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**SUBSTITUTE SENATE BILL 5451**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Commerce & Labor (originally sponsored by Senators Braun, Keiser, Conway, Kohl-Welles, and McAuliffe; by request of Department of Labor & Industries)

AN ACT Relating to addressing vocational rehabilitation by making certain recommendations from the vocational rehabilitation subcommittee permanent and creating certain incentives for employers to employ injured workers with permanent disabilities; amending RCW 51.16.120, 51.32.095, and 51.44.040; reenacting and amending RCW 51.32.099; adding a new section to chapter 51.32 RCW; creating new sections; and repealing 2013 c 331 s 3, 2011 c 291 s 3, and 2013 c 331 s 6 (uncodified).

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

**Sec.**  RCW 51.16.120 and 2010 c 213 s 1 are each amended to read as follows:

(1) Whenever a worker has a previous bodily disability from any previous injury or disease, whether known or unknown to the employer, and ((~~shall~~)) suffers a further disability from injury or occupational disease in employment covered by this title and becomes totally and permanently disabled from the combined effects thereof or dies when death was substantially accelerated by the combined effects thereof, then the experience record of an employer insured with the state fund at the time of the further injury or disease ((~~shall~~)) must be charged and a self-insured employer ((~~shall~~)) must pay directly into the reserve fund only the accident cost which would have resulted solely from the further injury or disease, had there been no preexisting disability, and which accident cost ((~~shall~~)) must be based upon an evaluation of the disability by medical experts. The difference between the charge thus assessed to such employer at the time of the further injury or disease and the total cost of the pension reserve ((~~shall~~)) must be assessed against the second injury fund. Except as provided in subsection (2) of this section, the department ((~~shall~~)) must pass upon the application of this section in all cases where benefits are paid for total permanent disability or death and issue an order thereon appealable by the employer. Pending outcome of such appeal the transfer or payment ((~~shall~~)) must be made as required by such order.

(2) If a self-insured employer is in default or the director has withdrawn the certification of a self-insured employer, the department ((~~shall~~)) may not pass on the application of this section. In such cases, the total cost of the pension reserve ((~~shall~~)) must first be assessed against the defaulting self-insured employer's deposit required by RCW 51.14.020 and in cases where the surety funds are insufficient the remaining cost of the pension reserve ((~~shall~~)) must be assessed against the insolvency trust fund.

(3) The department ((~~shall~~)) must, in cases of claims of workers sustaining injuries or occupational diseases in the employ of state fund employers, recompute the experience record of such employers when the claims of workers injured in their employ have been found to qualify for payments from the second injury fund after the regular time for computation of such experience records and the department may make appropriate adjustments in such cases including cash refunds or credits to such employers.

(4) ((~~To encourage employment of injured workers who are not reemployed by the employer at the time of injury, the department may adopt rules providing for the reduction or elimination of premiums or assessments from subsequent employers of such workers and may also adopt rules for the reduction or elimination of charges against such employers in the event of further injury to such workers in their employ.~~

~~(5)~~)) To encourage employment of injured workers who have a developmental disability as defined in RCW 71A.10.020, the department may adopt rules providing for the reduction or elimination of premiums or assessments from employers of such workers and may also adopt rules for the reduction or elimination of charges against their employers in the event of further injury to such workers in their employ.

**Sec.**  RCW 51.32.095 and 2013 c 331 s 1 are each amended to read as follows:

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers ((~~shall~~)) must utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection ((~~(4)~~)) (5) of this section or RCW 51.32.099, as appropriate. An injured worker may not participate in vocational rehabilitation under this section or RCW 51.32.099 if such participation would result in a payment of benefits as described in RCW 51.32.240(5), and any benefits so paid ((~~shall~~)) must be recovered according to the terms of that section.

