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HOUSE BILL 1910

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State of Washington

62nd Legislature

2011 Regular Session

By Representative Sells

Read first time 02/09/11. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to industrial insurance long-term disability; but  
2 only with respect to permanent partial disability awards, limiting  
3 pension awards following a permanent partial disability award,  
4 terminating pensions when the workplace residuals are not the  
5 predominant factor in a workers' inability to work or be retrained,  
6 creating the stay-at-work program, allowing wages for persons receiving  
7 long-term disability, and creating the safety and health projects  
8 program; amending RCW 51.04.110, 51.32.060, 51.32.067, 51.32.080, and  
9 51.32.160; reenacting and amending RCW 51.32.090; adding a new section  
10 to chapter 49.17 RCW; adding a new section to chapter 51.32 RCW;  
11 providing an effective date; providing an expiration date; and  
12 declaring an emergency.

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

14 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.17 RCW  
15 to read as follows:

16 (1) The director is authorized to provide funding from the medical  
17 aid fund established under RCW 51.44.020, by grant or contract, for  
18 safety and health investment projects for workplaces insured for  
19 workers' compensation through the department's state fund. This shall

1 include projects to: Prevent workplace injuries, illnesses, and  
2 fatalities; create early return-to-work programs; and to reduce long-  
3 term disability through the cooperation of employers and employees or  
4 their representatives.

5 (2) Awards may be granted to organizations such as, but not limited  
6 to, trade associations, business associations, employers, employees,  
7 labor unions, employee organizations, joint labor and management  
8 groups, and educational institutions in collaboration with state fund  
9 employer and employee representatives.

10 (3) Awards may not be used for lobbying or political activities;  
11 supporting, opposing, or developing legislative or regulatory  
12 initiatives; any activity not designed to reduce workplace injuries,  
13 illnesses, or fatalities; or reimbursing employers for the normal costs  
14 of complying with safety and health rules.

15 (4) Awards should foster the development and implementation of  
16 innovative and effective return-to-work programs that lead to improved  
17 outcomes for injured workers. Funds for awards shall be distributed as  
18 follows: Twenty-five percent for projects designed to develop and  
19 implement innovative and effective return-to-work programs for injured  
20 workers; twenty-five percent for projects that specifically address the  
21 needs of small businesses; and fifty percent for projects that foster  
22 workplace injury and illness prevention by addressing priorities  
23 identified by the department in cooperation with the Washington  
24 industrial safety and health act advisory committee and the workers'  
25 compensation advisory committee.

26 **Sec. 2.** RCW 51.04.110 and 2010 c 8 s 14001 are each amended to  
27 read as follows:

28 The director shall appoint a workers' compensation advisory  
29 committee composed of ten members: Three representing subject workers,  
30 three representing subject employers, one representing self-insurers,  
31 one representing workers of self-insurers, and two ex officio members,  
32 without a vote, one of whom shall be the chair of the board of  
33 industrial appeals and the other the representative of the department.  
34 The member representing the department shall be chair. This committee  
35 shall conduct a continuing study of any aspects of workers'  
36 compensation as the committee shall determine require their  
37 consideration and shall assist in the identification of priorities for

1 safety and health investment projects as provided in chapter 49.17 RCW.  
2 The committee shall report its findings to the department or the board  
3 of industrial insurance appeals for such action as deemed appropriate.  
4 The members of the committee shall be appointed for a term of three  
5 years commencing on July 1, 1971 and the terms of the members  
6 representing the workers and employers shall be staggered so that the  
7 director shall designate one member from each such group initially  
8 appointed whose term shall expire on June 30, 1972 and one member from  
9 each such group whose term shall expire on June 30, 1973. The members  
10 shall serve without compensation, but shall be entitled to travel  
11 expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or  
12 hereafter amended. The committee may hire such experts, if any, as it  
13 shall require to discharge its duties, and may utilize such personnel  
14 and facilities of the department and board of industrial insurance  
15 appeals as it shall need without charge. All expenses of this  
16 committee shall be paid by the department.

17 **Sec. 3.** RCW 51.32.060 and 2007 c 284 s 2 are each amended to read  
18 as follows:

19 (1) When the supervisor of industrial insurance shall determine  
20 that permanent total disability results from the injury, the worker  
21 shall receive monthly during the period of such disability:

22 (a) If married at the time of injury, sixty-five percent of his or  
23 her wages.

24 (b) If married with one child at the time of injury, sixty-seven  
25 percent of his or her wages.

26 (c) If married with two children at the time of injury, sixty-nine  
27 percent of his or her wages.

28 (d) If married with three children at the time of injury,  
29 seventy-one percent of his or her wages.

