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HOUSE BILL 1496

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State of Washington

64th Legislature

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By Representatives Sells, Gregerson, and Ormsby; by request of Department of Labor & Industries

Read first time 01/21/15. Referred to Committee on Labor.

1 AN ACT Relating to addressing vocational rehabilitation by making  
2 certain recommendations from the vocational rehabilitation  
3 subcommittee permanent and creating certain incentives for employers  
4 to employ injured workers with permanent disabilities; amending RCW  
5 51.16.120, 51.32.095, and 51.44.040; reenacting and amending RCW  
6 51.32.099; adding a new section to chapter 51.32 RCW; creating new  
7 sections; and repealing 2013 c 331 s 3, 2011 c 291 s 3, and 2013 c  
8 331 s 6 (uncodified).

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

10 **Sec. 1.** RCW 51.16.120 and 2010 c 213 s 1 are each amended to  
11 read as follows:

12 (1) Whenever a worker has a previous bodily disability from any  
13 previous injury or disease, whether known or unknown to the employer,  
14 and ~~((shall))~~ suffers a further disability from injury or  
15 occupational disease in employment covered by this title and becomes  
16 totally and permanently disabled from the combined effects thereof or  
17 dies when death was substantially accelerated by the combined effects  
18 thereof, then the experience record of an employer insured with the  
19 state fund at the time of the further injury or disease ~~((shall))~~  
20 must be charged and a self-insured employer ~~((shall))~~ must pay  
21 directly into the reserve fund only the accident cost which would

1 have resulted solely from the further injury or disease, had there  
2 been no preexisting disability, and which accident cost (~~shall~~)  
3 must be based upon an evaluation of the disability by medical  
4 experts. The difference between the charge thus assessed to such  
5 employer at the time of the further injury or disease and the total  
6 cost of the pension reserve (~~shall~~) must be assessed against the  
7 second injury fund. Except as provided in subsection (2) of this  
8 section, the department (~~shall~~) must pass upon the application of  
9 this section in all cases where benefits are paid for total permanent  
10 disability or death and issue an order thereon appealable by the  
11 employer. Pending outcome of such appeal the transfer or payment  
12 (~~shall~~) must be made as required by such order.

13 (2) If a self-insured employer is in default or the director has  
14 withdrawn the certification of a self-insured employer, the  
15 department (~~shall~~) may not pass on the application of this section.  
16 In such cases, the total cost of the pension reserve (~~shall~~) must  
17 first be assessed against the defaulting self-insured employer's  
18 deposit required by RCW 51.14.020 and in cases where the surety funds  
19 are insufficient the remaining cost of the pension reserve (~~shall~~)  
20 must be assessed against the insolvency trust fund.

21 (3) The department (~~shall~~) must, in cases of claims of workers  
22 sustaining injuries or occupational diseases in the employ of state  
23 fund employers, recompute the experience record of such employers  
24 when the claims of workers injured in their employ have been found to  
25 qualify for payments from the second injury fund after the regular  
26 time for computation of such experience records and the department  
27 may make appropriate adjustments in such cases including cash refunds  
28 or credits to such employers.

29 (~~(4) ((To encourage employment of injured workers who are not  
30 reemployed by the employer at the time of injury, the department may  
31 adopt rules providing for the reduction or elimination of premiums or  
32 assessments from subsequent employers of such workers and may also  
33 adopt rules for the reduction or elimination of charges against such  
34 employers in the event of further injury to such workers in their  
35 employ.~~

36 (+5)) To encourage employment of injured workers who have a  
37 developmental disability as defined in RCW 71A.10.020, the department  
38 may adopt rules providing for the reduction or elimination of  
39 premiums or assessments from employers of such workers and may also  
40 adopt rules for the reduction or elimination of charges against their

1 employers in the event of further injury to such workers in their  
2 employ.

