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SECOND SUBSTITUTE SENATE BILL 5378

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State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Commerce & Trade (originally sponsored by Senators Honeyford, Hewitt, T. Sheldon, Mulliken, Rasmussen and Hale)

READ FIRST TIME 02/02/04.

1 AN ACT Relating to simplifying and adding certainty to the  
2 calculation of workers' compensation benefits; amending RCW 51.08.178,  
3 51.28.040, 51.32.050, 51.32.060, 51.32.072, 51.32.075, 51.32.080,  
4 51.32.095, and 51.36.020; reenacting and amending RCW 51.32.090; adding  
5 new sections to chapter 51.08 RCW; adding a new section to chapter  
6 51.32 RCW; and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08 RCW  
9 to read as follows:

10 "Inflation" means the percentage change in the implicit price  
11 deflator for personal consumption expenditures for the United States as  
12 published for the most recent twelve-month period by the bureau of  
13 economic analysis of the federal department of commerce in September of  
14 the year before a June 30th determination.

15 **Sec. 2.** RCW 51.08.178 and 1988 c 161 s 12 are each amended to read  
16 as follows:

17 ~~((1) For the purposes of this title, the monthly wages the worker~~  
18 ~~was receiving from all employment at the time of injury shall be the~~

1 ~~basis upon which compensation is computed unless otherwise provided~~  
2 ~~specifically in the statute concerned. In cases where the worker's~~  
3 ~~wages are not fixed by the month, they shall be determined by~~  
4 ~~multiplying the daily wage the worker was receiving at the time of the~~  
5 ~~injury:~~

6 ~~(a) By five, if the worker was normally employed one day a week;~~

7 ~~(b) By nine, if the worker was normally employed two days a week;~~

8 ~~(c) By thirteen, if the worker was normally employed three days a~~  
9 ~~week;~~

10 ~~(d) By eighteen, if the worker was normally employed four days a~~  
11 ~~week;~~

12 ~~(e) By twenty two, if the worker was normally employed five days a~~  
13 ~~week;~~

14 ~~(f) By twenty six, if the worker was normally employed six days a~~  
15 ~~week;~~

16 ~~(g) By thirty, if the worker was normally employed seven days a~~  
17 ~~week.~~

18 ~~The term "wages" shall include the reasonable value of board,~~  
19 ~~housing, fuel, or other consideration of like nature received from the~~  
20 ~~employer as part of the contract of hire, but shall not include~~  
21 ~~overtime pay except in cases under subsection (2) of this section.~~  
22 ~~However, tips shall also be considered wages only to the extent such~~  
23 ~~tips are reported to the employer for federal income tax purposes. The~~  
24 ~~daily wage shall be the hourly wage multiplied by the number of hours~~  
25 ~~the worker is normally employed. The number of hours the worker is~~  
26 ~~normally employed shall be determined by the department in a fair and~~  
27 ~~reasonable manner, which may include averaging the number of hours~~  
28 ~~worked per day.~~

29 ~~(2) In cases where (a) the worker's employment is exclusively~~  
30 ~~seasonal in nature or (b) the worker's current employment or his or her~~  
31 ~~relation to his or her employment is essentially part time or~~  
32 ~~intermittent, the monthly wage shall be determined by dividing by~~  
33 ~~twelve the total wages earned, including overtime, from all employment~~  
34 ~~in any twelve successive calendar months preceding the injury which~~  
35 ~~fairly represent the claimant's employment pattern.~~

36 ~~(3) If, within the twelve months immediately preceding the injury,~~  
37 ~~the worker has received from the employer at the time of injury a bonus~~

1 as part of the contract of hire, the average monthly value of such  
2 bonus shall be included in determining the worker's monthly wages.

3 (4) In cases where a wage has not been fixed or cannot be  
4 reasonably and fairly determined, the monthly wage shall be computed on  
5 the basis of the usual wage paid other employees engaged in like or  
6 similar occupations where the wages are fixed.)) (1)(a) "Wages" means:

7 (i) The gross remuneration paid in cash by the employer to the  
8 worker for services performed with respect to a pay period, before any  
9 deductions. "Paid in cash" means payment in cash, by check, by  
10 electronic transfer, or by other means made directly to the worker; and

11 (ii) Tips only to the extent that the tips are reported to the  
12 employer for federal income tax purposes.

13 (b) Wages shall include the actual value of board, housing, and  
14 fuel received from the employer as part of the contract of hire. This  
15 subsection does not apply during any period in which the employer  
16 continues to provide, through a past or current payment, board,  
17 housing, and/or fuel that were provided to the employee at the time of  
18 the injury or manifestation of occupational disease.

19 (2) Wages does not include: Fringe benefits. "Fringe benefits"  
20 are any consideration given to a worker in addition to wages including,  
21 but not limited to: Retirement and financial benefit plans of whatever  
22 nature; mental and physical health insurance and treatment of whatever  
23 nature; life, disability, and wage-replacement insurance of whatever  
24 nature; unused, accrued leave of whatever nature; memberships of  
25 whatever nature; employee discounts or use or consumption of employer  
26 services, materials, equipment, and facilities of whatever nature;  
27 training and education of whatever nature; and other employee or  
28 beneficiary benefit plan for the employee's or beneficiaries' benefit  
29 resulting from the employment relationship.

30 (3) The worker's monthly wage shall be determined by dividing by  
31 twelve the total wages earned from all employment, including cash  
32 bonuses and overtime pay, in any four successive quarters in the  
33 twenty-four months preceding the injury or manifestation of  
34 occupational disease that most reasonably represents the worker's  
35 wages.

36 (4) In cases where the worker is self-employed or the worker's  
37 monthly wage cannot be reasonably determined under subsection (3) of  
38 this section due to the worker sustaining an injury or occupational

1 disease less than one year after beginning an employment relationship  
2 that both the worker and the employer intend to be continuous and  
3 lasting without limit into the foreseeable future, and which provides  
4 wages, on an annualized basis, of greater than one hundred fifty  
5 percent of wages earned by the worker in the twelve months before  
6 beginning such employment, the monthly wage shall be computed on the  
7 basis of the usual wage paid other employees of the employer at the  
8 time of injury or manifestation of occupational disease who perform  
9 like job duties with like work patterns or, if none exist, other  
10 employees in the worker's labor market who perform like job duties with  
11 like work patterns.

