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SENATE BILL 6767

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State of Washington

56th Legislature

2000 Regular Session

By Senator Fairley; by request of Department of Labor & Industries

Read first time 01/26/2000. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to vocational rehabilitation; amending RCW  
2 51.32.095; adding new sections to chapter 51.32 RCW; providing an  
3 effective date; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.32 RCW  
6 to read as follows:

7 (1) One of the primary purposes of this title is to enable injured  
8 workers to return to gainful employment. To be gainful employment, the  
9 employment must, in addition to other relevant factors, pay at least  
10 the legal minimum wage. Where, as a proximate result of the industrial  
11 injury or occupational disease, a worker is not employable, or the  
12 worker's wage earning capacity is less than seventy percent of his or  
13 her wages at the time of injury, and the supervisor of industrial  
14 insurance or the supervisor's designee determines that vocational  
15 rehabilitation services are necessary and likely to enable the injured  
16 worker to become employable at gainful employment or increase the  
17 worker's wage earning capacity at least twenty percent and not less  
18 than two dollars per hour, the supervisor or the supervisor's designee,  
19 in his or her sole discretion, whether or not medical treatment has

1 concluded, and prior to final evaluation of the worker's permanent  
2 disability, may pay or, if the employer is a self-insurer, direct the  
3 self-insurer to pay for any or all of the costs provided in subsections  
4 (4) and (5) of this section. In exercising his or her sole discretion,  
5 the supervisor of industrial insurance or the supervisor's designee  
6 shall consider:

7 (a) The expected cost, duration, and benefit of the vocational  
8 services;

9 (b) Whether the worker has taken advantage of and utilized  
10 vocational services provided in the past; and

11 (c) The worker's ability and willingness to participate in and  
12 benefit from vocational services.

13 (2) The following order of priorities shall guide the provision of  
14 all vocational services under this section:

15 (a) Vocational rehabilitation services that enable the injured  
16 worker to return to employment with the date of injury employer. This  
17 may include a return to the job at injury, a modified job, or a new job  
18 with the date of injury employer. This may also include a transitional  
19 return to work;

20 (b) Vocational rehabilitation services that enable the injured  
21 worker to return to employment with a new employer. This may include  
22 a modification of the previous job or a new job. This may also include  
23 a transitional return to work; and

24 (c) Self-employment based on the worker's transferable skills or  
25 on-the-job training.

26 (3)(a) The supervisor of industrial insurance, or the supervisor's  
27 designee, may require the injured worker to participate in a vocational  
28 evaluation. The vocational evaluation should include an assessment of  
29 the worker's:

30 (i) Age, education, and interests;

31 (ii) Applicable transferable skills;

32 (iii) Preexisting physical and mental conditions;

33 (iv) Physical and mental conditions proximately caused by the  
34 worker's industrial injury or occupational disease;

35 (v) Current wage earning capacity;

36 (vi) Expected wage earning capacity after completion of vocational  
37 rehabilitation services; and

38 (vii) Significant barriers to employment.

1 (b) The vocational evaluation should also include such other  
2 pertinent information as the department may prescribe by rule.

3 (4)(a) The cost of vocational rehabilitation services, excluding  
4 the cost of vocational rehabilitation counselors, may not exceed five  
5 thousand dollars over eighteen months. Costs for a formal program of  
6 vocational rehabilitation allowed by the supervisor or the supervisor's  
7 designee under subsection (1) of this section may include, but is not  
8 limited to, the following costs:

9 (i) Tuition, books, fees, and supplies;

10 (ii) Equipment, including equipment necessary for self-employment  
11 or reemployment;

12 (iii) Child or dependent care;

13 (iv) Fees for on-the-job training and the cost of furnishing tools;  
14 and

15 (v) A wage subsidy paid to an employer other than the employer at  
16 the time of injury in an amount not to exceed fifty percent of the  
17 worker's monthly wages over a period not to exceed six months. The  
18 wage subsidy must begin prior to claim closure and may not extend  
19 beyond six months after claim closure.

20 (b) The reasonable costs of transportation and, in cases where the  
21 worker is required to reside away from his or her customary residence,  
22 the reasonable cost of board and lodging shall also be paid. Any costs  
23 under this subsection shall be chargeable to the employer's cost  
24 experience or shall be paid by the self-insurer as the case may be.

