

CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 1887**

Chapter 326, Laws of 2013

63rd Legislature  
2013 Regular Session

INDUSTRIAL INSURANCE--VOCATIONAL REHABILITATION--EDUCATIONAL  
OPTIONS

EFFECTIVE DATE: 07/28/13

Passed by the House March 11, 2013  
Yeas 95 Nays 2

FRANK CHOPP

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**Speaker of the House of Representatives**

Passed by the Senate April 17, 2013  
Yeas 48 Nays 0

BRAD OWEN

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**President of the Senate**

Approved May 21, 2013, 2:41 p.m.

JAY INSLEE

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1887** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

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**Chief Clerk**

FILED

May 21, 2013

**Secretary of State  
State of Washington**

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**ENGROSSED HOUSE BILL 1887**

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Passed Legislature - 2013 Regular Session

**State of Washington                      63rd Legislature                      2013 Regular Session**

**By** Representatives Sawyer, Ryu, Green, and Freeman

Read first time 02/14/13. Referred to Committee on Labor & Workforce Development.

1            AN ACT Relating to increasing educational options under vocational  
2 rehabilitation plans; and amending RCW 51.32.099.

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

4            **Sec. 1.** RCW 51.32.099 and 2011 c 291 s 2 are each amended to read  
5 as follows:

6            (1)(a) The legislature intends to create improved vocational  
7 outcomes for Washington state injured workers and employers through  
8 legislative and regulatory change under a pilot program for the period  
9 of January 1, 2008, through June 30, 2013. This pilot vocational  
10 system is intended to allow opportunities for eligible workers to  
11 participate in meaningful retraining in high-demand occupations,  
12 improve successful return to work and achieve positive outcomes for  
13 workers, reduce the incidence of repeat vocational services, increase  
14 accountability and responsibility, and improve cost predictability. To  
15 facilitate the study and evaluation of the results of the proposed  
16 changes, the department shall establish the temporary funding of  
17 certain state fund vocational costs through the medical aid account to  
18 ensure the appropriate assessments to employers for the costs of their  
19 claims for vocational services in accordance with RCW 51.32.0991.

1 (b) An independent review and study of the effects of the pilot  
2 program shall be conducted to determine whether it has achieved the  
3 appropriate outcomes at reasonable cost to the system. The review  
4 shall include, at a minimum, a report on the department's performance  
5 with regard to the provision of vocational services, the skills  
6 acquired by workers who receive retraining services, the types of  
7 training programs approved, whether the workers are employed, at what  
8 jobs and wages after completion of the training program and at various  
9 times subsequent to their claim closure, the number and demographics of  
10 workers who choose the option provided in subsection (4)(b) of this  
11 section, and their employment and earnings status at various times  
12 subsequent to claim closure. The department may adopt rules, in  
13 collaboration with the subcommittee created under (c)(iii) of this  
14 subsection, to further define the scope and elements of the required  
15 study. Reports of the independent researcher are due on December 1,  
16 2010, December 1, 2011, and December 1, 2012.

17 (c) In implementing the pilot program, the department shall:

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

36 (ii) Develop and maintain a register of state fund and self-insured  
37 workers who have been retrained or have selected any of the vocational

1 options described in this section for at least the duration of the  
2 pilot program.

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

22 (iv) The department shall develop an annual report concerning  
23 Washington's workers' compensation vocational rehabilitation system to  
24 the legislature and to the subcommittee by December 1, 2009, and  
25 annually thereafter with the final report due by December 1, 2012. The  
26 annual report shall include the number of workers who have participated  
27 in more than one vocational training plan beginning with plans approved  
28 on January 1, 2008, and in which industries those workers were  
29 employed. The final report shall include the department's assessment  
30 and recommendations for further legislative action, in collaboration  
31 with the subcommittee.

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

37 (b) When the supervisor or supervisor's designee has decided that  
38 vocational rehabilitation is both necessary and likely to make the

1 worker employable at gainful employment, he or she shall be provided  
2 with services necessary to develop a vocational plan that, if  
3 completed, would render the worker employable. The vocational  
4 professional assigned to the claim shall, at the initial meeting with  
5 the worker, fully inform the worker of the return-to-work priorities  
6 set forth in RCW 51.32.095(2) and of his or her rights and  
7 responsibilities under the workers' compensation vocational system.  
8 The department shall provide tools to the vocational professional for  
9 communicating this and other information required by RCW 51.32.095 and  
10 this section to the worker.

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

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

36 (3)(a) All vocational plans must contain an accountability  
37 agreement signed by the worker detailing expectations regarding  
38 progress, attendance, and other factors influencing successful

1 participation in the plan. Failure to abide by the agreed expectations  
2 shall result in suspension of vocational benefits pursuant to RCW  
3 51.32.110.