12 (5) In cases where the worker's monthly wage cannot be reasonably  
13 determined under subsection (3) of this section because the worker  
14 sustained an injury or occupational disease less than one year after  
15 beginning an employment relationship that either the worker or the  
16 employer do not intend to be continuous and lasting without limit into  
17 the foreseeable future, or which provides wages, on an annualized  
18 basis, of fifty percent or less of wages earned by the worker in the  
19 twelve months before beginning such employment, the monthly wage shall  
20 be computed on the basis of the usual wage paid other employees of the  
21 employer at the time of injury or manifestation of occupational disease  
22 who perform like job duties with like work patterns, or, if none exist,  
23 other employees in the worker's labor market who perform like job  
24 duties with like work patterns.

25 (6) If the employer or department cannot obtain sufficient accurate  
26 information to calculate the worker's wages pursuant to subsection (3)  
27 of this section before the first payment of temporary total disability  
28 compensation is due, payments may be made provisionally based upon the  
29 worker's wages on the date of injury or manifestation of occupational  
30 disease.

31 **Sec. 3.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended to  
32 read as follows:

33 ~~((If change of circumstances warrants an increase or rearrangement~~  
34 ~~of compensation, like application shall be made therefor.))~~ Where the  
35 worker's application to reopen a claim has been granted under RCW  
36 51.32.160, compensation and other benefits if in order shall be allowed

1 for periods of time up to sixty days prior to the receipt of such  
2 application.

3 **Sec. 4.** RCW 51.32.050 and 1995 c 199 s 6 are each amended to read  
4 as follows:

5 (1) Where death results from the injury, the expenses of burial not  
6 to exceed two hundred percent of the average monthly wage in the state  
7 as defined in RCW 51.08.018 shall be paid.

8 (2)(a) Where death results from the injury, a surviving spouse of  
9 a deceased worker eligible for benefits under this title shall receive  
10 monthly for life or until remarriage payments according to the  
11 following schedule:

12 (i) If there are no children of the deceased worker, sixty percent  
13 of the wages of the deceased worker but not less than one hundred  
14 eighty-five dollars;

15 (ii) If there is one child of the deceased worker and in the legal  
16 custody of such spouse, sixty-two percent of the wages of the deceased  
17 worker but not less than two hundred twenty-two dollars;

18 (iii) If there are two children of the deceased worker and in the  
19 legal custody of such spouse, sixty-four percent of the wages of the  
20 deceased worker but not less than two hundred fifty-three dollars;

21 (iv) If there are three children of the deceased worker and in the  
22 legal custody of such spouse, sixty-six percent of the wages of the  
23 deceased worker but not less than two hundred seventy-six dollars;

24 (v) If there are four children of the deceased worker and in the  
25 legal custody of such spouse, sixty-eight percent of the wages of the  
26 deceased worker but not less than two hundred ninety-nine dollars; or

27 (vi) If there are five or more children of the deceased worker and  
28 in the legal custody of such spouse, seventy percent of the wages of  
29 the deceased worker but not less than three hundred twenty-two dollars.

30 (b) Where the surviving spouse does not have legal custody of any  
31 child or children of the deceased worker or where after the death of  
32 the worker legal custody of such child or children passes from such  
33 surviving spouse to another, any payment on account of such child or  
34 children not in the legal custody of the surviving spouse shall be made  
35 to the person or persons having legal custody of such child or  
36 children. The amount of such payments shall be five percent of the  
37 monthly benefits payable as a result of the worker's death for each

1 such child but such payments shall not exceed twenty-five percent.  
2 Such payments on account of such child or children shall be subtracted  
3 from the amount to which such surviving spouse would have been entitled  
4 had such surviving spouse had legal custody of all of the children and  
5 the surviving spouse shall receive the remainder after such payments on  
6 account of such child or children have been subtracted. Such payments  
7 on account of a child or children not in the legal custody of such  
8 surviving spouse shall be apportioned equally among such children.

9 (c) Payments to the surviving spouse of the deceased worker shall  
10 cease at the end of the month in which remarriage occurs: PROVIDED,  
11 That a monthly payment shall be made to the child or children of the  
12 deceased worker from the month following such remarriage in a sum equal  
13 to five percent of the wages of the deceased worker for one child and  
14 a sum equal to five percent for each additional child up to a maximum  
15 of five such children. Payments to such child or children shall be  
16 apportioned equally among such children. Such sum shall be in place of  
17 any payments theretofore made for the benefit of or on account of any  
18 such child or children. If the surviving spouse does not have legal  
19 custody of any child or children of the deceased worker, or if after  
20 the death of the worker, legal custody of such child or children passes  
21 from such surviving spouse to another, any payment on account of such  
22 child or children not in the legal custody of the surviving spouse  
23 shall be made to the person or persons having legal custody of such  
24 child or children.

25 (~~In no event shall~~) (i) For claims with date of injury or  
26 manifestation of occupational disease before July 1, 2004, the monthly  
27 payments provided in subsection (2) of this section may not exceed the  
28 applicable percentage of the average monthly wage in the state as  
29 computed under RCW 51.08.018 as follows:

30	AFTER	PERCENTAGE
31	June 30, 1993	105%
32	June 30, 1994	110%
33	June 30, 1995	115%
34	June 30, 1996	120%

35 (ii) For claims with date of injury or manifestation of  
36 occupational disease on or after July 1, 2003, but before June 30,

1 2005, the monthly payments provided in this subsection may not exceed  
2 one hundred twenty percent of the average monthly wage in the state on  
3 June 30, 2004. For all claims with the date of injury or manifestation  
4 of occupational disease on or after July 1, 2005, the monthly payments  
5 provided in this subsection may not exceed an amount determined by the  
6 department on June 30, 2004, and each June 30th thereafter, and  
7 applicable to claims with date of injury or manifestation of  
8 occupational disease in the twelve-month period following the June 30th  
9 determination. The amount is determined by adjusting the June 30,  
10 2004, amount for inflation on June 30, 2005. In subsequent years, the  
11 department shall adjust the amount applicable during the previous  
12 twelve-month period to account for inflation.

13 (e) In addition to the monthly payments provided for in subsection  
14 (2)(a) through (c) of this section, a surviving spouse or child or  
15 children of such worker if there is no surviving spouse, or dependent  
16 parent or parents, if there is no surviving spouse or child or children  
17 of any such deceased worker shall be forthwith paid a sum equal to one  
18 hundred percent of the average monthly wage in the state as defined in  
19 RCW 51.08.018, any such children, or parents to share and share alike  
20 in said sum.

