as follows:

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

23 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the
24 amount payable for total bodily impairment prescribed in (b)(i) of this
25 subsection shall be adjusted as provided in subsection (1)(b)(ii) of
26 this section.

27 (c) Until July 1, 1993, the total compensation for all unspecified
28 permanent partial disabilities resulting from the same injury shall not
29 exceed the sum of ninety thousand dollars. Beginning on July 1, 1993,
30 total compensation for all unspecified permanent partial disabilities
31 resulting from the same injury shall not exceed a sum calculated as
32 follows:

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

35 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum
36 prescribed in (b)(i) of this subsection shall be adjusted as provided
37 in subsection (1)(b)(ii) of this section.

1 (4) If permanent partial disability compensation is followed by
2 permanent total disability compensation, (~~any portion of the permanent~~
3 ~~partial disability compensation which exceeds the amount that would~~
4 ~~have been paid the injured worker if permanent total disability~~
5 ~~compensation had been paid in the first instance)) all permanent
6 partial disability compensation paid to the worker under the claim or
7 claims for which total permanent disability compensation is awarded
8 shall be, at the choosing of the injured worker, either: (a) Deducted
9 from the worker's monthly pension benefits (~~in an amount not to exceed~~
10 ~~twenty five percent of the monthly amount due from the department or~~
11 ~~self-insurer or one sixth of the total overpayment, whichever is less))
12 until the total award or awards paid are recovered; or (b) deducted
13 from the pension reserve of such injured worker and his or her monthly
14 compensation payments shall be reduced accordingly. Any interest paid
15 on any permanent partial disability compensation may not be deducted
16 from the pension benefits or pension reserve. The provisions of this
17 subsection apply to all permanent total disability determinations
18 issued on or after July 1, 2011.~~~~

19 (5) Should a worker receive an injury to a member or part of his or
20 her body already, from whatever cause, permanently partially disabled,
21 resulting in the amputation thereof or in an aggravation or increase in
22 such permanent partial disability but not resulting in the permanent
23 total disability of such worker, his or her compensation for such
24 partial disability shall be adjudged with regard to the previous
25 disability of the injured member or part and the degree or extent of
26 the aggravation or increase of disability thereof.

27 (6) When the compensation provided for in subsections (1) through
28 (3) of this section exceeds three times the average monthly wage in the
29 state as computed under the provisions of RCW 51.08.018, payment shall
30 be made in monthly payments in accordance with the schedule of
31 temporary total disability payments set forth in RCW 51.32.090 until
32 such compensation is paid to the injured worker in full, except that
33 the first monthly payment shall be in an amount equal to three times
34 the average monthly wage in the state as computed under the provisions
35 of RCW 51.08.018(~~, and interest shall be paid at the rate of eight~~
36 ~~percent on the unpaid balance of such compensation commencing with the~~
37 ~~second monthly payment. However,~~). Upon application of the injured
38 worker or survivor the monthly payment may be converted, in whole or in

1 part, into a lump sum payment, in which event the monthly payment shall
2 cease in whole or in part. Such conversion may be made only upon
3 written application of the injured worker or survivor to the department
4 and shall rest in the discretion of the department depending upon the
5 merits of each individual application. Upon the death of a worker all
6 unpaid installments accrued shall be paid according to the payment
7 schedule established prior to the death of the worker to the widow or
8 widower, or if there is no widow or widower surviving, to the dependent
9 children of such claimant, and if there are no such dependent children,
10 then to such other dependents as defined by this title.

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

13 **PART 5. SAFETY AND HEALTH INVESTMENT GRANTS**

14 NEW SECTION. **Sec. 501.** A new section is added to chapter 49.17
15 RCW to read as follows:

16 (1) The director is authorized to provide funding from the medical
17 aid fund established under RCW 51.44.020, by grant or contract, for
18 safety and health investment projects for workplaces insured for
19 workers' compensation through the department's state fund. This shall
20 include projects to: Prevent workplace injuries, illnesses, and
21 fatalities; create early return-to-work programs; and reduce long-term
22 disability through the cooperation of employers and employees or their
23 representatives.

24 (2) Awards may be granted to organizations such as, but not limited
25 to, trade associations, business associations, employers, employees,
26 labor unions, employee organizations, joint labor and management
27 groups, and educational institutions in collaboration with state fund
28 employer and employee representatives.

29 (3) Awards may not be used for lobbying or political activities;
30 supporting, opposing, or developing legislative or regulatory
31 initiatives; any activity not designed to reduce workplace injuries,
32 illnesses, or fatalities; or reimbursing employers for the normal costs
33 of complying with safety and health rules.