30 (e) If married with four children at the time of injury,  
31 seventy-three percent of his or her wages.

32 (f) If married with five or more children at the time of injury,  
33 seventy-five percent of his or her wages.

34 (g) If unmarried at the time of the injury, sixty percent of his or  
35 her wages.

36 (h) If unmarried with one child at the time of injury, sixty-two  
37 percent of his or her wages.

1 (i) If unmarried with two children at the time of injury,  
2 sixty-four percent of his or her wages.

3 (j) If unmarried with three children at the time of injury,  
4 sixty-six percent of his or her wages.

5 (k) If unmarried with four children at the time of injury,  
6 sixty-eight percent of his or her wages.

7 (l) If unmarried with five or more children at the time of injury,  
8 seventy percent of his or her wages.

9 (2) For any period of time where both husband and wife are entitled  
10 to compensation as temporarily or totally disabled workers, only that  
11 spouse having the higher wages of the two shall be entitled to claim  
12 their child or children for compensation purposes.

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

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

24 (5)(a) In no event shall the monthly payments provided in this  
25 section:

26 ((+a)) (i) Exceed the applicable percentage of the average monthly  
27 wage in the state as computed under the provisions of RCW 51.08.018 as  
28 follows:

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

34 ((+b)) (ii) For dates of injury or disease manifestation after  
35 July 1, 2008, be less than fifteen percent of the average monthly wage

1 in the state as computed under RCW 51.08.018 plus an additional ten  
2 dollars per month if a worker is married and an additional ten dollars  
3 per month for each child of the worker up to a maximum of five  
4 children. However, if the monthly payment computed under this  
5 subsection (5)(~~(b)~~) (a)(ii) is greater than one hundred percent of  
6 the wages of the worker as determined under RCW 51.08.178, the monthly  
7 payment due to the worker shall be equal to the greater of the monthly  
8 wages of the worker or the minimum benefit set forth in this section on  
9 June 30, 2008.

10 (b) For a worker who has been awarded a permanent total disability  
11 pension, but retains a limited ability to work, the department may not  
12 reduce the worker's pension payments if the wages or money the worker  
13 receives from working equal ten percent or less of the average monthly  
14 wage in the state as computed under RCW 51.08.018. If the worker's  
15 wages are more than ten percent of the average monthly wage in the  
16 state, the department shall reduce the worker's monthly pension  
17 payments by one dollar for every two dollars earned in excess of this  
18 amount. Workers must report every year to the department any earnings,  
19 wages, or employment on a form prescribed by the department. The  
20 department may not reduce benefits for wages when a worker's total  
21 permanent disability pension is due to the loss of both legs, or arms,  
22 or one leg and one arm, total loss of eyesight, or paralysis.

23 (c) The limitations under this subsection (5) shall not apply to  
24 the payments provided for in subsection (3) of this section.

25 (6) In the case of new or reopened claims, if the supervisor of  
26 industrial insurance determines that, at the time of filing or  
27 reopening, the worker is voluntarily retired and is no longer attached  
28 to the workforce, benefits shall not be paid under this section.

29 (7) The benefits provided by this section are subject to  
30 modification under RCW 51.32.067.

31 (8)(a) When the medical residuals of the industrial injury or  
32 occupational disease are not the predominant factor causing the  
33 worker's inability to perform employment or be retrained, compensation  
34 must continue until the worker reaches full federal retirement age as  
35 defined by 42 U.S.C. Sec. 416(1).

36 (b) The medical residuals of the industrial injury or occupational  
37 disease are the predominant factor when, considering the worker's

1 entire circumstances, the worker would be able to perform employment or  
2 be retrained but for the medical residuals.

3 (9) The department shall develop rules as necessary to implement  
4 this section.

5 (10) The provisions of subsection (8) of this section apply to all  
6 determinations of total permanent disability made by the department on  
7 or after July 1, 2011.

8 **Sec. 4.** RCW 51.32.067 and 2006 c 154 s 1 are each amended to read  
9 as follows:

10 (1) After a worker elects one of the options in (a), (b), or (c) of  
11 this subsection, that option shall apply only if the worker dies during  
12 a period of permanent total disability from a cause unrelated to the  
13 injury, leaving a surviving spouse, child, children, or other  
14 dependent. If, after making an election under this subsection, a  
15 worker dies from a cause related to the injury during a period of  
16 permanent total disability, his or her beneficiaries shall receive  
17 benefits under RCW 51.32.050 (2) through (5).

18 (a) **Option I.** An injured worker selecting this option shall  
19 receive the benefits provided by RCW 51.32.060, with no benefits being  
20 paid to the worker's surviving spouse, children, or others.