21 (f) Upon remarriage of a surviving spouse the monthly payments for  
22 the child or children shall continue as provided in this section, but  
23 the monthly payments to such surviving spouse shall cease at the end of  
24 the month during which remarriage occurs. However, after September 8,  
25 1975, an otherwise eligible surviving spouse of a worker who died at  
26 any time prior to or after September 8, 1975, shall have an option of:

27 (i) Receiving, once and for all, a lump sum of twenty-four times  
28 the monthly compensation rate in effect on the date of remarriage  
29 allocable to the spouse for himself or herself pursuant to subsection  
30 (2)(a)(i) of this section and subject to any modifications specified  
31 under subsection (2)(d) of this section and RCW 51.32.075(~~(+3+)~~) (1)(c)  
32 or fifty percent of the then remaining annuity value of his or her  
33 pension, whichever is the lesser: PROVIDED, That if the injury  
34 occurred prior to July 28, 1991, the remarriage benefit lump sum  
35 available shall be as provided in the remarriage benefit schedules then  
36 in effect; or

37 (ii) If a surviving spouse does not choose the option specified in  
38 subsection (2)(f)(i) of this section to accept the lump sum payment,

1 the remarriage of the surviving spouse of a worker shall not bar him or  
2 her from claiming the lump sum payment authorized in subsection  
3 (2)(f)(i) of this section during the life of the remarriage, or shall  
4 not prevent subsequent monthly payments to him or to her if the  
5 remarriage has been terminated by death or has been dissolved or  
6 annulled by valid court decree provided he or she has not previously  
7 accepted the lump sum payment.

8 (g) If the surviving spouse during the remarriage should die  
9 without having previously received the lump sum payment provided in  
10 subsection (2)(f)(i) of this section, his or her estate shall be  
11 entitled to receive the sum specified under subsection (2)(f)(i) of  
12 this section or fifty percent of the then remaining annuity value of  
13 his or her pension whichever is the lesser.

14 (h) The effective date of resumption of payments under subsection  
15 (2)(f)(ii) of this section to a surviving spouse based upon termination  
16 of a remarriage by death, annulment, or dissolution shall be the date  
17 of the death or the date the judicial decree of annulment or  
18 dissolution becomes final and when application for the payments has  
19 been received.

20 (i) If it should be necessary to increase the reserves in the  
21 reserve fund or to create a new pension reserve fund as a result of the  
22 amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of  
23 such increase in pension reserve in any such case shall be transferred  
24 to the reserve fund from the supplemental pension fund.

25 (3) If there is a child or children and no surviving spouse of the  
26 deceased worker or the surviving spouse is not eligible for benefits  
27 under this title, a sum equal to thirty-five percent of the wages of  
28 the deceased worker shall be paid monthly for one child and a sum  
29 equivalent to fifteen percent of such wage shall be paid monthly for  
30 each additional child, the total of such sum to be divided among such  
31 children, share and share alike(~~(:—PROVIDED, That)~~), subject to the  
32 following:

33 (a) For claims with date of injury or manifestation of occupational  
34 disease before July 1, 2004, benefits under this subsection or  
35 subsection (4) of this section shall not exceed the lesser of sixty-  
36 five percent of the wages of the deceased worker at the time of his or  
37 her death or the applicable percentage of the average monthly wage in  
38 the state as defined in RCW 51.08.018, as follows:



	AFTER	PERCENTAGE
1		
2	June 30, 1993	105%
3	June 30, 1994	110%
4	June 30, 1995	115%
5	June 30, 1996	120%

6 (b) For claims with date of injury or manifestation of occupational  
7 disease on or after July 1, 2004, but before June 30, 2005, the monthly  
8 payments provided in this subsection may not exceed one hundred twenty  
9 percent of the average monthly wage in the state on June 30, 2004. For  
10 all claims with date of injury or manifestation of occupational disease  
11 on or after July 1, 2005, the monthly payments provided in this  
12 subsection may not exceed an amount determined by the department on  
13 June 30, 2004, and each June 30th thereafter, and applicable to claims  
14 with date of injury or manifestation of occupational disease in the  
15 twelve-month period following the June 30th determination. The amount  
16 is determined by adjusting the June 30, 2004, amount for inflation on  
17 June 30, 2005. In subsequent years, the department shall adjust the  
18 amount applicable during the previous twelve-month period to account  
19 for inflation.

20 (4) In the event a surviving spouse receiving monthly payments  
21 dies, the child or children of the deceased worker shall receive the  
22 same payment as provided in subsection (3) of this section.

23 (5)(a) If the worker leaves no surviving spouse or child, but  
24 leaves a dependent or dependents, a monthly payment shall be made to  
25 each dependent as follows:

26 (i) For claims with date of injury or manifestation of occupational  
27 disease before July 1, 2004, the monthly payment shall be equal to  
28 fifty percent of the average monthly support actually received by such  
29 dependent from the worker during the twelve months next preceding the  
30 occurrence of the injury, but the total payment to all dependents in  
31 any case shall not exceed the lesser of sixty-five percent of the wages  
32 of the deceased worker at the time of his or her death or the  
33 applicable percentage of the average monthly wage in the state as  
34 defined in RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
1		
2	June 30, 1993	105%
3	June 30, 1994	110%
4	June 30, 1995	115%
5	June 30, 1996	120%

6     (ii) For claims with date of injury or manifestation of  
7     occupational disease on or after July 1, 2004, but before June 30,  
8     2005, the monthly payments provided in this subsection may not exceed  
9     one hundred twenty percent of the average monthly wage in the state on  
10    June 30, 2004. For all claims with date of injury or manifestation of  
11    occupational disease on or after July 1, 2005, the monthly payments  
12    provided in this subsection may not exceed an amount determined by the  
13    department on June 30, 2004, and each June 30th thereafter, and  
14    applicable to claims with date of injury or manifestation of  
15    occupational disease occurring in the twelve-month period following the  
16    June 30th determination. The amount is determined by adjusting the  
17    June 30, 2004, amount for inflation on June 30, 2005. In subsequent  
18    years, the department shall adjust the amount applicable during the  
19    previous twelve-month period to account for inflation.

20     (b) If any dependent is under the age of eighteen years at the time  
21     of the occurrence of the injury, the payment to such dependent shall  
22     cease when such dependent reaches the age of eighteen years except such  
23     payments shall continue until the dependent reaches age twenty-three  
24     while permanently enrolled at a full time course in an accredited  
25     school. The payment to any dependent shall cease if and when, under  
26     the same circumstances, the necessity creating the dependency would  
27     have ceased if the injury had not happened.

28     (6) For claims filed prior to July 1, 1986, if the injured worker  
29     dies during the period of permanent total disability, whatever the  
30     cause of death, leaving a surviving spouse, or child, or children, the  
31     surviving spouse or child or children shall receive benefits as if  
32     death resulted from the injury as provided in subsections (2) through  
33     (4) of this section. Upon remarriage or death of such surviving  
34     spouse, the payments to such child or children shall be made as  
35     provided in subsection (2) of this section when the surviving spouse of  
36     a deceased worker remarries.

