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SENATE BILL 5503

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State of Washington

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1993 Regular Session

By Senators Vognild, Newhouse, Sutherland, Moore, Amondson, McAuliffe, Fraser, Pelz, Cantu, Snyder, Deccio and Hochstatter

Read first time 02/01/93. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to loss of earning power payments; amending RCW  
2 51.32.090; and declaring an emergency.

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

4 **Sec. 1.** RCW 51.32.090 and 1988 c 161 s 4 are each amended to read  
5 as follows:

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

9 (2) Any compensation payable under this section for children not in  
10 the custody of the injured worker as of the date of injury shall be  
11 payable only to such person as actually is providing the support for  
12 such child or children pursuant to the order of a court of record  
13 providing for support of such child or children.

14 (3) As soon as recovery is so complete that the present earning  
15 power of the worker, at any kind of work, is restored to that existing  
16 at the time of the occurrence of the injury, the payments shall cease.  
17 If and so long as the present earning power is only partially restored,  
18 the payments shall continue (~~in the proportion which the new earning~~  
19 ~~power shall bear to the old~~). On or after the effective date of this

1 act, the payments shall equal eighty percent of the actual difference  
2 between the worker's present wages and earning power at the time of  
3 injury, but the total of these payments and the worker's present wages  
4 shall not exceed one hundred fifty percent of the average monthly wage  
5 in the state as computed by RCW 51.08.018, and in no event may the  
6 payments exceed one hundred percent of the entitlement as computed  
7 under subsection (1) of this section. No compensation shall be payable  
8 unless the loss of earning power shall exceed five percent.

9 (4) Whenever an employer requests that a worker who is entitled to  
10 temporary total disability under this chapter be certified by a  
11 physician as able to perform available work other than his or her usual  
12 work, the employer shall furnish to the physician, with a copy to the  
13 worker, a statement describing the available work in terms that will  
14 enable the physician to relate the physical activities of the job to  
15 the worker's disability. The physician shall then determine whether  
16 the worker is physically able to perform the work described. If the  
17 worker is released by his or her physician for said work, and the work  
18 thereafter comes to an end before the worker's recovery is sufficient  
19 in the judgment of his or her physician to permit him or her to return  
20 to his or her usual job, or to perform other available work, the  
21 worker's temporary total disability payments shall be resumed. Should  
22 the available work described, once undertaken by the worker, impede his  
23 or her recovery to the extent that in the judgment of his or her  
24 physician he or she should not continue to work, the worker's temporary  
25 total disability payments shall be resumed when the worker ceases such  
26 work.

27 Once the worker returns to work under the terms of this subsection,  
28 he or she shall not be assigned by the employer to work other than the  
29 available work described without the worker's written consent, or  
30 without prior review and approval by the worker's physician.

31 In the event of any dispute as to the worker's ability to perform  
32 the available work offered by the employer, the department shall make  
33 the final determination.

34 (5) No worker shall receive compensation for or during the day on  
35 which injury was received or the three days following the same, unless  
36 his or her disability shall continue for a period of fourteen  
37 consecutive calendar days from date of injury: PROVIDED, That attempts  
38 to return to work in the first fourteen days following the injury shall

1 not serve to break the continuity of the period of disability if the  
2 disability continues fourteen days after the injury occurs.

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

9 (7) In no event shall the monthly payments provided in this section  
10 exceed one hundred percent of the average monthly wage in the state as  
11 computed under the provisions of RCW 51.08.018.

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

15 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
16 preservation of the public peace, health, or safety, or support of the  
17 state government and its existing public institutions, and shall take  
18 effect immediately.

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