(2) ((~~When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used~~)) Vocational rehabilitation services may be provided to an injured worker when in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment. In determining whether to provide vocational services and at what level, the following list must be used, in order of priority with the highest priority given to returning a worker to employment:

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

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

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

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

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

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

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

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

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

(3) Notwithstanding subsection (2) of this section, vocational services may be provided to an injured worker who has suffered the loss or complete use of both legs, or arms, or one leg and one arm, or total eyesight when, in the sole discretion of the supervisor or the supervisor's designee, these services will either substantially improve the worker's quality of life or substantially improve the worker's ability to function in an employment setting, regardless of whether or not these services are either necessary or reasonably likely to make the worker employable at any gainful employment. Vocational services must be completed prior to the commencement of the worker's entitlement to benefits under RCW 51.32.060. However, workers who are eligible for vocational services under this subsection are not eligible for option 2 benefits, as provided in RCW 51.32.099(4) and section 5 of this act.

(4) To encourage the employment of individuals who have suffered an injury or occupational disease resulting in permanent disability which may be a substantial obstacle to employment, the supervisor or supervisor's designee, in his or her sole discretion, may provide assistance including job placement services for eligible injured workers who are receiving vocational services under the return-to-work priorities listed in subsection (2)(b) through (i) of this section, except for self-employment, and to employers that employ them. The assistance listed in (a) through (f) of this subsection is only available in cases where the worker is employed:

(a) Reduction or elimination of premiums or assessments owed by employers for such workers;

(b) Reduction or elimination of charges against the employers in the event of further injury to such workers in their employ;

(c) Reimbursement of the injured worker's wages for light duty or transitional work consistent with the limitations in RCW 51.32.090(4)(c);

(d) Reimbursement for the costs of clothing that is necessary to allow the worker to perform the offered work consistent with the limitations in RCW 51.32.090(4)(e);

(e) Reimbursement for the costs of tools or equipment to allow the worker to perform the work consistent with the limitations in RCW 51.32.090(4)(f);

(f) A one-time payment equal to the lesser of ten percent of the worker's wages including commissions and bonuses paid or ten thousand dollars for continuous employment without reduction in base wages for at least twelve months. The twelve months begin the first date of employment and the one-time payment is available at the sole discretion of the supervisor of industrial insurance;

(g) The benefits described in this section are available to a state fund employer without regard to whether the worker was employed by the state fund employer at the time of injury. The benefits are available to a self-insured employer only in cases where the worker was employed by a state fund employer at the time of injury or occupational disease manifestation;

(h) The benefits described in (a) through (f) of this subsection (4) are only available in instances where a vocational rehabilitation professional and the injured worker's health care provider have confirmed that the worker has returned to work that is consistent with the worker's limitations and physical restrictions.

(5)(a) For vocational plans approved prior to July 1, 1999, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) When the department has approved a vocational plan for a worker between July 1, 1999, through December 31, 2007, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

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

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

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

((~~(5)~~)) (6) In addition to the vocational rehabilitation expenditures provided for under subsection ((~~(4)~~)) (5) of this section and RCW 51.32.099, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 ((~~shall~~)) may not exceed five thousand dollars.

((~~(6)~~)) (7)(a) When the department has approved a vocational plan for a worker prior to January 1, 2008, regardless of whether the worker has begun participating in the approved plan, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section are limited to those provided under subsections ((~~(4) and~~)) (5) and (6) of this section.

(b) For vocational plans approved for a worker between January 1, 2008, through ((~~June 30, 2016~~)) July 31, 2015, total vocational costs allowed by the supervisor or supervisor's designee under subsection (1) of this section ((~~shall be~~)) is limited to those provided under the pilot program established in RCW 51.32.099, and vocational rehabilitation services ((~~shall~~)) must conform to the requirements in RCW 51.32.099.

((~~(7)~~)) (8) The department ((~~shall~~)) must establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations ((~~used under subsection (1) of this section and under RCW 51.32.099~~)). The state fund ((~~shall~~)) must make referrals for vocational rehabilitation services based on these performance criteria.

((~~(8)~~)) (9) The department ((~~shall~~)) must engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section ((~~and RCW 51.32.099~~)) including participation by the department as a partner with WorkSource and with the private vocational rehabilitation community to refer workers to these vocational professionals for job search and job placement assistance. As a partner, the department must place vocational professional full-time employees at selected WorkSource locations who will work with employers to market the benefits of on-the-job training programs and preferred worker financial incentives as described in subsection (4) of this section. For the purposes of this subsection, "WorkSource" means the established state system that administers the federal workforce investment act of 1998.