3 **Sec. 2.** RCW 51.32.095 and 2013 c 331 s 1 are each amended to  
4 read as follows:

5 (1) One of the primary purposes of this title is to enable the  
6 injured worker to become employable at gainful employment. To this  
7 end, the department or self-insurers (~~(shall)~~) must utilize the  
8 services of individuals and organizations, public or private, whose  
9 experience, training, and interests in vocational rehabilitation and  
10 retraining qualify them to lend expert assistance to the supervisor  
11 of industrial insurance in such programs of vocational rehabilitation  
12 as may be reasonable to make the worker employable consistent with  
13 his or her physical and mental status. Where, after evaluation and  
14 recommendation by such individuals or organizations and prior to  
15 final evaluation of the worker's permanent disability and in the sole  
16 opinion of the supervisor or supervisor's designee, whether or not  
17 medical treatment has been concluded, vocational rehabilitation is  
18 both necessary and likely to enable the injured worker to become  
19 employable at gainful employment, the supervisor or supervisor's  
20 designee may, in his or her sole discretion, pay or, if the employer  
21 is a self-insurer, direct the self-insurer to pay the cost as  
22 provided in subsection (~~(4)~~) (5) of this section or RCW 51.32.099,  
23 as appropriate. An injured worker may not participate in vocational  
24 rehabilitation under this section or RCW 51.32.099 if such  
25 participation would result in a payment of benefits as described in  
26 RCW 51.32.240(5), and any benefits so paid (~~(shall)~~) must be  
27 recovered according to the terms of that section.

28 (~~(When in the sole discretion of the supervisor or the~~  
29 ~~supervisor's designee vocational rehabilitation is both necessary and~~  
30 ~~likely to make the worker employable at gainful employment, then the~~  
31 ~~following order of priorities shall be used)) Vocational  
32 rehabilitation services may be provided to an injured worker when in  
33 the sole discretion of the supervisor or the supervisor's designee  
34 vocational rehabilitation is both necessary and likely to make the  
35 worker employable at gainful employment. In determining whether to  
36 provide vocational services and at what level, the following list  
37 must be used, in order of priority with the highest priority given to  
38 returning a worker to employment:~~

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

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

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

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

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

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

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

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

13 (i) Short-term retraining (~~and job placement~~).

14 (3) Notwithstanding subsection (2) of this section, vocational  
15 services may be provided to an injured worker who has suffered the  
16 loss or complete use of both legs, or arms, or one leg and one arm,  
17 or total eyesight when, in the sole discretion of the supervisor or  
18 the supervisor's designee, these services will either substantially  
19 improve the worker's quality of life or substantially improve the  
20 worker's ability to function in an employment setting, regardless of  
21 whether or not these services are either necessary or reasonably  
22 likely to make the worker employable at any gainful employment.  
23 Vocational services must be completed prior to the commencement of  
24 the worker's entitlement to benefits under RCW 51.32.060. However,  
25 workers who are eligible for vocational services under this  
26 subsection are not eligible for option 2 benefits, as provided in RCW  
27 51.32.099(4) and section 5 of this act.

28 (4) To encourage the employment of individuals who have suffered  
29 an injury or occupational disease resulting in permanent disability  
30 which may be a substantial obstacle to employment, the supervisor or  
31 supervisor's designee, in his or her sole discretion, may provide  
32 assistance including job placement services for eligible injured  
33 workers who are receiving vocational services under the return-to-  
34 work priorities listed in subsection (2)(b) through (i) of this  
35 section, except for self-employment, and to employers that employ  
36 them. The assistance listed in (a) through (f) of this subsection is  
37 only available in cases where the worker is employed:

38 (a) Reduction or elimination of premiums or assessments owed by  
39 employers for such workers;

1 (b) Reduction or elimination of charges against the employers in  
2 the event of further injury to such workers in their employ;

3 (c) Reimbursement of the injured worker's wages for light duty or  
4 transitional work consistent with the limitations in RCW  
5 51.32.090(4)(c);

6 (d) Reimbursement for the costs of clothing that is necessary to  
7 allow the worker to perform the offered work consistent with the  
8 limitations in RCW 51.32.090(4)(e);

9 (e) Reimbursement for the costs of tools or equipment to allow  
10 the worker to perform the work consistent with the limitations in RCW  
11 51.32.090(4)(f);

12 (f) A one-time payment equal to the lesser of ten percent of the  
13 worker's wages including commissions and bonuses paid or ten thousand  
14 dollars for continuous employment without reduction in base wages for  
15 at least twelve months. The twelve months begin the first date of  
16 employment and the one-time payment is available at the sole  
17 discretion of the supervisor of industrial insurance;

18 (g) The benefits described in this section are available to a  
19 state fund employer without regard to whether the worker was employed  
20 by the state fund employer at the time of injury. The benefits are  
21 available to a self-insured employer only in cases where the worker  
22 was employed by a state fund employer at the time of injury or  
23 occupational disease manifestation;

24 (h) The benefits described in (a) through (f) of this subsection  
25 (4) are only available in instances where a vocational rehabilitation  
26 professional and the injured worker's health care provider have  
27 confirmed that the worker has returned to work that is consistent  
28 with the worker's limitations and physical restrictions.