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

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

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

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

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

33 (4) Vocational plan development services shall be completed within  
34 ninety days of commencing. Except as provided in RCW 51.32.095(3),  
35 during vocational plan development the worker shall, with the  
36 assistance of a vocational professional, participate in vocational  
37 counseling and occupational exploration to include, but not be limited  
38 to, identifying possible job goals, training needs, resources, and

1 expenses, consistent with the worker's physical and mental status. A  
2 vocational rehabilitation plan shall be developed by the worker and the  
3 vocational professional and submitted to the department or  
4 self-insurer. Following this submission, the worker shall elect one of  
5 the following options:

6 (a) Option 1: The department or self-insurer implements and the  
7 worker participates in the vocational plan developed by the vocational  
8 professional and approved by the worker and the department or  
9 self-insurer. For state fund claims, the department must review and  
10 approve the vocational plan before implementation may begin. If the  
11 department takes no action within fifteen days, the plan is deemed  
12 approved. The worker may, within fifteen days of the department's  
13 approval of the plan or of a determination that the plan is valid  
14 following a dispute, elect option 2. However, in the sole discretion  
15 of the supervisor or supervisor's designee, the department may approve  
16 an election for option 2 benefits that was submitted in writing within  
17 twenty-five days of the department's approval of the plan or of a  
18 determination that the plan is valid following a dispute if the worker  
19 provides a written explanation establishing that he or she was unable  
20 to submit his or her election of option 2 benefits within fifteen days.  
21 In no circumstance may the department approve of an election for option  
22 2 benefits that was submitted more than twenty-five days after the  
23 department's approval of a retraining plan or of a determination that  
24 a plan is valid following a dispute.

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

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

35 (b) Option 2: The worker declines further vocational services  
36 under the claim and receives an amount equal to six months of temporary  
37 total disability compensation under RCW 51.32.090. The award is  
38 payable in biweekly payments in accordance with the schedule of

1 temporary total disability payments, until such award is paid in full.  
2 These payments shall not include interest on the unpaid balance.  
3 However, upon application by the worker, and at the discretion of the  
4 department, the compensation may be converted to a lump sum payment.  
5 The vocational costs defined in subsection (3)(d) of this section shall  
6 remain available to the worker, upon application to the department or  
7 self-insurer, for a period of five years. The vocational costs shall,  
8 if expended, be available for programs or courses at any accredited or  
9 licensed institution or program from a list of those approved by the  
10 department for tuition, books, fees, supplies, equipment, and tools,  
11 without department or self-insurer oversight. The department shall  
12 issue an order as provided in RCW 51.52.050 confirming the option 2  
13 election, setting a payment schedule, and terminating temporary total  
14 disability benefits effective the date of the order confirming that  
15 election. The department shall thereafter close the claim. A worker  
16 who elects option 2 benefits shall not be entitled to further temporary  
17 total, or to permanent total, disability benefits except upon a showing  
18 of a worsening in the condition or conditions accepted under the claim  
19 such that claim closure is not appropriate, in which case the option 2  
20 selection will be rescinded and the amount paid to the worker will be  
21 assessed as an overpayment. A claim that was closed based on the  
22 worker's election of option 2 benefits may be reopened as provided in  
23 RCW 51.32.160, but cannot be reopened for the sole purpose of allowing  
24 the worker to seek vocational assistance.

25 (i) If within five years from the date the option 2 order becomes  
26 final, the worker is subsequently injured or suffers an occupational  
27 disease or reopens the claim as provided in RCW 51.32.160, and  
28 vocational rehabilitation is found both necessary and likely to enable  
29 the injured worker to become employable at gainful employment under RCW  
30 51.32.095(1), the duration of any vocational plan under subsection  
31 (3)(e) of this section shall not exceed eighteen months.

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

37 (iii) If the available vocational costs are utilized by the worker



1 and the claim is thereafter reopened as provided in RCW 51.32.160, the  
2 cost available for any vocational plan is limited to that in subsection  
3 (3)(d) of this section less that previously expended.

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

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

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

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

28 (c) When a vocational plan interruption is the result of the  
29 worker's actions, the worker's entitlement to benefits shall be  
30 suspended in accordance with RCW 51.32.110. If plan development or  
31 implementation is recommenced, the cost and duration of the plan shall  
32 not include credit for that expended prior to the interruption. A  
33 vocational plan interruption is considered a result of the worker's  
34 actions when it is due to the failure to meet attendance expectations  
35 set by the training or educational institution, failure to achieve  
36 passing grades or acceptable performance review, unaccepted or  
37 postinjury conditions that prevent further participation in the

1 vocational plan, or the worker's failure to abide by the accountability  
2 agreement per subsection (3)(a) of this section.

Passed by the House March 11, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.