34 (4) Funds for awards shall be distributed as follows: At least
35 twenty-five percent for projects designed to develop and implement
36 innovative and effective return-to-work programs for injured workers;

1 at least twenty-five percent for projects that specifically address the
2 needs of small businesses; and at least fifty percent for projects that
3 foster workplace injury and illness prevention by addressing priorities
4 identified by the department in cooperation with the Washington
5 industrial safety and health act advisory committee and the workers'
6 compensation advisory committee.

7 (5) The department shall adopt rules as necessary to implement this
8 section.

9 **Sec. 502.** RCW 51.04.110 and 2010 c 8 s 14001 are each amended to
10 read as follows:

11 The director shall appoint a workers' compensation advisory
12 committee composed of ten members: Three representing subject workers,
13 three representing subject employers, one representing self-insurers,
14 one representing workers of self-insurers, and two ex officio members,
15 without a vote, one of whom shall be the chair of the board of
16 industrial appeals and the other the representative of the department.
17 The member representing the department shall be chair. This committee
18 shall conduct a continuing study of any aspects of workers'
19 compensation as the committee shall determine require their
20 consideration and shall assist in the identification of priorities for
21 safety and health investment projects as provided in chapter 49.17 RCW.
22 The committee shall report its findings to the department or the board
23 of industrial insurance appeals for such action as deemed appropriate.
24 The members of the committee shall be appointed for a term of three
25 years commencing on July 1, 1971 and the terms of the members
26 representing the workers and employers shall be staggered so that the
27 director shall designate one member from each such group initially
28 appointed whose term shall expire on June 30, 1972 and one member from
29 each such group whose term shall expire on June 30, 1973. The members
30 shall serve without compensation, but shall be entitled to travel
31 expenses as provided in RCW 43.03.050 and 43.03.060 (~~as now existing~~
32 ~~or hereafter amended~~). The committee may hire such experts, if any,
33 as it shall require to discharge its duties, and may utilize such
34 personnel and facilities of the department and board of industrial
35 insurance appeals as it shall need without charge. All expenses of
36 this committee shall be paid by the department.

1 **PART 6. INDUSTRIAL INSURANCE RAINY DAY FUND**

2 NEW SECTION. **Sec. 601.** A new section is added to chapter 51.44
3 RCW to read as follows:

4 (1) There shall be, in the custody of the state treasurer, a fund
5 to be known and designated as the industrial insurance rainy day fund.

6 (2) The director shall be the administrator of the fund, may
7 transfer moneys into and out of the fund only as authorized by this
8 section, and shall separately account for moneys in the fund from the
9 accident and medical aid funds. The assets of this fund shall not be
10 used for any purposes other than meeting the obligations of this title.

11 (3) Before proposing premium rates as provided in RCW 51.16.035,
12 the director shall determine whether the assets of the accident and
13 medical aid funds combined are at least ten percent but not more than
14 thirty percent in excess of its funded liabilities, and if so transfer
15 any excess to the industrial insurance rainy day fund, unless doing so
16 would:

17 (a) Threaten the department's ability to meet the obligations of
18 this title;

19 (b) Result in total assets of the rainy day fund combined with the
20 assets of the accident and medical aid funds to exceed thirty percent
21 of the accident and medical aid funds' liabilities.

22 (4) The workers' compensation advisory committee shall create a
23 finance subcommittee made up of six members, three of whom shall
24 represent business, and three of whom shall represent workers. The
25 director or director's designee shall chair the committee. The
26 committee shall provide recommendations for any changes to subsection
27 (3)(b) of this section to the appropriate committees of the legislature
28 by December 1, 2011.

29 (5) When adopting premium rates, the director may transfer moneys
30 from the industrial insurance rainy day fund into the accident fund or
31 medical aid fund upon finding that the transfer is necessary to reduce
32 a rate increase or aid businesses in recovering from or during economic
33 recessions. The director may also transfer moneys from this fund at
34 any time liabilities increase so that total liabilities exceed assets
35 of the accident fund, medical aid fund, or both.

36 (6) Notwithstanding chapter 51.52 RCW, the director's decisions
37 regarding transfers into and out of the industrial insurance rainy day
38 fund are not reviewable by any court or tribunal, but must be announced

1 as part of the rule-making process for setting premium rates, and must
2 be part of the department's rule-making file required by chapter 34.05
3 RCW.