29 (5)(a) For vocational plans approved prior to July 1, 1999, costs  
30 for vocational rehabilitation benefits allowed by the supervisor or  
31 supervisor's designee under subsection (1) of this section may  
32 include the cost of books, tuition, fees, supplies, equipment,  
33 transportation, child or dependent care, and other necessary expenses  
34 for any such worker in an amount not to exceed three thousand dollars  
35 in any fifty-two week period, and the cost of continuing the  
36 temporary total disability compensation under RCW 51.32.090 while the  
37 worker is actively and successfully undergoing a formal program of  
38 vocational rehabilitation.

39 (b) When the department has approved a vocational plan for a  
40 worker between July 1, 1999, through December 31, 2007, costs for

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

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

19 (d) In cases where the worker is required to reside away from his  
20 or her customary residence, the reasonable cost of board and lodging  
21 (~~shall~~) must also be paid.

22 (e) Costs paid under this subsection (~~shall~~) must be chargeable  
23 to the employer's cost experience or (~~shall~~) must be paid by the  
24 self-insurer as the case may be.

25 (~~(+5)~~) (6) In addition to the vocational rehabilitation  
26 expenditures provided for under subsection (~~(+4)~~) (5) of this  
27 section and RCW 51.32.099, an additional five thousand dollars may,  
28 upon authorization of the supervisor or the supervisor's designee, be  
29 expended for: (a) Accommodations for an injured worker that are  
30 medically necessary for the worker to participate in an approved  
31 retraining plan; and (b) accommodations necessary to perform the  
32 essential functions of an occupation in which an injured worker is  
33 seeking employment, consistent with the retraining plan or the  
34 recommendations of a vocational evaluation. The injured worker's  
35 attending physician or licensed advanced registered nurse  
36 practitioner must verify the necessity of the modifications or  
37 accommodations. The total expenditures authorized in this subsection  
38 and the expenditures authorized under RCW 51.32.250 (~~shall~~) may not  
39 exceed five thousand dollars.

1       ~~((+6))~~ (7)(a) When the department has approved a vocational plan  
2 for a worker prior to January 1, 2008, regardless of whether the  
3 worker has begun participating in the approved plan, costs for  
4 vocational rehabilitation benefits allowed by the supervisor or  
5 supervisor's designee under subsection (1) of this section are  
6 limited to those provided under subsections ~~((+4) and)~~ (5) and (6)  
7 of this section.

8       (b) For vocational plans approved for a worker between January 1,  
9 2008, through ~~((June 30, 2016))~~ July 31, 2015, total vocational costs  
10 allowed by the supervisor or supervisor's designee under subsection  
11 (1) of this section ~~((shall be))~~ is limited to those provided under  
12 the pilot program established in RCW 51.32.099, and vocational  
13 rehabilitation services ~~((shall))~~ must conform to the requirements in  
14 RCW 51.32.099.

15       ~~((+7))~~ (8) The department ~~((shall))~~ must establish criteria to  
16 monitor the quality and effectiveness of rehabilitation services  
17 provided by the individuals and organizations ~~((used under subsection~~  
18 ~~(1) of this section and under RCW 51.32.099))~~. The state fund  
19 ~~((shall))~~ must make referrals for vocational rehabilitation services  
20 based on these performance criteria.