((~~(9)~~)) (10) The benefits in this section ((~~and~~)), RCW 51.32.099 ((~~shall~~)), and section 5 of this act must be provided for the injured workers of self-insured employers. Self-insurers ((~~shall~~)) must report both benefits provided and benefits denied ((~~under this section and RCW 51.32.099~~)) in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section ((~~or~~)), RCW 51.32.099, or section 5 of this act, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

((~~(10)~~)) (11) Except as otherwise provided ((~~in this section or RCW 51.32.099~~)), the benefits provided for in this section ((~~and~~)), RCW 51.32.099, and section 5 of this act are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims ((~~shall~~)) may not be reopened solely for vocational rehabilitation purposes.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) 2013 c 331 s 3 and 2011 c 291 s 3 (uncodified); and

(2) 2013 c 331 s 6 (uncodified).

**Sec.**  RCW 51.32.099 and 2013 c 331 s 2 and 2013 c 326 s 1 are each reenacted and amended to read as follows:

(1)(a) The legislature intends to create improved vocational outcomes for Washington state injured workers and employers through legislative and regulatory change under a pilot program for the period of January 1, 2008, through ((~~June 30, 2016~~)) July 31, 2015. This pilot vocational system is intended to allow opportunities for eligible workers to participate in meaningful retraining in high-demand occupations, improve successful return to work and achieve positive outcomes for workers, reduce the incidence of repeat vocational services, increase accountability and responsibility, and improve cost predictability. To facilitate the study and evaluation of the results of the proposed changes, the department ((~~shall~~)) must establish the temporary funding of certain state fund vocational costs through the medical aid account to ensure the appropriate assessments to employers for the costs of their claims for vocational services in accordance with RCW 51.32.0991.

(b) In implementing the pilot program, the department ((~~shall~~)) must:

(i) Establish a vocational initiative project that includes participation by the department as a partner with WorkSource, the established state system that administers the federal workforce investment act of 1998. As a partner, the department ((~~shall~~)) must place vocational professional full-time employees at pilot WorkSource locations; refer some workers for vocational services to these vocational professionals; and work with employers in work source pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high employer demand programs of study as defined in RCW 28B.50.030. These on-the-job training programs and community college slots may be considered by both department and private sector vocational professionals for vocational plan development. The department will also assist stakeholders in developing additional vocational training programs in various industries, including but not limited to agriculture and construction. These programs will expand the choices available to injured workers in developing their vocational training plans with the assistance of vocational professionals.

(ii) Develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options described in this section for at least the duration of the pilot program.

(iii) Create a vocational rehabilitation subcommittee made up of members appointed by the director for at least the duration of the pilot program. This subcommittee ((~~shall~~)) must provide the business and labor partnership needed to maintain focus on the intent of the pilot program, as described in this section, and provide consistency and transparency to the development of rules and policies. The subcommittee ((~~shall~~)) must report to the director at least annually and recommend to the director and the legislature any additional statutory changes needed, which may include extension of the pilot period. The subcommittee ((~~shall~~)) must provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee ((~~shall~~)) must provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury. The subcommittee ((~~shall~~)) must also consider options that, under limited circumstances, would allow injured workers to attend baccalaureate institutions under their vocational rehabilitation plans and, by December 31, 2013, the subcommittee ((~~shall~~)) must provide recommendations to the director and the legislature on statutory changes needed to develop those options.

(iv) In collaboration with the subcommittee, the department ((~~shall~~)) must develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature with the final report due by December 1, ((~~2015~~)) 2014. The final report ((~~shall~~)) must include an assessment and recommendations for further legislative action.

(2)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self‑insurer notifies the worker of his or her eligibility for plan development services or of an eligibility determination in response to a dispute of a vocational decision.

(b) When the supervisor or supervisor's designee has decided that vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she ((~~shall~~)) must be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim ((~~shall~~)) must, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department ((~~shall~~)) must provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department ((~~shall~~)) must also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the commencement of vocational plan development. However, at the sole discretion of the supervisor or the supervisor's designee, an employer may be granted an extension of time of up to ten additional days to make a valid return-to-work offer. The additional days may be allowed by the department with or without a request from the employer. The extension may only be granted if the employer made a return-to-work offer to the worker within fifteen days of the date the worker commenced vocational plan development that met some but not all of the requirements in this section. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation ((~~shall be~~)) are terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer.