1 (7) For claims filed on or after July 1, 1986, every worker who  
2 becomes eligible for permanent total disability benefits shall elect an  
3 option as provided in RCW 51.32.067.

4 **Sec. 5.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read  
5 as follows:

6 (1) Except as provided in subsection (2) of this section, when the  
7 supervisor of industrial insurance (~~shall~~) determines that permanent  
8 total disability results from the injury, the worker shall receive  
9 monthly during the period of such disability:

10 (a) If married at the time of injury, sixty-five percent of his or  
11 her wages but not less than two hundred fifteen dollars per month.

12 (b) If married with one child at the time of injury, sixty-seven  
13 percent of his or her wages but not less than two hundred fifty-two  
14 dollars per month.

15 (c) If married with two children at the time of injury, sixty-nine  
16 percent of his or her wages but not less than two hundred eighty-three  
17 dollars.

18 (d) If married with three children at the time of injury,  
19 seventy-one percent of his or her wages but not less than three hundred  
20 six dollars per month.

21 (e) If married with four children at the time of injury,  
22 seventy-three percent of his or her wages but not less than three  
23 hundred twenty-nine dollars per month.

24 (f) If married with five or more children at the time of injury,  
25 seventy-five percent of his or her wages but not less than three  
26 hundred fifty-two dollars per month.

27 (g) If unmarried at the time of the injury, sixty percent of his or  
28 her wages but not less than one hundred eighty-five dollars per month.

29 (h) If unmarried with one child at the time of injury, sixty-two  
30 percent of his or her wages but not less than two hundred twenty-two  
31 dollars per month.

32 (i) If unmarried with two children at the time of injury,  
33 sixty-four percent of his or her wages but not less than two hundred  
34 fifty-three dollars per month.

35 (j) If unmarried with three children at the time of injury,  
36 sixty-six percent of his or her wages but not less than two hundred  
37 seventy-six dollars per month.

1 (k) If unmarried with four children at the time of injury,  
2 sixty-eight percent of his or her wages but not less than two hundred  
3 ninety-nine dollars per month.

4 (l) If unmarried with five or more children at the time of injury,  
5 seventy percent of his or her wages but not less than three hundred  
6 twenty-two dollars per month.

7 (2) For any claim with date of injury or manifestation of  
8 occupational disease on or after July 1, 2004, when the supervisor of  
9 industrial insurance determines that permanent total disability results  
10 from the injury, the worker shall receive monthly during the period of  
11 such disability sixty-five and five-tenths percent of his or her wages  
12 as determined under RCW 51.08.178, but not less than two hundred  
13 seventy-six dollars per month.

14 (3) For any period of time where both husband and wife are entitled  
15 to compensation as temporarily or totally disabled workers, only that  
16 spouse having the higher wages of the two shall be entitled to claim  
17 their child or children for compensation purposes under subsection (1)  
18 of this section.

19 ((+3)) (4) In case of permanent total disability, if the character  
20 of the injury is such as to render the worker so physically helpless as  
21 to require the hiring of the services of an attendant, the department  
22 shall make monthly payments to such attendant for such services as long  
23 as such requirement continues, but such payments shall not obtain or be  
24 operative while the worker is receiving care under or pursuant to the  
25 provisions of chapter 51.36 RCW and RCW 51.04.105.

26 ((+4)) (5) Should any further accident result in the permanent  
27 total disability of an injured worker, he or she shall receive the  
28 pension to which he or she would be entitled, notwithstanding the  
29 payment of a lump sum for his or her prior injury.

30 ((+5) ~~In no event shall~~) (6)(a)(i) For claims filed before July 1,  
31 2004, the monthly payments provided in this section may not exceed the  
32 applicable percentage of the average monthly wage in the state as  
33 computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%

1 June 30, 1995 115%

2 June 30, 1996 120%

3 (ii) For claims with date of injury or manifestation of  
4 occupational disease on or after July 1, 2004, but before June 30,  
5 2005, the monthly payments provided in this subsection may not exceed  
6 one hundred twenty percent of the average monthly wage in the state on  
7 June 30, 2004. For all claims with date of injury or manifestation of  
8 occupational disease on or after July 1, 2005, the monthly payments  
9 provided in this subsection may not exceed an amount determined by the  
10 department on June 30, 2004, and each June 30th thereafter, and  
11 applicable to claims with date of injury or manifestation of  
12 occupational disease occurring in the twelve-month period following the  
13 June 30th determination. The amount is determined by adjusting the  
14 June 30, 2004, amount for inflation on June 30, 2005. In subsequent  
15 years, the department shall adjust the amount applicable during the  
16 previous twelve-month period to account for inflation.

17 (b) The limitations under this subsection shall not apply to the  
18 payments provided for in subsection ~~((+3))~~ (4) of this section.

19 ~~((+6))~~ (7) In the case of new or reopened claims, if the  
20 supervisor of industrial insurance determines that, at the time of  
21 filing or reopening, the worker is voluntarily retired and is no longer  
22 attached to the work force, benefits shall not be paid under this  
23 section.

24 ~~((+7))~~ (8) The benefits provided by this section are subject to  
25 modification under RCW 51.32.067.

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

28 (1)(a) Notwithstanding any other provision of law, every surviving  
29 spouse and every permanently totally disabled worker or temporarily  
30 totally disabled worker, if such worker was unmarried at the time of  
31 the worker's injury or was then married but the marriage was later  
32 terminated by judicial action, receiving a pension or compensation for  
33 temporary total disability under this title pursuant to compensation  
34 schedules in effect prior to July 1, 1971, shall after July 1, 1975,  
35 and until July 1, 2004, be paid fifty percent of the average monthly  
36 wage in the state as computed under RCW 51.08.018 per month and an  
37 amount equal to five percent of such average monthly wage per month to

1 such totally disabled worker if married at the time of the worker's  
2 injury and the marriage was not later terminated by judicial action,  
3 and an additional two percent of such average monthly wage for each  
4 child of such totally disabled worker at the time of injury in the  
5 legal custody of such totally disabled worker or such surviving spouse  
6 up to a maximum of five such children. The monthly payments such  
7 surviving spouse or totally disabled worker are receiving pursuant to  
8 compensation schedules in effect prior to July 1, 1971 shall be  
9 deducted from the monthly payments above specified.