21       ~~((+8))~~ (9) The department ~~((shall))~~ must engage in, where  
22 feasible and cost-effective, a cooperative program with the state  
23 employment security department to provide job placement services  
24 under this section ~~((and RCW 51.32.099))~~ including participation by  
25 the department as a partner with WorkSource and with the private  
26 vocational rehabilitation community to refer workers to these  
27 vocational professionals for job search and job placement assistance.  
28 As a partner, the department must place vocational professional full-  
29 time employees at selected WorkSource locations who will work with  
30 employers to market the benefits of on-the-job training programs and  
31 preferred worker financial incentives as described in RCW  
32 51.32.095(3). For the purposes of this subsection, "WorkSource" means  
33 the established state system that administers the federal workforce  
34 investment act of 1998.

35       ~~((+9))~~ (10) The benefits in this section ~~((and)),~~ RCW 51.32.099  
36 ~~((shall)),~~ and section 5 of this act must be provided for the injured  
37 workers of self-insured employers. Self-insurers ~~((shall))~~ must  
38 report both benefits provided and benefits denied ~~((under this~~  
39 ~~section and RCW 51.32.099))~~ in the manner prescribed by the  
40 department by rule adopted under chapter 34.05 RCW. The director may,

1 in his or her sole discretion and upon his or her own initiative or  
2 at any time that a dispute arises under this section (~~(e)~~), RCW  
3 51.32.099, or section 5 of this act, promptly make such inquiries as  
4 circumstances require and take such other action as he or she  
5 considers will properly determine the matter and protect the rights  
6 of the parties.

7 (~~(10)~~) (11) Except as otherwise provided (~~in this section or~~  
8 ~~RCW 51.32.099~~), the benefits provided for in this section (~~and~~),  
9 RCW 51.32.099, and section 5 of this act are available to any  
10 otherwise eligible worker regardless of the date of industrial  
11 injury. However, claims (~~shall~~) may not be reopened solely for  
12 vocational rehabilitation purposes.

13 NEW SECTION. **Sec. 3.** The following acts or parts of acts are  
14 each repealed:

- 15 (1) 2013 c 331 s 3 and 2011 c 291 s 3 (uncodified); and  
16 (2) 2013 c 331 s 6 (uncodified).

17 **Sec. 4.** RCW 51.32.099 and 2013 c 331 s 2 and 2013 c 326 s 1 are  
18 each reenacted and amended to read as follows:

19 (1)(a) The legislature intends to create improved vocational  
20 outcomes for Washington state injured workers and employers through  
21 legislative and regulatory change under a pilot program for the  
22 period of January 1, 2008, through (~~June 30, 2016~~) July 31, 2015.  
23 This pilot vocational system is intended to allow opportunities for  
24 eligible workers to participate in meaningful retraining in high-  
25 demand occupations, improve successful return to work and achieve  
26 positive outcomes for workers, reduce the incidence of repeat  
27 vocational services, increase accountability and responsibility, and  
28 improve cost predictability. To facilitate the study and evaluation  
29 of the results of the proposed changes, the department (~~shall~~) must  
30 establish the temporary funding of certain state fund vocational  
31 costs through the medical aid account to ensure the appropriate  
32 assessments to employers for the costs of their claims for vocational  
33 services in accordance with RCW 51.32.0991.

34 (b) In implementing the pilot program, the department (~~shall~~)  
35 must:

36 (i) Establish a vocational initiative project that includes  
37 participation by the department as a partner with WorkSource, the  
38 established state system that administers the federal workforce



1 investment act of 1998. As a partner, the department (~~shall~~) must  
2 place vocational professional full-time employees at pilot WorkSource  
3 locations; refer some workers for vocational services to these  
4 vocational professionals; and work with employers in work source  
5 pilot areas to market the benefits of on-the-job training programs  
6 and with community colleges to reserve slots in high employer demand  
7 programs of study as defined in RCW 28B.50.030. These on-the-job  
8 training programs and community college slots may be considered by  
9 both department and private sector vocational professionals for  
10 vocational plan development. The department will also assist  
11 stakeholders in developing additional vocational training programs in  
12 various industries, including but not limited to agriculture and  
13 construction. These programs will expand the choices available to  
14 injured workers in developing their vocational training plans with  
15 the assistance of vocational professionals.

16 (ii) Develop and maintain a register of state fund and self-  
17 insured workers who have been retrained or have selected any of the  
18 vocational options described in this section for at least the  
19 duration of the pilot program.