(d) Following the time period described in (c) of this subsection, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer ((~~shall~~)) must result in the termination of vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.

(3)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. Failure to abide by the agreed expectations ((~~shall~~)) must result in suspension of vocational benefits pursuant to RCW 51.32.110, including the opportunity for the worker to demonstrate good cause.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department ((~~shall~~)) must develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause ((~~shall~~)) must be provided in rule. The frequency and reasons for good cause extensions ((~~shall~~)) must be reported to the subcommittee created under subsection (1) (b)(iii) of this section.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed twelve thousand dollars. This amount ((~~shall~~)) must be adjusted effective July 1 of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30 of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges.

(e) The duration of the vocational plan ((~~shall~~)) may not exceed two years from the date the plan is implemented. The worker ((~~shall~~)) must receive temporary total disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging ((~~shall~~)) must also be paid.

(4) Vocational plan development services ((~~shall~~)) must be completed within ninety days of commencing. Except as provided in RCW 51.32.095(3), during vocational plan development the worker ((~~shall~~)) must, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan ((~~shall~~)) must be developed by the worker and the vocational professional and submitted to the department or self‑insurer. Following this submission, the worker ((~~shall~~)) must elect one of the following options:

(a) Option 1: The department or self‑insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self‑insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. The worker may, within fifteen days of the department's approval of the plan or of a determination that the plan is valid following a dispute, elect option 2. However, in the sole discretion of the supervisor or supervisor's designee, the department may approve an election for option 2 benefits that was submitted in writing within twenty-five days of the department's approval of the plan or of a determination that the plan is valid following a dispute if the worker provides a written explanation establishing that he or she was unable to submit his or her election of option 2 benefits within fifteen days. In no circumstance may the department approve of an election for option 2 benefits that was submitted more than twenty-five days after the department's approval of a retraining plan or of a determination that a plan is valid following a dispute.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) ((~~shall~~)) must include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection (3)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to six months of temporary total disability compensation under RCW 51.32.090. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments ((~~shall~~)) may not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section ((~~shall~~)) must remain available to the worker, upon application to the department or self‑insurer, for a period of five years. The vocational costs ((~~shall~~)) must, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self‑insurer oversight. The department ((~~shall~~)) must issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits effective the date of the order confirming that election. The department ((~~shall~~)) must thereafter close the claim. A worker who elects option 2 benefits ((~~shall not be~~)) is not entitled to further temporary total, or to permanent total, disability benefits except upon a showing of a worsening in the condition or conditions accepted under the claim such that claim closure is not appropriate, in which case the option 2 selection will be rescinded and the amount paid to the worker will be assessed as an overpayment. A claim that was closed based on the worker's election of option 2 benefits may be reopened as provided in RCW 51.32.160, but cannot be reopened for the sole purpose of allowing the worker to seek vocational assistance.

(i) If within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section ((~~shall~~)) may not exceed eighteen months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) ((~~shall~~)) must include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection (3)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

(5)(a) As used in this section, "vocational plan interruption" means an occurrence ((~~which~~)) that disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self‑insurer ((~~shall~~)) must recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited institution, when it is due to a death in the worker's immediate family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits ((~~shall~~)) must be suspended in accordance with RCW 51.32.110, including the opportunity for the worker to demonstrate good cause. If plan development or implementation is recommenced, the cost and duration of the plan ((~~shall~~)) may not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section.

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

(1) Through the collaboration of the vocational rehabilitation subcommittee established in RCW 51.32.099, certain vocational rehabilitation benefits and options have been identified as permanently needed to support appropriate outcomes for eligible injured workers. To continue the partnership of business and labor with regard to best practices in the provision of vocational services and to identify further improvements to Washington's vocational rehabilitation system and benefits, the director must appoint a vocational rehabilitation advisory committee to consist of at least one member representing employers insured by the state fund, one member representing self-insured employers, and two members representing workers. The appointments must be made from lists of nominations provided by statewide business, self-insured employers, and labor organizations.