25 (5) In addition to the vocational rehabilitation expenditures  
26 provided for under subsection (4) of this section, an additional five  
27 thousand dollars may, upon authorization of the supervisor of  
28 industrial insurance or the supervisor's designee, be expended for:

29 (a) Accommodations for an injured worker that are medically necessary  
30 for the worker to participate in an approved retraining plan; and (b)  
31 accommodations necessary to perform the essential functions of an  
32 occupation in which an injured worker is seeking employment, consistent  
33 with the retraining plan or the recommendations of a vocational  
34 evaluation. The injured worker's attending physician must verify the  
35 necessity of the modifications or accommodations. The costs shall be  
36 chargeable to the employer's cost experience or shall be paid by the  
37 self-insurer as the case may be. The total expenditures authorized in  
38 this subsection and the expenditures authorized under RCW 51.32.250 may  
39 not exceed five thousand dollars.

1 (6) Whenever the supervisor of industrial insurance or the  
2 supervisor's designee, in his or her sole discretion, determines that  
3 reemployment services are likely to enable an injured worker to return  
4 to employment, the supervisor or the supervisor's designee may pay or,  
5 if the employer is a self-insurer, direct the employer to pay for the  
6 following:

7 (a) Job development, job search, and job placement services, not to  
8 exceed ninety days and seven hundred fifty dollars; and

9 (b) Skill enhancement services, not to exceed five hundred dollars.

10 (7) While the worker is actively and successfully undergoing a  
11 formal program of vocational rehabilitation under this section, the  
12 supervisor of industrial insurance or the supervisor's designee shall  
13 pay or, if the employer is a self-insurer, direct the self-insurer to  
14 pay the worker temporary total disability compensation under RCW  
15 51.32.090. If the worker receives wages as part of the formal  
16 vocational plan of rehabilitation, he or she may not be entitled to  
17 temporary total disability compensation under this subsection.

18 (8) The benefits in this section shall be provided for the injured  
19 workers of self-insured employers. Self-insurers shall report both  
20 benefits provided and benefits denied under this section in the manner  
21 prescribed by the department by rule adopted under chapter 34.05 RCW.  
22 The director or the director's designee may, in his or her sole  
23 discretion and upon his or her own initiative or at any time that a  
24 dispute arises under this section, promptly make such inquiries as  
25 circumstances require and take such other action as he or she considers  
26 will properly determine the matter and protect the rights of the  
27 parties.

28 (9) The department may adopt rules, as it deems necessary, to  
29 implement this section.

30 (10) Claims may not be reopened solely for vocational  
31 rehabilitation purposes.

32 (11) The benefits set forth in this section shall be provided to  
33 any otherwise eligible worker that files an application for benefits  
34 after June 30, 2001. A worker who files an application for benefits  
35 after June 30, 2001, may not be considered for, or receive any benefits  
36 under, RCW 51.32.095.

37 (12) This section expires June 30, 2005.

1       **Sec. 2.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read  
2 as follows:

3       (1) One of the primary purposes of this title is to enable the  
4 injured worker to become employable at gainful employment. To this  
5 end, the department or self-insurers shall utilize the services of  
6 individuals and organizations, public or private, whose experience,  
7 training, and interests in vocational rehabilitation and retraining  
8 qualify them to lend expert assistance to the supervisor of industrial  
9 insurance in such programs of vocational rehabilitation as may be  
10 reasonable to make the worker employable consistent with his or her  
11 physical and mental status. Where, after evaluation and recommendation  
12 by such individuals or organizations and prior to final evaluation of  
13 the worker's permanent disability and in the sole opinion of the  
14 supervisor or supervisor's designee, whether or not medical treatment  
15 has been concluded, vocational rehabilitation is both necessary and  
16 likely to enable the injured worker to become employable at gainful  
17 employment, the supervisor or supervisor's designee may, in his or her  
18 sole discretion, pay or, if the employer is a self-insurer, direct the  
19 self-insurer to pay the cost as provided in subsection (3) of this  
20 section.

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

- 25       (a) Return to the previous job with the same employer;
- 26       (b) Modification of the previous job with the same employer  
27 including transitional return to work;
- 28       (c) A new job with the same employer in keeping with any  
29 limitations or restrictions;
- 30       (d) Modification of a new job with the same employer including  
31 transitional return to work;
- 32       (e) Modification of the previous job with a new employer;
- 33       (f) A new job with a new employer or self-employment based upon  
34 transferable skills;
- 35       (g) Modification of a new job with a new employer;
- 36       (h) A new job with a new employer or self-employment involving on-  
37 the-job training;
- 38       (i) Short-term retraining and job placement.

1 (3)(a) Except as provided in (b) of this subsection, costs for  
2 vocational rehabilitation benefits allowed by the supervisor or  
3 supervisor's designee under subsection (1) of this section may include  
4 the cost of books, tuition, fees, supplies, equipment, transportation,  
5 child or dependent care, and other necessary expenses for any such  
6 worker in an amount not to exceed three thousand dollars in any fifty-  
7 two week period (~~except as authorized by RCW 51.60.060~~), and the cost  
8 of continuing the temporary total disability compensation under RCW  
9 51.32.090 while the worker is actively and successfully undergoing a  
10 formal program of vocational rehabilitation.