20 (iii) Create a vocational rehabilitation subcommittee made up of  
21 members appointed by the director for at least the duration of the  
22 pilot program. This subcommittee (~~shall~~) must provide the business  
23 and labor partnership needed to maintain focus on the intent of the  
24 pilot program, as described in this section, and provide consistency  
25 and transparency to the development of rules and policies. The  
26 subcommittee (~~shall~~) must report to the director at least annually  
27 and recommend to the director and the legislature any additional  
28 statutory changes needed, which may include extension of the pilot  
29 period. The subcommittee (~~shall~~) must provide input and oversight  
30 with the department concerning the study required under (b) of this  
31 subsection. The subcommittee (~~shall~~) must provide recommendations  
32 for additional changes or incentives for injured workers to return to  
33 work with their employer of injury. The subcommittee (~~shall~~) must  
34 also consider options that, under limited circumstances, would allow  
35 injured workers to attend baccalaureate institutions under their  
36 vocational rehabilitation plans and, by December 31, 2013, the  
37 subcommittee (~~shall~~) must provide recommendations to the director  
38 and the legislature on statutory changes needed to develop those  
39 options.

1 (iv) In collaboration with the subcommittee, the department  
2 (~~shall~~) must develop an annual report concerning Washington's  
3 workers' compensation vocational rehabilitation system to the  
4 legislature with the final report due by December 1, (~~2015~~) 2014.  
5 The final report (~~shall~~) must include an assessment and  
6 recommendations for further legislative action.

7 (2)(a) For the purposes of this section, the day the worker  
8 commences vocational plan development means the date the department  
9 or self-insurer notifies the worker of his or her eligibility for  
10 plan development services or of an eligibility determination in  
11 response to a dispute of a vocational decision.

12 (b) When the supervisor or supervisor's designee has decided that  
13 vocational rehabilitation is both necessary and likely to make the  
14 worker employable at gainful employment, he or she (~~shall~~) must be  
15 provided with services necessary to develop a vocational plan that,  
16 if completed, would render the worker employable. The vocational  
17 professional assigned to the claim (~~shall~~) must, at the initial  
18 meeting with the worker, fully inform the worker of the return-to-  
19 work priorities set forth in RCW 51.32.095(2) and of his or her  
20 rights and responsibilities under the workers' compensation  
21 vocational system. The department (~~shall~~) must provide tools to the  
22 vocational professional for communicating this and other information  
23 required by RCW 51.32.095 and this section to the worker.

24 (c) On the date the worker commences vocational plan development,  
25 the department (~~shall~~) must also inform the employer in writing of  
26 the employer's right to make a valid return-to-work offer during the  
27 first fifteen days following the commencement of vocational plan  
28 development. However, at the sole discretion of the supervisor or the  
29 supervisor's designee, an employer may be granted an extension of  
30 time of up to ten additional days to make a valid return-to-work  
31 offer. The additional days may be allowed by the department with or  
32 without a request from the employer. The extension may only be  
33 granted if the employer made a return-to-work offer to the worker  
34 within fifteen days of the date the worker commenced vocational plan  
35 development that met some but not all of the requirements in this  
36 section. To be valid, the offer must be for bona fide employment with  
37 the employer of injury, consistent with the worker's documented  
38 physical and mental restrictions as provided by the worker's health  
39 care provider. When the employer makes a valid return-to-work offer,  
40 the vocational plan development services and temporary total

1 disability compensation (~~shall be~~) are terminated effective on the  
2 starting date for the job without regard to whether the worker  
3 accepts the return-to-work offer.

4 (d) Following the time period described in (c) of this  
5 subsection, the employer may still provide, and the worker may  
6 accept, any valid return-to-work offer. The worker's acceptance of  
7 such an offer (~~shall~~) must result in the termination of vocational  
8 plan development or implementation services and temporary total  
9 disability compensation effective the day the employment begins.

10 (3)(a) All vocational plans must contain an accountability  
11 agreement signed by the worker detailing expectations regarding  
12 progress, attendance, and other factors influencing successful  
13 participation in the plan. Failure to abide by the agreed  
14 expectations (~~shall~~) must result in suspension of vocational  
15 benefits pursuant to RCW 51.32.110, including the opportunity for the  
16 worker to demonstrate good cause.