10 (b) Subject to subsection (2) of this section, where such a  
11 surviving spouse has remarried, or where any such child of such worker,  
12 whether living or deceased, is not in the legal custody of such worker  
13 or such surviving spouse there shall be paid for the benefit of and on  
14 account of each such child a sum equal to two percent of such average  
15 monthly wage up to a maximum of five such children in addition to any  
16 payments theretofore paid under compensation schedules in effect prior  
17 to July 1, 1971 for the benefit of and on account of each such child.  
18 In the case of any child or children of a deceased worker not leaving  
19 a surviving spouse or where the surviving spouse has later died, there  
20 shall be paid for the benefit of and on account of each such child a  
21 sum equal to two percent of such average monthly wage up to a maximum  
22 of five such children in addition to any payments theretofore paid  
23 under such schedules for the benefit of and on account of each such  
24 child.

25 (2) Beginning July 1, 2004, the monthly payments and the additional  
26 payments for the injured worker's spouse or children provided in this  
27 section may not exceed an amount determined by the department on June  
28 30, 2003, adjusted for inflation on June 30, 2004, and each June 30th  
29 thereafter, and applicable to payments made during the twelve-month  
30 period following the June 30th determination. The amount is determined  
31 by adjusting the amount applicable during the previous twelve-month  
32 period to account for inflation.

33 (3)(a) If the character of the injury or occupational disease is  
34 such as to render the worker so physically helpless as to require the  
35 hiring of the services of an attendant, the department shall make  
36 monthly payments to such attendant for such services as long as such  
37 requirement continues but such payments shall not obtain or be  
38 operative while the worker is receiving care under or pursuant to the

1 provisions of this title except for care granted at the discretion of  
2 the supervisor pursuant to RCW 51.36.010: PROVIDED, That such payments  
3 shall not be considered compensation nor shall they be subject to any  
4 limitation upon total compensation payments.

5 (b) No part of such additional payments shall be payable from the  
6 accident fund.

7 (4) The director shall pay monthly from the supplemental pension  
8 fund such an amount as will, when added to the compensation theretofore  
9 paid under compensation schedules in effect prior to July 1, 1971,  
10 equal the amounts hereinabove specified.

11 (5) In cases where money has been or shall be advanced to any such  
12 person from the pension reserve, the additional amount to be paid under  
13 this section shall be reduced by the amount of monthly pension which  
14 was or is predicated upon such advanced portion of the pension reserve.

15 **Sec. 7.** RCW 51.32.075 and 1988 c 161 s 7 are each amended to read  
16 as follows:

17 (1) Subject to subsection (2) of this section, the compensation or  
18 death benefits payable pursuant to the provisions of this chapter for  
19 temporary total disability, permanent total disability, or death  
20 arising out of injuries or occupational diseases shall be adjusted as  
21 follows:

22 ~~((1))~~(a) On July 1, 1982, there shall be an adjustment for those  
23 whose right to compensation was established on or after July 1, 1971,  
24 and before July 1, 1982. The adjustment shall be determined by  
25 multiplying the amount of compensation to which they are entitled by a  
26 fraction, the denominator of which shall be the average monthly wage in  
27 the state under RCW 51.08.018 for the fiscal year in which such  
28 person's right to compensation was established, and the numerator of  
29 which shall be the average monthly wage in the state under RCW  
30 51.08.018 on July 1, 1982.

31 ~~((2))~~ (b) In addition to the adjustment established by  
32 ~~((subsection (1)))~~ (a) of this ~~((section))~~ subsection, there shall be  
33 another adjustment on July 1, 1983, for those whose right to  
34 compensation was established on or after July 1, 1971, and before July  
35 1983, which shall be determined by multiplying the amount of  
36 compensation to which they are entitled by a fraction, the denominator  
37 of which shall be the average monthly wage in the state under RCW

1 51.08.018 for the fiscal year in which such person's right to  
2 compensation was established, and the numerator of which shall be the  
3 average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

4 ~~((+3))~~ (c) In addition to the adjustments under ~~((subsections (1)~~  
5 ~~and (2))~~ (a) and (b) of this ~~((section))~~ subsection, further  
6 adjustments shall be made beginning on July 1, 1984, and on each July  
7 1st thereafter for those whose right to compensation was established on  
8 or after July 1, 1971. The adjustment shall be determined by  
9 multiplying the amount of compensation to which they are entitled by a  
10 fraction, the denominator of which shall be the average monthly wage in  
11 the state under RCW 51.08.018 for the fiscal year in which such  
12 person's right to compensation was established, and the numerator of  
13 which shall be the average monthly wage in the state under RCW  
14 51.08.018 on July 1st of the year in which the adjustment is being  
15 made. The department or self-insurer shall adjust the resulting  
16 compensation rate to the nearest whole cent, not to exceed the average  
17 monthly wage in the state as computed under RCW 51.08.018.

18 (2) Beginning July 1, 2004, the annual adjustments provided for in  
19 this section shall be an amount determined by the department on June  
20 30, 2003, adjusted for inflation on June 30, 2004, and each June 30th  
21 thereafter, and applicable to payments made during the twelve-month  
22 period following the June 30th determination. The amount is determined  
23 by adjusting the amount applicable during the previous twelve-month  
24 period to account for inflation.

25 **Sec. 8.** RCW 51.32.080 and 1993 c 520 s 1 are each amended to read  
26 as follows:

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

30

LOSS BY AMPUTATION	
31	Of leg above the knee joint with short
32	thigh stump (3" or less below the
33	tuberosity of ischium)..... \$54,000.00
34	Of leg at or above knee joint with
35	functional stump..... 48,600.00



1	Of leg below knee joint . . . . .	43,200.00
2	Of leg at ankle (Syme) . . . . .	37,800.00
3	Of foot at mid-metatarsals . . . . .	18,900.00
4	Of great toe with resection of metatarsal	
5	bone . . . . .	11,340.00
6	Of great toe at metatarsophalangeal	
7	joint . . . . .	6,804.00
8	Of great toe at interphalangeal joint . . . . .	3,600.00
9	Of lesser toe (2nd to 5th) with resection of	
10	metatarsal bone . . . . .	4,140.00
11	Of lesser toe at metatarsophalangeal	
12	joint . . . . .	2,016.00
13	Of lesser toe at proximal interphalangeal	
14	joint . . . . .	1,494.00
15	Of lesser toe at distal interphalangeal	
16	joint . . . . .	378.00
17	Of arm at or above the deltoid insertion or	
18	by disarticulation at the shoulder . . . . .	54,000.00
19	Of arm at any point from below the deltoid	
20	insertion to below the elbow joint at	
21	the insertion of the biceps tendon . . . . .	51,300.00
22	Of arm at any point from below the elbow	
23	joint distal to the insertion of the	
24	biceps tendon to and including	
25	mid-metacarpal amputation of the	
26	hand . . . . .	48,600.00
27	Of all fingers except the thumb at	
28	metacarpophalangeal joints . . . . .	29,160.00
29	Of thumb at metacarpophalangeal joint or	
30	with resection of carpometacarpal	
31	bone . . . . .	19,440.00
32	Of thumb at interphalangeal joint . . . . .	9,720.00
33	Of index finger at metacarpophalangeal	
34	joint or with resection of metacarpal	
35	bone . . . . .	12,150.00
36	Of index finger at proximal	
37	interphalangeal joint . . . . .	9,720.00