21 (b) **Option II.** An injured worker selecting this option shall  
22 receive an actuarially reduced benefit which upon death shall be  
23 ~~((continued throughout the life of and))~~ paid to the surviving spouse,  
24 child, or other dependent as the worker has nominated by written  
25 designation duly executed and filed with the department. The benefit  
26 is payable to the designated beneficiary through their life or through  
27 the period the injured worker would have been entitled to permanent  
28 total disability benefits, whichever ends first.

29 (c) **Option III.** An injured worker selecting this option shall  
30 receive an actuarially reduced benefit and, upon death, one-half of the  
31 reduced benefit shall be ~~((continued throughout the life of and))~~ paid  
32 to the surviving spouse, child, or other dependent as the worker has  
33 nominated by written designation duly executed and filed with the  
34 department. The benefit is payable to the designated beneficiary  
35 through their life or through the period the injured worker would have  
36 been entitled to permanent total disability benefits, whichever ends  
37 first.

1 (2) The worker shall make the election in writing and the worker's  
2 spouse, if any, shall consent in writing as a prerequisite to the  
3 election of Option I.

4 (3) If the worker's nominated beneficiary is the worker's spouse,  
5 and the worker and spouse enter into a dissolution of marriage after  
6 the nomination has been made, the worker may apply to receive benefits  
7 as calculated under Option I if the period of the worker's entitlement  
8 to permanent total disability benefits has not ended. This change is  
9 effective the date of the decree of dissolution of marriage, but no  
10 more than one year prior to the date application for the change is  
11 received in the department, provided the worker submits legally  
12 certified documentation of the decree of dissolution of marriage.

13 (4) If the worker's nominated beneficiary dies, the worker may  
14 apply to receive benefits as calculated under Option I if the period of  
15 the worker's entitlement to permanent total disability benefits has not  
16 ended. This change is effective the date of death, but no more than  
17 one year prior to the date application for the change is received in  
18 the department, provided the worker submits a certified copy of the  
19 death certificate.

20 (5) The change in benefits authorized by subsections (3) and (4) of  
21 this section is a one-time adjustment and will be permanent for the  
22 ~~((life of the worker))~~ period of the worker's entitlement to permanent  
23 total disability benefits.

24 (6) The department shall adopt such rules as may be necessary to  
25 implement this section.

26 **Sec. 5.** RCW 51.32.080 and 2007 c 172 s 1 are each amended to read  
27 as follows:

28 (1)(a) Beginning with injuries on or after July 1, 2011, for the  
29 permanent partial disabilities here specifically described, the injured  
30 worker shall receive compensation as follows:

31 LOSS BY AMPUTATION

32 Of leg above the knee joint with short thigh \$140,533.00  
33 stump (3" or less below the tuberosity  
34 of ischium).....

1	<u>Of leg at or above knee joint with functional</u>	<u>\$126,480.00</u>
2	<u>stump.....</u>	
3	<u>Of leg below knee joint.....</u>	<u>\$112,427.00</u>
4	<u>Of leg at ankle (Syme).....</u>	<u>\$98,373.00</u>
5	<u>Of foot at mid-metatarsals.....</u>	<u>\$49,187.00</u>
6	<u>Of great toe with resection of metatarsal</u>	<u>\$29,512.00</u>
7	<u>bone.....</u>	
8	<u>Of great toe at metatarsophalangeal</u>	<u>\$17,707.00</u>
9	<u>joint.....</u>	
10	<u>Of great toe at interphalangeal joint.....</u>	<u>\$9,369.00</u>
11	<u>Of lesser toe (2nd to 5th) with resection of</u>	<u>\$10,774.00</u>
12	<u>metatarsal bone.....</u>	
13	<u>Of lesser toe at metatarsophalangeal joint..</u>	<u>\$5,247.00</u>
14	<u>Of lesser toe at proximal interphalangeal</u>	<u>\$3,888.00</u>
15	<u>joint.....</u>	
16	<u>Of lesser toe at distal interphalangeal</u>	<u>\$984.00</u>
17	<u>joint.....</u>	
18	<u>Of arm at or above the deltoid insertion or</u>	<u>\$140,533.00</u>
19	<u>by disarticulation at the shoulder.....</u>	
20	<u>Of arm at any point from below the deltoid</u>	<u>\$133,507.00</u>
21	<u>insertion to below the elbow joint at the</u>	
22	<u>insertion of the biceps tendon.....</u>	
23	<u>Of arm at any point from below the elbow</u>	<u>\$126,480.00</u>
24	<u>joint distal to the insertion of the biceps</u>	
25	<u>tendon to and including mid-metacarpal</u>	
26	<u>amputation of the hand.....</u>	
27	<u>Of all fingers except the thumb at</u>	<u>\$75,888.00</u>
28	<u>metacarpophalangeal joints.....</u>	
29	<u>Of thumb at metacarpophalangeal joint or</u>	<u>\$50,592.00</u>
30	<u>with resection of carpometacarpal bone..</u>	
31	<u>Of thumb at interphalangeal joint.....</u>	<u>\$25,296.00</u>
32	<u>Of index finger at metacarpophalangeal joint</u>	<u>\$31,620.00</u>
33	<u>or with resection of metacarpal bone.....</u>	
34	<u>Of index finger at proximal interphalangeal</u>	<u>\$25,296.00</u>
35	<u>joint.....</u>	
36	<u>Of index finger at distal interphalangeal</u>	<u>\$13,913.00</u>
37	<u>joint.....</u>	