17 (b) Any formal education included as part of the vocational plan  
18 must be for an accredited or licensed program or other program  
19 approved by the department. The department (~~shall~~) must develop  
20 rules that provide criteria for the approval of nonaccredited or  
21 unlicensed programs.

22 (c) The vocational plan for an individual worker must be  
23 completed and submitted to the department within ninety days of the  
24 day the worker commences vocational plan development. The department  
25 may extend the ninety days for good cause. Criteria for good cause  
26 (~~shall~~) must be provided in rule. The frequency and reasons for  
27 good cause extensions (~~shall~~) must be reported to the subcommittee  
28 created under subsection (1) (b)(iii) of this section.

29 (d) Costs for the vocational plan may include books, tuition,  
30 fees, supplies, equipment, child or dependent care, training fees for  
31 on-the-job training, the cost of furnishing tools and other equipment  
32 necessary for self-employment or reemployment, and other necessary  
33 expenses in an amount not to exceed twelve thousand dollars. This  
34 amount (~~shall~~) must be adjusted effective July 1 of each year for  
35 vocational plans or retraining benefits available under subsection  
36 (4)(b) of this section approved on or after this date but before June  
37 30 of the next year based on the average percentage change in tuition  
38 for the next fall quarter for all Washington state community  
39 colleges.

1 (e) The duration of the vocational plan (~~shall~~) may not exceed  
2 two years from the date the plan is implemented. The worker (~~shall~~)  
3 must receive temporary total disability compensation under RCW  
4 51.32.090 and the cost of transportation while he or she is actively  
5 and successfully participating in a vocational plan.

6 (f) If the worker is required to reside away from his or her  
7 customary residence, the reasonable cost of board and lodging  
8 (~~shall~~) must also be paid.

9 (4) Vocational plan development services (~~shall~~) must be  
10 completed within ninety days of commencing. Except as provided in RCW  
11 51.32.095(3), during vocational plan development the worker (~~shall~~)  
12 must, with the assistance of a vocational professional, participate  
13 in vocational counseling and occupational exploration to include, but  
14 not be limited to, identifying possible job goals, training needs,  
15 resources, and expenses, consistent with the worker's physical and  
16 mental status. A vocational rehabilitation plan (~~shall~~) must be  
17 developed by the worker and the vocational professional and submitted  
18 to the department or self-insurer. Following this submission, the  
19 worker (~~shall~~) must elect one of the following options:

20 (a) Option 1: The department or self-insurer implements and the  
21 worker participates in the vocational plan developed by the  
22 vocational professional and approved by the worker and the department  
23 or self-insurer. For state fund claims, the department must review  
24 and approve the vocational plan before implementation may begin. If  
25 the department takes no action within fifteen days, the plan is  
26 deemed approved. The worker may, within fifteen days of the  
27 department's approval of the plan or of a determination that the plan  
28 is valid following a dispute, elect option 2. However, in the sole  
29 discretion of the supervisor or supervisor's designee, the department  
30 may approve an election for option 2 benefits that was submitted in  
31 writing within twenty-five days of the department's approval of the  
32 plan or of a determination that the plan is valid following a dispute  
33 if the worker provides a written explanation establishing that he or  
34 she was unable to submit his or her election of option 2 benefits  
35 within fifteen days. In no circumstance may the department approve of  
36 an election for option 2 benefits that was submitted more than  
37 twenty-five days after the department's approval of a retraining plan  
38 or of a determination that a plan is valid following a dispute.

39 (i) Following successful completion of the vocational plan, any  
40 subsequent assessment of whether vocational rehabilitation is both

1 necessary and likely to enable the injured worker to become  
2 employable at gainful employment under RCW 51.32.095(1) (~~shall~~)  
3 must include consideration of transferable skills obtained in the  
4 vocational plan.