1	Of index finger at distal interphalangeal	
2	joint .....	5,346.00
3	Of middle finger at metacarpophalangeal	
4	joint or with resection of metacarpal	
5	bone .....	9,720.00
6	Of middle finger at proximal	
7	interphalangeal joint .....	7,776.00
8	Of middle finger at distal interphalangeal	
9	joint .....	4,374.00
10	Of ring finger at metacarpophalangeal	
11	joint or with resection of metacarpal	
12	bone .....	4,860.00
13	Of ring finger at proximal interphalangeal	
14	joint .....	3,888.00
15	Of ring finger at distal interphalangeal	
16	joint .....	2,430.00
17	Of little finger at metacarpophalangeal	
18	joint or with resection of metacarpal	
19	bone .....	2,430.00
20	Of little finger at proximal interphalangeal	
21	joint .....	1,944.00
22	Of little finger at distal interphalangeal	
23	joint .....	972.00

MISCELLANEOUS

25	Loss of one eye by enucleation .....	21,600.00
26	Loss of central visual acuity in one eye ...	18,000.00
27	Complete loss of hearing in both ears ....	43,200.00
28	Complete loss of hearing in one ear .....	7,200.00

29 (b) Beginning on July 1, 1993, compensation under this subsection  
30 shall be computed as follows:

31 (i) Beginning on July 1, 1993, the compensation amounts for the  
32 specified disabilities listed in (a) of this subsection shall be  
33 increased by thirty-two percent; (~~and~~)

34 (ii) Beginning on July 1, 1994, and (~~each July 1 thereafter~~)  
35 ending on June 30, 2004, the compensation amounts for the specified  
36 disabilities listed in (a) of this subsection, as adjusted under (b)(i)  
37 of this subsection, shall be readjusted to reflect the percentage

1 change in the consumer price index, calculated as follows: The index  
2 for the calendar year preceding the year in which the July calculation  
3 is made, to be known as "calendar year A," is divided by the index for  
4 the calendar year preceding calendar year A, and the resulting ratio is  
5 multiplied by the compensation amount in effect on June 30 immediately  
6 preceding the July 1st on which the respective calculation is made.  
7 For the purposes of this subsection, "index" means the same as the  
8 definition in RCW 2.12.037(1); and

9 (iii) Beginning on July 1, 2004, and each July 1st thereafter, the  
10 compensation amounts of the specified disabilities listed in (a) of  
11 this subsection, as adjusted under (b)(ii) of this subsection, shall be  
12 adjusted to account for inflation.

13 (2) Compensation for amputation of a member or part thereof at a  
14 site other than those specified in subsection (1) of this section, and  
15 for loss of central visual acuity and loss of hearing other than  
16 complete, shall be in proportion to that which such other amputation or  
17 partial loss of visual acuity or hearing most closely resembles and  
18 approximates. Compensation shall be calculated based on the adjusted  
19 schedule of compensation in effect for the respective time period as  
20 prescribed in subsection (1) of this section.

21 (3)(a) Compensation for any other permanent partial disability not  
22 involving amputation shall be in the proportion which the extent of  
23 such other disability, called unspecified disability, shall bear to the  
24 disabilities specified in subsection (1) of this section, which most  
25 closely resembles and approximates in degree of disability such other  
26 disability, and compensation for any other unspecified permanent  
27 partial disability shall be in an amount as measured and compared to  
28 total bodily impairment. To reduce litigation and establish more  
29 certainty and uniformity in the rating of unspecified permanent partial  
30 disabilities, the department shall enact rules having the force of law  
31 classifying such disabilities in the proportion which the department  
32 shall determine such disabilities reasonably bear to total bodily  
33 impairment. In enacting such rules, the department shall give  
34 consideration to, but need not necessarily adopt, any nationally  
35 recognized medical standards or guides for determining various bodily  
36 impairments.

37 (b) Until July 1, 1993, for purposes of calculating monetary  
38 benefits under (a) of this subsection, the amount payable for total

1 bodily impairment shall be deemed to be ninety thousand dollars.  
2 Beginning on July 1, 1993, for purposes of calculating monetary  
3 benefits under (a) of this subsection, the amount payable for total  
4 bodily impairment shall be adjusted as follows:

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

8 (ii) Beginning on July 1, 1994, and (~~each July 1 thereafter~~)  
9 ending on June 30, 2004, the amount payable for total bodily impairment  
10 prescribed in (b)(i) of this subsection shall be adjusted as provided  
11 in subsection (1)(b)(ii) of this section; and

12 (iii) Beginning on July 1, 2004, and each July 1st thereafter, the  
13 amount payable for total bodily impairment prescribed in (b)(i) of this  
14 subsection shall be adjusted as provided in subsection (1)(b)(iii) of  
15 this section.

16 (c) Until July 1, 1993, the total compensation for all unspecified  
17 permanent partial disabilities resulting from the same injury shall not  
18 exceed the sum of ninety thousand dollars. Beginning on July 1, 1993,  
19 total compensation for all unspecified permanent partial disabilities  
20 resulting from the same injury shall not exceed a sum calculated as  
21 follows:

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

24 (ii) Beginning on July 1, 1994, and (~~each July 1 thereafter~~)  
25 ending on June 30, 2004, the sum prescribed in (b)(i) of this  
26 subsection shall be adjusted as provided in subsection (1)(b)(ii) of  
27 this section; and

28 (iii) Beginning on July 1, 2004, and each July 1st thereafter, the  
29 sum prescribed in (b)(i) of this subsection shall be adjusted as  
30 provided in subsection (1)(b)(iii) of this section.

31 (4) If permanent partial disability compensation is followed by  
32 permanent total disability compensation, any portion of the permanent  
33 partial disability compensation which exceeds the amount that would  
34 have been paid the injured worker if permanent total disability  
35 compensation had been paid in the first instance, shall be deducted  
36 from the pension reserve of such injured worker and his or her monthly  
37 compensation payments shall be reduced accordingly.