11 (b) Beginning with vocational rehabilitation plans approved on or  
12 after July 1, 1999, costs for vocational rehabilitation benefits  
13 allowed by the supervisor or supervisor's designee under subsection (1)  
14 of this section may include the cost of books, tuition, fees, supplies,  
15 equipment, child or dependent care, and other necessary expenses for  
16 any such worker in an amount not to exceed four thousand dollars in any  
17 fifty-two week period (~~except as authorized by RCW 51.60.060~~), and  
18 the cost of transportation and continuing the temporary total  
19 disability compensation under RCW 51.32.090 while the worker is  
20 actively and successfully undergoing a formal program of vocational  
21 rehabilitation.

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

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

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

37 (4) In addition to the vocational rehabilitation expenditures  
38 provided for under subsection (3) of this section, an additional five  
39 thousand dollars may, upon authorization of the supervisor or the

1 supervisor's designee, be expended for: (a) Accommodations for an  
2 injured worker that are medically necessary for the worker to  
3 participate in an approved retraining plan; and (b) accommodations  
4 necessary to perform the essential functions of an occupation in which  
5 an injured worker is seeking employment, consistent with the retraining  
6 plan or the recommendations of a vocational evaluation. The injured  
7 worker's attending physician must verify the necessity of the  
8 modifications or accommodations. The total expenditures authorized in  
9 this subsection and the expenditures authorized under RCW 51.32.250  
10 shall not exceed five thousand dollars.

11 ~~(5) ((The department shall establish criteria to monitor the~~  
12 ~~quality and effectiveness of rehabilitation services provided by the~~  
13 ~~individuals and organizations used under subsection (1) of this~~  
14 ~~section. The state fund shall make referrals for vocational~~  
15 ~~rehabilitation services based on these performance criteria.~~

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

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

28 ~~((+8))~~ (6) Except as ~~((otherwise provided in this section))~~  
29 provided in section 1 of this act, the benefits provided for in this  
30 section are available to any otherwise eligible worker regardless of  
31 the date of industrial injury. However, claims shall not be reopened  
32 solely for vocational rehabilitation purposes.

33 NEW SECTION. Sec. 3. A new section is added to chapter 51.32 RCW  
34 to read as follows:

35 (1) The department shall establish, adopt, and supervise the  
36 administration of printed forms, rules, regulations, and practices for  
37 the furnishing of vocational services under this act. Only those  
38 persons, firms, partnerships, corporations, or other entities, whether

1 public or private, that are registered with the department may provide  
2 vocational services to injured workers under this act. Registration  
3 under this subsection may not guarantee or entitle the vocational  
4 provider to any referrals under this act. The department shall adopt  
5 rules that establish the qualifications necessary to become registered  
6 with the department.

7 (2) The director shall, in consultation with interested persons,  
8 establish and, in his or her discretion, periodically change as may be  
9 necessary, and make available a fee schedule of the maximum charges to  
10 be made by a registered vocational provider. No services covered under  
11 this section shall be charged or paid at a rate or rates exceeding  
12 those specified in the fee schedule, and no contract providing for  
13 greater fees shall be valid as to the excess. The establishment of  
14 such a schedule does not constitute agency action as defined in RCW  
15 34.05.010, nor does such a fee schedule constitute a rule as defined in  
16 RCW 34.05.010.

17 (3) The vocational services purchased under this act shall be  
18 prudent, cost-effective, and conform with accepted standards of good  
19 practice. The state fund shall make referrals for vocational services  
20 based on the vocational provider's performance. In selecting a  
21 vocational provider, the department may consider:

- 22 (a) The complexity of cases handled by the vocational provider;
- 23 (b) The cost of the services rendered by the vocational provider;
- 24 (c) The length of time taken to provide the services;
- 25 (d) The outcome of services;
- 26 (e) The worker's wage earning capacity after the conclusion of  
27 vocational services;
- 28 (f) Whether the worker was employed ninety days after vocational  
29 services were concluded; and
- 30 (g) Such other pertinent information as the department may  
31 prescribe by rule.

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

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.32 RCW  
36 to read as follows:

37 The department shall make annual reports to the house of  
38 representatives commerce and labor committee, and the senate labor and



1 workforce development committee, or the successor committees, beginning  
2 December 1, 2001, and ending December 1, 2004.

3 NEW SECTION. **Sec. 5.** Section 1 of this act takes effect July 1,  
4 2001.

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