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

10 (b) Option 2: The worker declines further vocational services  
11 under the claim and receives an amount equal to six months of  
12 temporary total disability compensation under RCW 51.32.090. The  
13 award is payable in biweekly payments in accordance with the schedule  
14 of temporary total disability payments, until such award is paid in  
15 full. These payments (~~shall~~) may not include interest on the unpaid  
16 balance. However, upon application by the worker, and at the  
17 discretion of the department, the compensation may be converted to a  
18 lump sum payment. The vocational costs defined in subsection (3)(d)  
19 of this section (~~shall~~) must remain available to the worker, upon  
20 application to the department or self-insurer, for a period of five  
21 years. The vocational costs (~~shall~~) must, if expended, be available  
22 for programs or courses at any accredited or licensed institution or  
23 program from a list of those approved by the department for tuition,  
24 books, fees, supplies, equipment, and tools, without department or  
25 self-insurer oversight. The department (~~shall~~) must issue an order  
26 as provided in RCW 51.52.050 confirming the option 2 election,  
27 setting a payment schedule, and terminating temporary total  
28 disability benefits effective the date of the order confirming that  
29 election. The department (~~shall~~) must thereafter close the claim. A  
30 worker who elects option 2 benefits (~~shall not be~~) is not entitled  
31 to further temporary total, or to permanent total, disability  
32 benefits except upon a showing of a worsening in the condition or  
33 conditions accepted under the claim such that claim closure is not  
34 appropriate, in which case the option 2 selection will be rescinded  
35 and the amount paid to the worker will be assessed as an overpayment.  
36 A claim that was closed based on the worker's election of option 2  
37 benefits may be reopened as provided in RCW 51.32.160, but cannot be  
38 reopened for the sole purpose of allowing the worker to seek  
39 vocational assistance.

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

9 (ii) If the available vocational costs are utilized by the  
10 worker, any subsequent assessment of whether vocational  
11 rehabilitation is both necessary and likely to enable the injured  
12 worker to become employable at gainful employment under RCW  
13 51.32.095(1) (~~shall~~) must include consideration of the transferable  
14 skills obtained.

15 (iii) If the available vocational costs are utilized by the  
16 worker and the claim is thereafter reopened as provided in RCW  
17 51.32.160, the cost available for any vocational plan is limited to  
18 that in subsection (3)(d) of this section less that previously  
19 expended.

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

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

26 (5)(a) As used in this section, "vocational plan interruption"  
27 means an occurrence (~~which~~) that disrupts the plan to the extent  
28 the employability goal is no longer attainable. "Vocational plan  
29 interruption" does not include institutionally scheduled breaks in  
30 educational programs, occasional absence due to illness, or  
31 modifications to the plan which will allow it to be completed within  
32 the cost and time provisions of subsection (3)(d) and (e) of this  
33 section.

34 (b) When a vocational plan interruption is beyond the control of  
35 the worker, the department or self-insurer (~~shall~~) must recommence  
36 plan development. If necessary to complete vocational services, the  
37 cost and duration of the plan may include credit for that expended  
38 prior to the interruption. A vocational plan interruption is  
39 considered outside the control of the worker when it is due to the  
40 closure of the accredited institution, when it is due to a death in

1 the worker's immediate family, or when documented changes in the  
2 worker's accepted medical conditions prevent further participation in  
3 the vocational plan.

4 (c) When a vocational plan interruption is the result of the  
5 worker's actions, the worker's entitlement to benefits (~~shall~~) must  
6 be suspended in accordance with RCW 51.32.110, including the  
7 opportunity for the worker to demonstrate good cause. If plan  
8 development or implementation is recommenced, the cost and duration  
9 of the plan (~~shall~~) may not include credit for that expended prior  
10 to the interruption. A vocational plan interruption is considered a  
11 result of the worker's actions when it is due to the failure to meet  
12 attendance expectations set by the training or educational  
13 institution, failure to achieve passing grades or acceptable  
14 performance review, unaccepted or postinjury conditions that prevent  
15 further participation in the vocational plan, or the worker's failure  
16 to abide by the accountability agreement per subsection (3)(a) of  
17 this section.

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

20 (1) Through the collaboration of the vocational rehabilitation  
21 subcommittee established in RCW 51.32.099, certain vocational  
22 rehabilitation benefits and options have been identified as  
23 permanently needed to support appropriate outcomes for eligible  
24 injured workers. To continue the partnership of business and labor  
25 with regard to best practices in the provision of vocational services  
26 and to identify further improvements to Washington's vocational  
27 rehabilitation system and benefits, the director must appoint a  
28 vocational rehabilitation advisory committee to consist of at least  
29 one member representing employers insured by the state fund, one  
30 member representing self-insured employers, and two members  
31 representing workers. The appointments must be made from lists of  
32 nominations provided by statewide business, self-insured employers,  
33 and labor organizations.