1 (5) Should a worker receive an injury to a member or part of his or  
2 her body already, from whatever cause, permanently partially disabled,  
3 resulting in the amputation thereof or in an aggravation or increase in  
4 such permanent partial disability but not resulting in the permanent  
5 total disability of such worker, his or her compensation for such  
6 partial disability shall be adjudged with regard to the previous  
7 disability of the injured member or part and the degree or extent of  
8 the aggravation or increase of disability thereof.

9 (6) When the compensation provided for in subsections (1) through  
10 (3) of this section exceeds three times the average monthly wage in the  
11 state as computed under the provisions of RCW 51.08.018, payment shall  
12 be made in monthly payments in accordance with the schedule of  
13 temporary total disability payments set forth in RCW 51.32.090 until  
14 such compensation is paid to the injured worker in full, except that  
15 the first monthly payment shall be in an amount equal to three times  
16 the average monthly wage in the state as computed under the provisions  
17 of RCW 51.08.018, and interest shall be paid at the rate of eight  
18 percent on the unpaid balance of such compensation commencing with the  
19 second monthly payment. However, upon application of the injured  
20 worker or survivor the monthly payment may be converted, in whole or in  
21 part, into a lump sum payment, in which event the monthly payment shall  
22 cease in whole or in part. Such conversion may be made only upon  
23 written application of the injured worker or survivor to the department  
24 and shall rest in the discretion of the department depending upon the  
25 merits of each individual application. Upon the death of a worker all  
26 unpaid installments accrued shall be paid according to the payment  
27 schedule established prior to the death of the worker to the widow or  
28 widower, or if there is no widow or widower surviving, to the dependent  
29 children of such claimant, and if there are no such dependent children,  
30 then to such other dependents as defined by this title.

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

33 **Sec. 9.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and 1993  
34 c 271 s 1 are each reenacted and amended to read as follows:

35 (1) When the total disability is only temporary, the schedule of  
36 payments contained in RCW 51.32.060 (1) (~~and~~) or (2) and (3) shall  
37 apply, so long as the total disability continues.

1 (2) Any compensation payable under this section for children not in  
2 the custody of the injured worker as of the date of injury shall be  
3 payable only to such person as actually is providing the support for  
4 such child or children pursuant to the order of a court of record  
5 providing for support of such child or children. This subsection does  
6 not apply to claims filed on or after July 1, 2004.

7 (3)(a) As soon as recovery is so complete that the worker is  
8 capable of gainful employment on a reasonably continuous basis and the  
9 present earning power of the worker, at any kind of work, is restored  
10 to that existing at the time of the occurrence of the injury, the  
11 payments shall cease. If and so long as the present earning power is  
12 only partially restored and the worker is working, the payments shall:

13 (i) For claims for injuries that occurred before May 7, 1993,  
14 continue in the proportion which the new earning power shall bear to  
15 the old; or

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

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

28 (c) The injured worker remains eligible for the benefits provided  
29 in this subsection only until the injured worker's condition is  
30 medically fixed and stable.

31 (4)(a) Whenever the employer of injury requests that a worker who  
32 is entitled to temporary total disability under this chapter be  
33 certified by a physician as able to perform available work other than  
34 his or her usual work, the employer shall furnish to the physician,  
35 with a copy to the worker, a statement describing the work available  
36 with the employer of injury in terms that will enable the physician to  
37 relate the physical activities of the job to the worker's disability.  
38 The physician shall then determine whether the worker is physically

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

13 (b) Once the worker returns to work under the terms of this  
14 subsection (4), he or she shall not be assigned by the employer to work  
15 other than the available work described without the worker's written  
16 consent, or without prior review and approval by the worker's  
17 physician.

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

25 (d) In the event of any dispute as to the worker's ability to  
26 perform the available work offered by the employer, the department  
27 shall make the final determination.

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

35 (6) Should a worker suffer a temporary total disability and should  
36 his or her employer at the time of the injury continue to pay him or  
37 her the wages which he or she was earning at the time of such injury,

1 such injured worker shall not receive any payment provided in  
2 subsection (1) or (2) of this section during the period his or her  
3 employer shall so pay such wages.

4 (7) (~~In no event shall~~) (a) For claims with date of injury or  
5 manifestation of occupational disease before July 1, 2004, the monthly  
6 payments provided in this section may not exceed the applicable  
7 percentage of the average monthly wage in the state as computed under  
8 the provisions of RCW 51.08.018 as follows:

9	AFTER	PERCENTAGE
10	June 30, 1993	105%
11	June 30, 1994	110%
12	June 30, 1995	115%
13	June 30, 1996	120%

14 (b) For claims with date of injury or manifestation of occupational  
15 disease on or after July 1, 2004, but before June 30, 2005, the monthly  
16 payments provided in this subsection may not exceed one hundred twenty  
17 percent of the average monthly wage in the state on June 30, 2004. For  
18 all claims with date of injury or manifestation of occupational disease  
19 on or after July 1, 2005, the monthly payments provided in this  
20 subsection may not exceed an amount determined by the department on  
21 June 30, 2004, and each June 30th thereafter, and applicable to claims  
22 with date of injury or manifestation of occupational disease occurring  
23 in the twelve-month period following the June 30th determination. The  
24 amount is determined by adjusting the June 30, 2004, amount for  
25 inflation on June 30, 2005. In subsequent years, the department shall  
26 adjust the amount applicable during the previous twelve-month period to  
27 account for inflation.

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

31 **Sec. 10.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read  
32 as follows:

33 (1) One of the primary purposes of this title is to enable the  
34 injured worker to become employable at gainful employment. To this  
35 end, the department or self-insurers shall utilize the services of



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

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

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

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

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

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

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

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

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

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

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

34 (3)(a) Except as provided in (b) of this subsection, costs for  
35 vocational rehabilitation benefits allowed by the supervisor or  
36 supervisor's designee under subsection (1) of this section may include  
37 the cost of books, tuition, fees, supplies, equipment, transportation,  
38 child or dependent care, and other necessary expenses for any such

1 worker in an amount not to exceed three thousand dollars in any fifty-  
2 two week period (~~((except as authorized by RCW 51.60.060))~~), and the cost  
3 of continuing the temporary total disability compensation under RCW  
4 51.32.090 while the worker is actively and successfully undergoing a  
5 formal program of vocational rehabilitation.