1	<u>Of middle finger at metacarpophalangeal</u>	<u>\$25,296.00</u>
2	<u>joint or with resection of metacarpal</u>	
3	<u>bone.....</u>	
4	<u>Of middle finger at proximal interphalangeal</u>	<u>\$20,237.00</u>
5	<u>joint.....</u>	
6	<u>Of middle finger at distal interphalangeal</u>	<u>\$11,383.00</u>
7	<u>joint.....</u>	
8	<u>Of ring finger at metacarpophalangeal joint</u>	<u>\$12,648.00</u>
9	<u>or with resection of metacarpal bone . . . .</u>	
10	<u>Of ring finger at proximal interphalangeal</u>	<u>\$10,118.00</u>
11	<u>joint.....</u>	
12	<u>Of ring finger at distal interphalangeal</u>	<u>\$6,324.00</u>
13	<u>joint.....</u>	
14	<u>Of little finger at metacarpophalangeal joint</u>	<u>\$6,324.00</u>
15	<u>or with resection of metacarpal</u>	
16	<u>bone.....</u>	
17	<u>Of little finger at proximal interphalangeal</u>	<u>\$5,059.00</u>
18	<u>joint.....</u>	
19	<u>Of little finger at distal interphalangeal</u>	<u>\$2,530.00</u>
20	<u>joint.....</u>	

MISCELLANEOUS

22	<u>Loss of one eye by enucleation.....</u>	<u>\$56,213.00</u>
23	<u>Loss of central visual acuity in one eye.....</u>	<u>\$46,844.00</u>
24	<u>Complete loss of hearing in both ears.....</u>	<u>\$86,482.00</u>
25	<u>Complete loss of hearing in one ear.....</u>	<u>\$14,414.00</u>

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

LOSS BY AMPUTATION

31	Of leg above the knee joint with short	\$54,000.00
32	thigh stump (3" or less below the	
33	tuberosity of ischium).....	

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

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

MISCELLANEOUS

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

31        ~~((b))~~ (c) Beginning on July 1, 1993, compensation under this  
32 subsection shall be computed as follows:

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

1 (ii) Beginning on July 1, 1994, and each July 1st thereafter until  
2 July 1, 2011, the compensation amounts for the specified disabilities  
3 listed in ~~((a))~~ (b) of this subsection, as adjusted under ~~((b))~~  
4 (c)(i) of this subsection, shall be readjusted to reflect the  
5 percentage change in the consumer price index, calculated as follows:  
6 The index for the calendar year preceding the year in which the July  
7 calculation is made, to be known as "calendar year A," is divided by  
8 the index for the calendar year preceding calendar year A, and the  
9 resulting ratio is multiplied by the compensation amount in effect on  
10 June 30 immediately preceding the July 1st on which the respective  
11 calculation is made. For the purposes of this subsection, "index"  
12 means the same as the definition in RCW 2.12.037(1); and

13 (iii) Beginning with injuries on July 1, 2012, and for those  
14 occurring each July 1st thereafter, the compensation amounts for the  
15 specified disabilities listed in (a) of this subsection shall be  
16 readjusted to reflect the percentage change in the consumer price  
17 index, calculated under the formula provided in (c)(ii) of this  
18 subsection.

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

27 (3)(a) Compensation for any other permanent partial disability not  
28 involving amputation shall be in the proportion which the extent of  
29 such other disability, called unspecified disability, shall bear to the  
30 disabilities specified in subsection (1) of this section, which most  
31 closely resembles and approximates in degree of disability such other  
32 disability, and compensation for any other unspecified permanent  
33 partial disability shall be in an amount as measured and compared to  
34 total bodily impairment. To reduce litigation and establish more  
35 certainty and uniformity in the rating of unspecified permanent partial  
36 disabilities, the department shall enact rules having the force of law  
37 classifying such disabilities in the proportion which the department  
38 shall determine such disabilities reasonably bear to total bodily

1 impairment. In enacting such rules, the department shall give  
2 consideration to, but need not necessarily adopt, any nationally  
3 recognized medical standards or guides for determining various bodily  
4 impairments.