4 **Sec. 602.** RCW 51.44.100 and 1990 c 80 s 1 are each amended to read
5 as follows:

6 Whenever, in the judgment of the state investment board, there
7 shall be in the accident fund, medical aid fund, reserve fund,
8 industrial insurance rainy day fund, or the supplemental pension fund,
9 funds in excess of that amount deemed by the state investment board to
10 be sufficient to meet the current expenditures properly payable
11 therefrom, the state investment board may invest and reinvest such
12 excess funds in the manner prescribed by RCW 43.84.150, and not
13 otherwise.

14 The state investment board may give consideration to the investment
15 of excess funds in federally insured student loans made to persons in
16 vocational training or retraining or reeducation programs. The state
17 investment board may make such investments by purchasing from savings
18 and loan associations, commercial banks, mutual savings banks, credit
19 unions and other institutions authorized to be lenders under the
20 federally insured student loan act, organized under federal or state
21 law and operating in this state loans made by such institutions to
22 residents of the state of Washington particularly for the purpose of
23 vocational training or reeducation: PROVIDED, That the state
24 investment board shall purchase only that portion of any loan which is
25 guaranteed or insured by the United States of America, or by any agency
26 or instrumentality of the United States of America: PROVIDED FURTHER,
27 That the state investment board is authorized to enter into contracts
28 with such savings and loan associations, commercial banks, mutual
29 savings banks, credit unions, and other institutions authorized to be
30 lenders under the federally insured student loan act to service loans
31 purchased pursuant to this section at an agreed upon contract price.

32 **Sec. 603.** RCW 43.79A.040 and 2011 c 274 s 4 are each amended to
33 read as follows:

34 (1) Money in the treasurer's trust fund may be deposited, invested,
35 and reinvested by the state treasurer in accordance with RCW 43.84.080

1 in the same manner and to the same extent as if the money were in the
2 state treasury, and may be commingled with moneys in the state treasury
3 for cash management and cash balance purposes.

4 (2) All income received from investment of the treasurer's trust
5 fund must be set aside in an account in the treasury trust fund to be
6 known as the investment income account.

7 (3) The investment income account may be utilized for the payment
8 of purchased banking services on behalf of treasurer's trust funds
9 including, but not limited to, depository, safekeeping, and
10 disbursement functions for the state treasurer or affected state
11 agencies. The investment income account is subject in all respects to
12 chapter 43.88 RCW, but no appropriation is required for payments to
13 financial institutions. Payments must occur prior to distribution of
14 earnings set forth in subsection (4) of this section.

15 (4)(a) Monthly, the state treasurer must distribute the earnings
16 credited to the investment income account to the state general fund
17 except under (b), (c), and (d) of this subsection.

18 (b) The following accounts and funds must receive their
19 proportionate share of earnings based upon each account's or fund's
20 average daily balance for the period: The Washington promise
21 scholarship account, the college savings program account, the
22 Washington advanced college tuition payment program account, the
23 accessible communities account, the community and technical college
24 innovation account, the agricultural local fund, the American Indian
25 scholarship endowment fund, the foster care scholarship endowment fund,
26 the foster care endowed scholarship trust fund, the students with
27 dependents grant account, the basic health plan self-insurance reserve
28 account, the contract harvesting revolving account, the Washington
29 state combined fund drive account, the commemorative works account, the
30 county enhanced 911 excise tax account, the Washington international
31 exchange scholarship endowment fund, the toll collection account, the
32 developmental disabilities endowment trust fund, the energy account,
33 the fair fund, the family leave insurance account, the food animal
34 veterinarian conditional scholarship account, the fruit and vegetable
35 inspection account, the future teachers conditional scholarship
36 account, the game farm alternative account, the GET ready for math and
37 science scholarship account, the Washington global health technologies
38 and product development account, the grain inspection revolving fund,

1 the industrial insurance rainy day fund, the juvenile accountability
2 incentive account, the law enforcement officers' and firefighters' plan
3 2 expense fund, the local tourism promotion account, the pilotage
4 account, the produce railcar pool account, the regional transportation
5 investment district account, the rural rehabilitation account, the
6 stadium and exhibition center account, the youth athletic facility
7 account, the self-insurance revolving fund, the sulfur dioxide
8 abatement account, the children's trust fund, the Washington horse
9 racing commission Washington bred owners' bonus fund and breeder awards
10 account, the Washington horse racing commission class C purse fund
11 account, the individual development account program account, the
12 Washington horse racing commission operating account (earnings from the
13 Washington horse racing commission operating account must be credited
14 to the Washington horse racing commission class C purse fund account),
15 the life sciences discovery fund, the Washington state heritage center
16 account, the reduced cigarette ignition propensity account, and the
17 reading achievement account.