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

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

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

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

32 (4) In addition to the vocational rehabilitation expenditures  
33 provided for under subsection (3) of this section, an additional five  
34 thousand dollars may, upon authorization of the supervisor or the  
35 supervisor's designee, be expended for: (a) Accommodations for an  
36 injured worker that are medically necessary for the worker to  
37 participate in an approved retraining plan; and (b) accommodations  
38 necessary to perform the essential functions of an occupation in which

1 an injured worker is seeking employment, consistent with the retraining  
2 plan or the recommendations of a vocational evaluation. The injured  
3 worker's attending physician must verify the necessity of the  
4 modifications or accommodations. The total expenditures authorized in  
5 this subsection and the expenditures authorized under RCW 51.32.250  
6 shall not exceed five thousand dollars.

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

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

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

24 (8) Except as otherwise provided in this section, the benefits  
25 provided for in this section are available to any otherwise eligible  
26 worker regardless of the date of industrial injury. However, claims  
27 shall not be reopened solely for vocational rehabilitation purposes.

28 **Sec. 11.** RCW 51.36.020 and 1999 c 395 s 1 are each amended to read  
29 as follows:

30 (1) When the injury to any worker is so serious as to require his  
31 or her being taken from the place of injury to a place of treatment,  
32 his or her employer shall, at the expense of the medical aid fund, or  
33 self-insurer, as the case may be, furnish transportation to the nearest  
34 place of proper treatment.

35 (2) Every worker whose injury results in the loss of one or more  
36 limbs or eyes shall be provided with proper artificial substitutes and  
37 every worker, who suffers an injury to an eye producing an error of

1 refraction, shall be once provided proper and properly equipped lenses  
2 to correct such error of refraction and his or her disability rating  
3 shall be based upon the loss of sight before correction.

4 (3) Every worker whose accident results in damage to or destruction  
5 of an artificial limb, eye, or tooth, shall have same repaired or  
6 replaced.

7 (4) Every worker whose hearing aid or eyeglasses or lenses are  
8 damaged, destroyed, or lost as a result of an industrial accident shall  
9 have the same restored or replaced. The department or self-insurer  
10 shall be liable only for the cost of restoring damaged hearing aids or  
11 eyeglasses to their condition at the time of the accident.

12 (5) All mechanical appliances necessary in the treatment of an  
13 injured worker, such as braces, belts, casts, and crutches, shall be  
14 provided and all mechanical appliances required as permanent equipment  
15 after treatment has been completed shall continue to be provided or  
16 replaced without regard to the date of injury or date treatment was  
17 completed, notwithstanding any other provision of law.

18 (6) A worker, whose injury is of such short duration as to bring  
19 him or her within the time limit provisions of RCW 51.32.090, shall  
20 nevertheless receive during the omitted period medical, surgical, and  
21 hospital care and service and transportation under the provisions of  
22 this chapter.

23 (7) Whenever in the sole discretion of the supervisor it is  
24 reasonable and necessary to provide residence modifications necessary  
25 to meet the needs and requirements of the worker who has sustained  
26 catastrophic injury, the department or self-insurer may be ordered to  
27 pay an amount determined as follows:

28 (a) For claims with date of injury or manifestation of occupational  
29 disease before July 1, 2004, the amount may not ((to)) exceed the  
30 state's average annual wage for one year as determined under RCW  
31 50.04.355(~~, as now existing or hereafter amended,~~) toward the cost of  
32 such modifications or construction. ((Such))

33 (b) For claims with date of injury or manifestation of occupational  
34 disease on or after July 1, 2004, but before June 30, 2005, the amount  
35 provided for in this subsection may not exceed the average annual wage  
36 in the state on June 30, 2004. For all claims with date of injury or  
37 manifestation of occupational disease on or after July 1, 2005, the  
38 amount provided in this subsection may not exceed an amount determined

1 by the department on June 30, 2004, and each June 30th thereafter, and  
2 applicable to claims with date of injury or manifestation of  
3 occupational disease occurring in the twelve-month period following the  
4 June 30th determination. The amount is determined by adjusting the  
5 June 30, 2004, amount for inflation on June 30, 2005. In subsequent  
6 years, the department shall adjust the amount applicable during the  
7 previous twelve-month period to account for inflation. Payment shall  
8 ~~((only))~~ be made under this subsection only for the construction or  
9 modification of a residence in which the injured worker resides. Only  
10 one residence of any worker may be modified or constructed under this  
11 subsection, although the supervisor may order more than one payment for  
12 any one home, up to the maximum amount permitted by this section.

13 (8)(a) Whenever in the sole discretion of the supervisor it is  
14 reasonable and necessary to modify a motor vehicle owned by a worker  
15 who has become an amputee or becomes paralyzed because of an industrial  
16 injury, the supervisor may pay or order a self-insurer to pay as  
17 follows:

18 (i) For claims with date of injury or manifestation of occupational  
19 disease before July 1, 2004, up to fifty percent of the state's average  
20 annual wage for one year, as determined under RCW 50.04.355(~~, to be~~  
21 paid by the department or self-insurer)) toward the costs thereof.

22 (ii) For claims with date of injury or manifestation of  
23 occupational disease on or after July 1, 2004, but before June 30,  
24 2005, the amount will be up to fifty percent of the state's average  
25 annual wage as of June 30, 2004, adjusted for inflation. For all  
26 claims with date of injury or manifestation of occupational disease on  
27 or after July 1, 2005, the amount provided in this subsection may not  
28 exceed an amount determined by the department on June 30, 2004, and  
29 each June 30th thereafter, and applicable to claims with date of injury  
30 or manifestation of occupational disease occurring in the twelve-month  
31 period following the June 30th determination. The amount is determined  
32 by adjusting the June 30, 2004, amount for inflation on June 30, 2005.  
33 In subsequent years, the department shall adjust the amount applicable  
34 during the previous twelve-month period to account for inflation.

35 (b) In the sole discretion of the supervisor after his or her  
36 review, the amount paid under this subsection may be increased by no  
37 more than four thousand dollars by written order of the supervisor.

1           (9) The benefits provided by subsections (7) and (8) of this  
2 section are available to any otherwise eligible worker regardless of  
3 the date of industrial injury.

4           NEW SECTION. **Sec. 12.** A new section is added to chapter 51.08 RCW  
5 to read as follows:

6           The department may adopt rules necessary to implement section 2 of  
7 this act.

8           NEW SECTION. **Sec. 13.** A new section is added to chapter 51.32 RCW  
9 to read as follows:

10           The department may adopt rules necessary to implement section 9 of  
11 this act.

12           NEW SECTION. **Sec. 14.** This act takes effect July 1, 2004.

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