5 (b) Beginning with injuries on July 1, 2011, for purposes of  
6 calculating monetary benefits under (a) of this subsection, the amount  
7 payable for total bodily impairment shall be deemed to be two hundred  
8 thirty-four thousand two hundred twenty-two dollars. Beginning with  
9 injuries on July 1, 2012, for purposes of calculating monetary benefits  
10 under (a) of this subsection, the amount payable for total bodily  
11 impairment shall be adjusted as provided in subsection (1)(c)(iii) of  
12 this section.

13 (c) Until July 1, 1993, for purposes of calculating monetary  
14 benefits under (a) of this subsection, the amount payable for total  
15 bodily impairment shall be deemed to be ninety thousand dollars.  
16 Beginning on July 1, 1993, for purposes of calculating monetary  
17 benefits under (a) of this subsection, the amount payable for total  
18 bodily impairment shall be adjusted as follows:

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

22 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the  
23 amount payable for total bodily impairment prescribed in ~~((b))~~ (c)(i)  
24 of this subsection shall be adjusted as provided in subsection  
25 ~~(1)((b))~~ (c)(ii) of this section.

26 ~~((e))~~ (d) Until July 1, 1993, the total compensation for all  
27 unspecified permanent partial disabilities resulting from the same  
28 injury shall not exceed the sum of ninety thousand dollars. Beginning  
29 on July 1, 1993, total compensation for all unspecified permanent  
30 partial disabilities resulting from the same injury shall not exceed a  
31 sum calculated as follows:

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

34 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum  
35 prescribed in ~~((b))~~ (c)(i) of this subsection shall be adjusted as  
36 provided in subsection ~~(1)((b))~~ (c)(ii) of this section.

37 (4) If permanent partial disability compensation is followed by  
38 permanent total disability compensation, ~~((any portion of the permanent~~

1 ~~partial disability compensation which exceeds the amount that would~~  
2 ~~have been paid the injured worker if permanent total disability~~  
3 ~~compensation had been paid in the first instance)) all permanent~~  
4 ~~partial disability compensation paid to the worker under the claim or~~  
5 ~~claims for which total permanent disability compensation is awarded~~  
6 shall be, at the choosing of the injured worker, either: (a) Deducted  
7 from the worker's monthly pension benefits (~~(in an amount not to exceed~~  
8 ~~twenty five percent of the monthly amount due from the department or~~  
9 ~~self-insurer or one-sixth of the total overpayment, whichever is less))~~  
10 ~~until the total award or awards paid are recovered;~~ or (b) deducted  
11 from the pension reserve of such injured worker and his or her monthly  
12 compensation payments shall be reduced accordingly. Any interest paid  
13 on any permanent partial disability compensation may not be deducted  
14 from the pension benefits or pension reserve. The provisions of this  
15 subsection apply to all permanent total disability determinations  
16 issued on or after July 1, 2011.

17 (5) Should a worker receive an injury to a member or part of his or  
18 her body already, from whatever cause, permanently partially disabled,  
19 resulting in the amputation thereof or in an aggravation or increase in  
20 such permanent partial disability but not resulting in the permanent  
21 total disability of such worker, his or her compensation for such  
22 partial disability shall be adjudged with regard to the previous  
23 disability of the injured member or part and the degree or extent of  
24 the aggravation or increase of disability thereof.

25 (6) When the compensation provided for in subsections (1) through  
26 (3) of this section exceeds three times the average monthly wage in the  
27 state as computed under the provisions of RCW 51.08.018, payment shall  
28 be made in monthly payments in accordance with the schedule of  
29 temporary total disability payments set forth in RCW 51.32.090 until  
30 such compensation is paid to the injured worker in full, except that  
31 the first monthly payment shall be in an amount equal to three times  
32 the average monthly wage in the state as computed under the provisions  
33 of RCW 51.08.018(~~(, and interest shall be paid at the rate of eight~~  
34 ~~percent on the unpaid balance of such compensation commencing with the~~  
35 ~~second monthly payment. However,)). Upon application of the injured  
36 worker or survivor the monthly payment may be converted, in whole or in  
37 part, into a lump sum payment, in which event the monthly payment shall  
38 cease in whole or in part. Such conversion may be made only upon~~

1 written application of the injured worker or survivor to the department  
2 ((and)) or self-insurer. A decision to deny the application to the  
3 worker of a self-insurer, or to either grant or deny the application to  
4 the worker of an employer insured by the department, shall rest in the  
5 discretion of the department depending upon the merits of each  
6 individual application. Upon the death of a worker all unpaid  
7 installments accrued shall be paid according to the payment schedule  
8 established prior to the death of the worker to the widow or widower,  
9 or if there is no widow or widower surviving, to the dependent children  
10 of such claimant, and if there are no such dependent children, then to  
11 such other dependents as defined by this title.

