

**SSB 5676 - H AMD 637**

By Representative Condotta

**FAILED 4/10/2007**

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and  
4 1993 c 271 s 1 are each reenacted and amended to read as follows:

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

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

13 (3)(a) As soon as recovery is so complete that the present  
14 earning power of the worker, at any kind of work, is restored to  
15 that existing at the time of the occurrence of the injury, the  
16 payments shall cease. If and so long as the present earning power  
17 is only partially restored, the payments shall:

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

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

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

3 (c) The prior closure of the claim or the receipt of permanent  
4 partial disability benefits shall not affect the rate at which loss  
5 of earning power benefits are calculated upon reopening the claim.

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

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

33 (c) If the worker returns to work under this subsection (4),  
34 any employee health and welfare benefits that the worker was  
35 receiving at the time of injury shall continue or be resumed at the  
36 level provided at the time of injury. Such benefits shall not be  
37 continued or resumed if to do so is inconsistent with the terms of  
38 the benefit program, or with the terms of the collective bargaining  
39 agreement currently in force.

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

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

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

18 (7) In no event shall the monthly payments provided in this  
19 section exceed the applicable percentage of the average monthly  
20 wage in the state as computed under the provisions of RCW 51.08.018  
21 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

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

25 NEW SECTION. **Sec. 2.** (1) The workers' compensation advisory  
26 committee created under RCW 51.04.110 shall conduct a study of  
27 policies created by the department of labor and industries for  
28 industrial insurance claims in which an employer continues to pay  
29 a worker wages which he or she was earning at the time of injury in  
30 accordance with RCW 51.32.090(6), including identifying the number  
31 of claims in which holiday pay, vacation pay, sick leave, or other

1 similar benefits were deemed payments by the employer for the  
2 purposes of RCW 51.32.090(6).

3 (2) The workers' compensation advisory committee created under  
4 RCW 51.04.110 shall report the results of the study to the house of  
5 representatives commerce and labor committee and the senate labor,  
6 commerce, research, and development committee by December 1, 2007.  
7 The report must include recommendations on whether further  
8 legislative action is necessary."

9 Correct the title.

**EFFECT:** Strikes the part of the bill related to Kept-on-Salary.  
Creates a requirement that the Workers' Compensation Advisory  
Committee conduct a study of the Department's Kept-on-Salary  
policies, including identifying the number of claims in which  
holiday pay, vacation pay, sick leave, or other similar benefits  
were deemed payments by the employer for the purposes of Kept-  
on-Salary.

Requires the Workers' Compensation Advisory Committee to report  
to the Legislature by December 1, 2007, including  
recommendations on whether further legislative action is  
necessary.