

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5503**

Chapter 271, Laws of 1993

53rd Legislature  
1993 Regular Session

WORKERS' COMPENSATION--LOSS OF EARNING POWER BENEFIT  
RATE INCREASED

EFFECTIVE DATE: 5/7/93

Passed by the Senate April 20, 1993  
YEAS 47 NAYS 0

JOEL PRITCHARD

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**President of the Senate**

Passed by the House April 9, 1993  
YEAS 98 NAYS 0

BRIAN EBERSOLE

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**Speaker of the  
House of Representatives**

Approved May 7, 1993

MIKE LOWRY

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**Governor of the State of Washington**

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5503** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

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**Secretary**

FILED

May 7, 1993 - 11:56 a.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5503**

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AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

**State of Washington                      53rd Legislature                      1993 Regular Session**

**By** Senate Committee on Labor & Commerce (originally sponsored by Senators Vognild, Newhouse, Sutherland, Moore, Amondson, McAuliffe, Fraser, Pelz, Cantu, Snyder, Deccio and Hochstatter)

Read first time 03/03/93.

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)(a) 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:

1        (i) For claims for injuries that occurred before the effective date  
2 of this act, continue in the proportion which the new earning power  
3 shall bear to the old; or

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

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

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

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

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

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

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

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

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

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

Passed the Senate April 20, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.