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

14 **Sec. 6.** RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are  
15 each reenacted and amended to read as follows:

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

19 (2) Any compensation payable under this section for children not in  
20 the custody of the injured worker as of the date of injury shall be  
21 payable only to such person as actually is providing the support for  
22 such child or children pursuant to the order of a court of record  
23 providing for support of such child or children.

24 (3)(a) As soon as recovery is so complete that the present earning  
25 power of the worker, at any kind of work, is restored to that existing  
26 at the time of the occurrence of the injury, the payments shall cease.  
27 If and so long as the present earning power is only partially restored,  
28 the payments shall:

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

32 (ii) For claims for injuries occurring on or after May 7, 1993,  
33 equal eighty percent of the actual difference between the worker's  
34 present wages and earning power at the time of injury, but: (A) The  
35 total of these payments and the worker's present wages may not exceed  
36 one hundred fifty percent of the average monthly wage in the state as  
37 computed under RCW 51.08.018; (B) the payments may not exceed one

1 hundred percent of the entitlement as computed under subsection (1) of  
2 this section; and (C) the payments may not be less than the worker  
3 would have received if (a)(i) of this subsection had been applicable to  
4 the worker's claim.

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

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

10 (4)(a) (~~Whenever~~) The legislature finds that long-term disability  
11 and the cost of injuries is significantly reduced when injured workers  
12 remain at work following their injury. To encourage employers at the  
13 time of injury to provide light duty or transitional work for their  
14 workers, wage subsidies and other incentives are made available to  
15 employers insured with the department.

16 (b) The employer of injury (~~requests that~~) may provide light duty  
17 or transitional work to a worker who is entitled to temporary total  
18 disability under this chapter (~~be certified by a physician or licensed~~  
19 advanced registered nurse practitioner as able to perform available  
20 work other than his or her usual work,)). The department shall obtain  
21 from the physician or licensed advanced registered nurse practitioner  
22 a statement confirming the light duty or transitional work is  
23 consistent with the worker's medical restrictions related to the  
24 injury. This statement must be obtained before the start of the light  
25 duty or transitional work. The employer shall furnish to the physician  
26 or licensed advanced registered nurse practitioner, with a copy to the  
27 worker, a statement describing the work (~~available~~) with the employer  
28 of injury in terms that will enable the physician or licensed advanced  
29 registered nurse practitioner to relate the physical activities of the  
30 job to the worker's disability. The physician or licensed advanced  
31 registered nurse practitioner shall then determine whether the worker  
32 is physically able to perform the work described. The worker's  
33 temporary total disability payments shall (~~continue until the worker~~  
34 is released by his or her physician or licensed advanced registered  
35 nurse practitioner for the work, and begins the work with the employer  
36 of injury. If) stop effective the date the light duty or transitional  
37 job starts. Temporary total disability payments shall resume if the  
38 work (~~thereafter~~) comes to an end before the worker's recovery is



1 sufficient in the judgment of his or her physician or licensed advanced  
2 registered nurse practitioner to permit him or her to return to his or  
3 her usual job, or to perform other available work offered by the  
4 employer of injury(~~(, the worker's temporary total disability payments~~  
5 ~~shall be resumed)~~). Should the available work described, once  
6 undertaken by the worker, impede his or her recovery to the extent that  
7 in the judgment of his or her physician or licensed advanced registered  
8 nurse practitioner he or she should not continue to work, the worker's  
9 temporary total disability payments shall be resumed when the worker  
10 ceases such work at the direction of the physician or licensed advanced  
11 registered nurse practitioner.

12 ~~((b))~~ (c) To further encourage employers to maintain the  
13 employment of their injured workers, an employer insured with the  
14 department and that offers work to a worker pursuant to this subsection  
15 (4) shall be eligible for reimbursement of the injured worker's wages  
16 for light duty or transitional work equal to fifty percent of the  
17 basic, gross wages paid for that work, for a maximum of sixty-six work  
18 days within a consecutive twenty-four month period. In no event may  
19 the wage subsidies paid to an employer on a claim exceed ten thousand  
20 dollars. Wage subsidies shall be calculated using the worker's basic  
21 hourly wages or basic salary, and no subsidy shall be paid for any  
22 other form of compensation or payment to the worker such as tips,  
23 commissions, bonuses, board, housing, fuel, health care, dental care,  
24 vision care, per diem, reimbursements for work-related expenses, or any  
25 other payments. An employer may not, under any circumstances, receive  
26 a wage subsidy for a day in which the worker did not actually perform  
27 any work, regardless of whether or not the employer paid the worker  
28 wages for that day.