18 (c) The following accounts and funds must receive eighty percent of
19 their proportionate share of earnings based upon each account's or
20 fund's average daily balance for the period: The advanced right-of-way
21 revolving fund, the advanced environmental mitigation revolving
22 account, the federal narcotics asset forfeitures account, the high
23 occupancy vehicle account, the local rail service assistance account,
24 and the miscellaneous transportation programs account.

25 (d) Any state agency that has independent authority over accounts
26 or funds not statutorily required to be held in the custody of the
27 state treasurer that deposits funds into a fund or account in the
28 custody of the state treasurer pursuant to an agreement with the office
29 of the state treasurer shall receive its proportionate share of
30 earnings based upon each account's or fund's average daily balance for
31 the period.

32 (5) In conformance with Article II, section 37 of the state
33 Constitution, no trust accounts or funds shall be allocated earnings
34 without the specific affirmative directive of this section.

35 **PART 7. INITIATIVE TO ADDRESS WORKER, EMPLOYER, AND PROVIDER FRAUD**

1 NEW SECTION. **Sec. 701.** A new section is added to chapter 51.04
2 RCW to read as follows:

3 (1) The legislature finds that the department is successfully
4 addressing employer fraud and the underground economy, helping ensure
5 that employers who appropriately report and pay premiums can be
6 competitive. Efforts focus on prevention, education, and enforcement
7 by identifying industries for targeted audits, informing industry
8 members and providing the opportunity for voluntary compliance, and
9 ultimately identifying employers for audit based on proven criteria.

10 (2) To ensure the appropriate use of workers' compensation funds,
11 the legislature directs the department of labor and industries to
12 continue applying these proven best practices to employer fraud and to
13 apply the same best practices to address instances of worker and
14 provider fraud, including but not limited to:

15 (a) Participating in a national information exchange with other
16 workers' compensation insurers to avoid duplication of claims and
17 benefits;

18 (b) Increasing public awareness of employer, worker, and provider
19 fraud issues and how to report suspected fraud;

20 (c) Establishing criteria for the periodic review of total
21 permanent disability pension recipients including their level of
22 disability and physical activity to determine whether they can be
23 gainfully employed; and

24 (d) Identifying provider billing patterns to target potentially
25 abusive practices.

26 (3) The provisions of RCW 51.28.070 shall not be a barrier to the
27 department's participation in a national information exchange as
28 required in subsection (2)(a) of this section.

29 (4) The department's activities must include approaches to prevent,
30 educate, and ensure compliance by providers, employers, and workers.
31 The department shall provide a report to the governor and the
32 appropriate legislative committees by December 1, 2012, that describes
33 the agency's efforts and outcomes and makes recommendations for
34 statutory changes to address barriers for successfully addressing
35 provider, employer, and worker fraud.

36 **PART 8. PERFORMANCE AUDIT OF THE WORKERS' COMPENSATION**

1 **CLAIMS MANAGEMENT SYSTEM**

2 NEW SECTION. **Sec. 801.** A new section is added to chapter 51.04
3 RCW to read as follows:

4 (1) The joint legislative audit and review committee, in
5 consultation with the department of labor and industries and the
6 workers' compensation advisory committee, shall conduct a performance
7 audit of the workers' compensation claims management system, including
8 self-insured claims. The joint legislative audit and review committee
9 may contract with an independent expert in workers' compensation claims
10 management to assist with the audit.

11 (2) The audit shall:

12 (a) Evaluate the extent to which the department: (i) Makes fair
13 and timely decisions, and resolves complaints and disputes in a timely,
14 fair, and effective manner; and (ii) communicates with employers and
15 workers in a timely, responsive, and accurate manner, including
16 communication about review and appeal rights, and including the use of
17 plain language and sufficient opportunities for face-to-face meetings;

18 (b) Determine if current claims management organization and service
19 delivery models are the most efficient available; analyze organization
20 and delivery for retrospective rating plan participants as compared to
21 nonparticipants to identify differences and how those differences
22 influence retrospective rating plan refunds; and determine whether
23 current initiatives improve service delivery, meet the needs of current
24 and future workers and employers, improve public education and
25 outreach, and are otherwise measurable; and

26 (c) Make recommendations regarding administrative changes that
27 should be made to improve efficiency while maintaining high levels of
28 quality service to help address system costs, and any needed
29 legislative changes to implement the recommendations.

30 (3) The joint legislative audit and review committee shall submit
31 progress reports by December 1, 2012, and December 1, 2013, and the
32 results of the audit by June 30, 2015, to the appropriate committees of
33 the legislature.

34 (4) This section expires December 31, 2015.

35 **PART 9. OCCUPATIONAL DISEASE STUDY**