(2)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self-insurer notifies the worker of his or her eligibility for plan development services or of an eligibility determination in response to a dispute of a vocational decision.

(b) When the supervisor or supervisor's designee has decided that vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she must be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim must, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department must provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department must also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the commencement of vocational plan development. However, at the sole discretion of the supervisor or the supervisor's designee, an employer may be granted an extension of time of up to ten additional days to make a valid return-to-work offer. The additional days may be allowed by the department with or without a request from the employer. The extension may only be granted if the employer made a return-to-work offer to the worker within fifteen days of the date the worker commenced vocational plan development that met some but not all of the requirements in this section. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation must be terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer.

(d) Following the time period described in (c) of this subsection, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer must result in the termination of vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.

(3)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. Failure to abide by the agreed expectations must result in suspension of vocational benefits pursuant to RCW 51.32.110, including the opportunity for the worker to demonstrate good cause.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department must develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause must be provided in rule.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed seventeen thousand five hundred dollars. This amount must be adjusted effective July 1st of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30th of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges. Effective July 1, 2016, and each July 1st thereafter, the increase cannot exceed two percent per year, unless the amount available would be less than one hundred fifty percent of the average cost of a two-year community college training plan. Effective July 1st following the calendar year in which the amount available is less than one hundred fifty percent of the average cost of a two-year community college plan, costs for newly approved plans can be up to one hundred fifty percent of this community college plan average. The average cost of two-year community college training plans will be calculated by the department based on plans completed during the preceding calendar year.

(e) The duration of the vocational plan may not exceed two years from the date the plan is implemented. The worker must receive temporary total disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging must also be paid.

(4) Except as provided in RCW 51.32.095(3), during vocational plan development the worker must, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan must be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker must elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. Beginning the date the department approves the plan, or the date of a determination that the plan is valid following a dispute, through completion of the first academic quarter or three months' training, the worker may elect option 2. However, in the sole discretion of the supervisor or supervisor's designee, the department may approve an election for option 2 benefits that was submitted in writing within twenty-five days of the end of the first academic quarter or three months' training if the worker provides a written explanation establishing that he or she was unable to submit his or her election of option 2 benefits within fifteen days. In no circumstance may the department approve of an election for option 2 benefits that was submitted more than twenty-five days after the end of the first academic quarter or three months' training.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) must include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection (3)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to nine months of temporary total disability compensation under RCW 51.32.090. The award must be reduced by the amount of any temporary total disability compensation paid for days starting with the first day of the academic quarter or three months' training and for any days through the date the department received the worker's written election of option 2. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments may not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section must remain available to the worker less any amount expended for the worker's participation in the first academic quarter or three months' training, upon application to the department or self-insurer, for a period of five years. The vocational costs must, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. Up to ten percent of the total funds available to the worker can be used for vocational counseling and job placement services. The department must issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits effective the date of the order confirming that election. The department must thereafter close the claim. A worker who elects option 2 benefits is not entitled to further temporary total, or to permanent total, disability benefits except upon a showing of a worsening in the condition or conditions accepted under the claim such that claim closure is not appropriate, in which case the option 2 selection must be rescinded and the amount paid to the worker must be assessed as an overpayment. A claim that was closed based on the worker's election of option 2 benefits may be reopened as provided in RCW 51.32.160, but cannot be reopened for the sole purpose of allowing the worker to seek vocational assistance.

(i) If, within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section may not exceed fifteen months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) must include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection (3)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

(5)(a) "Vocational plan interruption" for the purposes of this section means an occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self-insurer must recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited institution, when it is due to a death in the worker's immediate family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits must be suspended in accordance with RCW 51.32.110, including the opportunity for the worker to demonstrate good cause. If plan development or implementation is recommenced, the cost and duration of the plan may not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement in subsection (3)(a) of this section.