29 (d) If an employer offers a worker work pursuant to this subsection  
30 (4) and the worker must be provided with training or instruction to be  
31 qualified to perform the offered work, the employer shall be eligible  
32 for a reimbursement from the department for any tuition, books, fees,  
33 and materials required for that training or instruction, up to a  
34 maximum of one thousand dollars. Reimbursing an employer for the costs  
35 of such training or instruction does not constitute a determination by  
36 the department that the worker is eligible for vocational services  
37 authorized by RCW 51.32.095 and 51.32.099.

1       (e) If an employer offers a worker work pursuant to this subsection  
2 (4), and the employer provides the worker with clothing that is  
3 necessary to allow the worker to perform the offered work, the employer  
4 shall be eligible for reimbursement for such clothing from the  
5 department, up to a maximum of four hundred dollars: PROVIDED,  
6 HOWEVER, That an employer shall not receive reimbursement for any  
7 clothing it provided to the worker that it normally provides to its  
8 workers. The clothing purchased for the worker shall become the  
9 worker's property once the work comes to an end.

10       (f) If an employer offers a worker work pursuant to this subsection  
11 (4) and the worker must be provided with tools or equipment to perform  
12 the offered work, the employer shall be eligible for a reimbursement  
13 from the department for such tools and equipment and related costs as  
14 determined by department rule, up to a maximum of two thousand five  
15 hundred dollars. An employer shall not be reimbursed for any tools or  
16 equipment purchased prior to offering the work to the worker pursuant  
17 to this subsection (4). An employer shall not be reimbursed for any  
18 tools or equipment that it normally provides to its workers. The tools  
19 and equipment shall be the property of the employer.

20       (g) An employer may offer work to a worker pursuant to this  
21 subsection (4) more than once, but in no event may the employer receive  
22 wage subsidies for more than sixty-six days of work in a consecutive  
23 twenty-four month period under one claim. An employer may continue to  
24 offer work pursuant to this subsection (4) after the worker has  
25 performed sixty-six days of work, but the employer shall not be  
26 eligible to receive wage subsidies for such work.

27       (h) An employer shall not receive any wage subsidies or  
28 reimbursement of any expenses pursuant to this subsection (4) unless  
29 the employer has completed and submitted the reimbursement request on  
30 forms developed by the department, along with all related information  
31 required by department rules. No wage subsidy or reimbursement shall  
32 be paid to an employer who fails to submit a form for such payment  
33 within one year of the date the work was performed. In no event shall  
34 an employer receive wage subsidy payments or reimbursements of any  
35 expenses pursuant to this subsection (4) unless the worker's physician  
36 or licensed advanced registered nurse practitioner has restricted him  
37 or her from performing his or her usual work and the worker's physician

1 or licensed advanced registered nurse practitioner has released him or  
2 her to perform the work offered.

3 (i) Payments made under (b) through (g) of this subsection are  
4 subject to penalties under RCW 51.32.240(5) in cases where the funds  
5 were obtained through willful misrepresentation.

6 (j) Once the worker returns to work under the terms of this  
7 subsection (4), he or she shall not be assigned by the employer to work  
8 other than the available work described without the ((worker's written  
9 consent, or without prior review and)) approval ((by)) of the worker's  
10 physician or licensed advanced registered nurse practitioner. An  
11 employer who directs a claimant to perform work other than that  
12 approved by the attending physician and without the approval of the  
13 worker's physician or licensed advanced registered nurse practitioner  
14 shall not receive any wage subsidy or other reimbursements for such  
15 work.

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

23 ((+d+)) (l) In the event of any dispute as to the validity of the  
24 work offered or as to the worker's ability to perform the available  
25 work offered by the employer, the department shall make the final  
26 determination pursuant to an order that contains the notice required by  
27 RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

28 (5) An employer's experience rating shall not be affected by the  
29 employer's request for or receipt of wage subsidies.

30 (6) The department shall create a Washington stay-at-work account  
31 which shall be funded by assessments of employers insured through the  
32 state fund for the costs of the payments authorized by subsection (4)  
33 of this section and for the cost of creating a reserve for anticipated  
34 liabilities. Employers may collect up to one-half the fund assessment  
35 from workers.

36 (7) No worker shall receive compensation for or during the day on  
37 which injury was received or the three days following the same, unless  
38 his or her disability shall continue for a period of fourteen

1 consecutive calendar days from date of injury: PROVIDED, That attempts  
2 to return to work in the first fourteen days following the injury shall  
3 not serve to break the continuity of the period of disability if the  
4 disability continues fourteen days after the injury occurs.

5 ~~((+6+))~~ (8) Should a worker suffer a temporary total disability and  
6 should his or her employer at the time of the injury continue to pay  
7 him or her the wages which he or she was earning at the time of such  
8 injury, such injured worker shall not receive any payment provided in  
9 subsection (1) of this section during the period his or her employer  
10 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,  
11 sick leave, or other similar benefits shall not be deemed to be  
12 payments by the employer for the purposes of this subsection.

13 ~~((+7+))~~ (9) In no event shall the monthly payments provided in this  
14 section:

15 (a) Exceed the applicable percentage of the average monthly wage in  
16 the state as computed under the provisions of RCW 51.08.018 as follows:

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

22 (b) For dates of injury or disease manifestation after July 1,  
23 2008, be less than fifteen percent of the average monthly wage in the  
24 state as computed under RCW 51.08.018 plus an additional ten dollars  
25 per month if the worker is married and an additional ten dollars per  
26 month for each child of the worker up to a maximum of five children.  
27 However, if the monthly payment computed under this subsection ~~((+7+))~~  
28 (9)(b) is greater than one hundred percent of the wages of the worker  
29 as determined under RCW 51.08.178, the monthly payment due to the  
30 worker shall be equal to the greater of the monthly wages of the worker  
31 or the minimum benefit set forth in this section on June 30, 2008.

32 ~~((+8+))~~ (10) If the supervisor of industrial insurance determines  
33 that the worker is voluntarily retired and is no longer attached to the  
34 workforce, benefits shall not be paid under this section.

1       **Sec. 7.** RCW 51.32.160 and 1995 c 253 s 2 are each amended to read  
2 as follows:

3       (1)(a) If aggravation, diminution, or termination of disability  
4 takes place, the director may, upon the application of the beneficiary,  
5 made within seven years from the date the first closing order becomes  
6 final, or at any time upon his or her own motion, readjust the rate of  
7 compensation in accordance with the rules in this section provided for  
8 the same, or in a proper case terminate the payment: PROVIDED, That  
9 the director may, upon application of the worker made at any time,  
10 provide proper and necessary medical and surgical services as  
11 authorized under RCW 51.36.010. The department shall promptly mail a  
12 copy of the application to the employer at the employer's last known  
13 address as shown by the records of the department.

14       (b) "Closing order" as used in this section means an order based on  
15 factors which include medical recommendation, advice, or examination.

16       (c) Applications for benefits where the claim has been closed  
17 without medical recommendation, advice, or examination are not subject  
18 to the seven year limitation of this section. The preceding sentence  
19 shall not apply to any closing order issued prior to July 1, 1981.  
20 First closing orders issued between July 1, 1981, and July 1, 1985,  
21 shall, for the purposes of this section only, be deemed issued on July  
22 1, 1985. The time limitation of this section shall be ten years in  
23 claims involving loss of vision or function of the eyes.

24       (d) If an order denying an application to reopen filed on or after  
25 July 1, 1988, is not issued within ninety days of receipt of such  
26 application by the self-insured employer or the department, such  
27 application shall be deemed granted. However, for good cause, the  
28 department may extend the time for making the final determination on  
29 the application for an additional sixty days.

30       (2) If a worker receiving ~~((a pension for))~~ permanent total  
31 disability benefits returns to ~~((gainful))~~ any employment for wages or  
32 earnings, the director ~~((may))~~ shall suspend ~~((or))~~, terminate ~~((the~~  
33 ~~rate of compensation established for the disability))~~, or reduce the  
34 amount of compensation without producing medical evidence that shows  
35 that a diminution of the disability has occurred. A reduction in the  
36 amount of compensation must be in accordance with RCW 51.32.060(5)(b).

37       (3) No act done or ordered to be done by the director, or the

1 department prior to the signing and filing in the matter of a written  
2 order for such readjustment shall be grounds for such readjustment.

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

5 Utilization, worker satisfaction and outcomes, and system and  
6 employer costs related to RCW 51.32.060 and 51.32.080 will be studied  
7 and a report issued to the appropriate legislative committees, the  
8 department, and the workers' compensation advisory committee by  
9 December 1, 2014. The workers' compensation advisory committee shall  
10 recommend to the department any legislation needed to ensure the  
11 appropriate utilization of disability benefits at reasonable cost to  
12 the system.

13 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of the  
15 state government and its existing public institutions, and takes effect  
16 July 1, 2011.

17 NEW SECTION. **Sec. 10.** Section 6 of this act expires July 1, 2016.

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