(6) Costs paid for vocational services and plans must be chargeable to the employer's cost experience or must be paid by the self-insurer, as the case may be. For state fund vocational plans implemented on or after January 1, 2008, the costs may be paid from the medical aid fund at the sole discretion of the director under the following circumstances:

(a) The worker previously participated in a vocational plan or selected a worker option as described in RCW 51.32.099(4) or in subsection (4) of this section;

(b) The worker's prior vocational plan or selected option was based on an approved plan or option on or after January 1, 2008;

(c) For state fund employers, the date of injury or disease manifestation of the subsequent claim is within the period of time used to calculate their experience factor;

(d) The subsequent claim is for an injury or occupational disease that resulted from employment and work-related activities beyond the worker's documented restrictions.

(7) The vocational plan costs payable from the medical aid fund must include the costs of temporary total disability benefits, except those payable from the supplemental pension fund, from the date the vocational plan is implemented to the date the worker completes the plan or ceases participation. The vocational costs paid from the medical aid fund may not be charged to the state fund employer's cost experience.

**Sec.**  RCW 51.44.040 and 2005 c 475 s 1 are each amended to read as follows:

(1) There ((~~shall be~~)) is in the office of the state treasurer((~~,~~)) a fund to be known and designated as the "second injury fund," which ((~~shall~~)) may be used only for the purpose of defraying charges against ((~~it~~)) employers and for supporting return-to-work outcomes for injured workers as provided in RCW 51.16.120, 51.32.095(4), and 51.32.250. The fund ((~~shall~~)) must be administered by the director. The state treasurer ((~~shall~~)) must be the custodian of the second injury fund and ((~~shall be~~)) is authorized to disburse moneys from it only upon written order of the director.

(2) Payments to the second injury fund from the accident fund ((~~shall~~)) must be made pursuant to rules adopted by the director. Costs of these payments may not affect the experience rating of employers insured by the state fund.

(3)(a) Assessments for the second injury fund ((~~shall~~)) must be imposed on self-insurers pursuant to rules adopted by the director. Such rules ((~~shall~~)) must provide for at least the following:

(i) Except as provided in (a)(ii) of this subsection, the amount assessed each self-insurer must be in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund.

(ii) Except as provided in section 2, chapter 475, Laws of 2005, beginning with assessments imposed on or after July 1, 2009, the department ((~~shall~~)) must experience rate the amount assessed each self-insurer as long as the aggregate amount assessed is in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund. The experience rating factor must provide equal weight to the ratio between expenditures made by the second injury fund for claims of the self-insurer to the total expenditures made by the second injury fund for claims of all self-insurers for the prior three fiscal years and the ratio of workers' compensation claim payments under this title made by the self-insurer to the total worker's compensation claim payments made by all self-insurers under this title for the prior three fiscal years. The weighted average of these two ratios must be divided by the latter ratio to arrive at the experience factor.

(b) For purposes of this subsection, "expenditures made by the second injury fund" mean the costs and charges described under RCW 51.32.250 and 51.16.120 ((~~(3) and~~)) (4), and the amounts assessed to the second injury fund as described under RCW 51.16.120(1). Under no circumstances does "expenditures made by the second injury fund" include any subsequent payments, assessments, or adjustments for pensions, where the applicable second injury fund entitlement was established outside of the three fiscal years.

NEW SECTION. **Sec.**  The department of labor and industries is authorized to establish and adopt rules governing the eligibility for and administration of benefits available under RCW 51.16.120, 51.32.095, 51.32.099, 51.44.040, and section 5 of this act.

NEW SECTION. **Sec.**  The department of labor and industries must conduct a study of injured workers whose employers participate in the incentives provided in RCW 51.32.095(4) to determine the impact on return-to-work outcomes, long-term disability, and claim costs. By December 1, 2018, and in compliance with RCW 43.01.036, the department must submit a report to the appropriate committees of the legislature that details the results of the study conducted under this section.

NEW SECTION. **Sec.**  Sections 1, 2, and 6 of this act apply to all workers' compensation claims that are open on or after January 1, 2016, without regard to the date of injury or occupational disease manifestation.

NEW SECTION. **Sec.**  Section 5 of this act applies to all claims commencing vocational plan development on or after July 31, 2015, without regard to the date of injury or occupational disease manifestation.

**--- END ---**