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

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

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

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

39 (3)(a) All vocational plans must contain an accountability  
40 agreement signed by the worker detailing expectations regarding



1 progress, attendance, and other factors influencing successful  
2 participation in the plan. Failure to abide by the agreed  
3 expectations must result in suspension of vocational benefits  
4 pursuant to RCW 51.32.110, including the opportunity for the worker  
5 to demonstrate good cause.

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

11 (c) The vocational plan for an individual worker must be  
12 completed and submitted to the department within ninety days of the  
13 day the worker commences vocational plan development. The department  
14 may extend the ninety days for good cause. Criteria for good cause  
15 must be provided in rule.

16 (d) Costs for the vocational plan may include books, tuition,  
17 fees, supplies, equipment, child or dependent care, training fees for  
18 on-the-job training, the cost of furnishing tools and other equipment  
19 necessary for self-employment or reemployment, and other necessary  
20 expenses in an amount not to exceed seventeen thousand five hundred  
21 dollars. This amount must be adjusted effective July 1st of each year  
22 for vocational plans or retraining benefits available under  
23 subsection (4)(b) of this section approved on or after this date but  
24 before June 30th of the next year based on the average percentage  
25 change in tuition for the next fall quarter for all Washington state  
26 community colleges. Effective July 1, 2016, and each July 1st  
27 thereafter, the increase cannot exceed two percent per year, unless  
28 the amount available would be less than one hundred fifty percent of  
29 the average cost of a two-year community college training plan.  
30 Effective July 1st following the calendar year in which the amount  
31 available is less than one hundred fifty percent of the average cost  
32 of a two-year community college plan, costs for newly approved plans  
33 can be up to one hundred fifty percent of this community college plan  
34 average. The average cost of two-year community college training  
35 plans will be calculated by the department based on plans completed  
36 during the preceding calendar year.

37 (e) The duration of the vocational plan may not exceed two years  
38 from the date the plan is implemented. The worker must receive  
39 temporary total disability compensation under RCW 51.32.090 and the

1 cost of transportation while he or she is actively and successfully  
2 participating in a vocational plan.

3 (f) If the worker is required to reside away from his or her  
4 customary residence, the reasonable cost of board and lodging must  
5 also be paid.

6 (4) Except as provided in RCW 51.32.095(3), during vocational  
7 plan development the worker must, with the assistance of a vocational  
8 professional, participate in vocational counseling and occupational  
9 exploration to include, but not be limited to, identifying possible  
10 job goals, training needs, resources, and expenses, consistent with  
11 the worker's physical and mental status. A vocational rehabilitation  
12 plan must be developed by the worker and the vocational professional  
13 and submitted to the department or self-insurer. Following this  
14 submission, the worker must elect one of the following options:

15 (a) Option 1: The department or self-insurer implements and the  
16 worker participates in the vocational plan developed by the  
17 vocational professional and approved by the worker and the department  
18 or self-insurer. For state fund claims, the department must review  
19 and approve the vocational plan before implementation may begin. If  
20 the department takes no action within fifteen days, the plan is  
21 deemed approved. Beginning the date the department approves the plan,  
22 or the date of a determination that the plan is valid following a  
23 dispute, through completion of the first academic quarter or three  
24 months' training, the worker may elect option 2. However, in the sole  
25 discretion of the supervisor or supervisor's designee, the department  
26 may approve an election for option 2 benefits that was submitted in  
27 writing within twenty-five days of the end of the first academic  
28 quarter or three months' training if the worker provides a written  
29 explanation establishing that he or she was unable to submit his or  
30 her election of option 2 benefits within fifteen days. In no  
31 circumstance may the department approve of an election for option 2  
32 benefits that was submitted more than twenty-five days after the end  
33 of the first academic quarter or three months' training.

34 (i) Following successful completion of the vocational plan, any  
35 subsequent assessment of whether vocational rehabilitation is both  
36 necessary and likely to enable the injured worker to become  
37 employable at gainful employment under RCW 51.32.095(1) must include  
38 consideration of transferable skills obtained in the vocational plan.

39 (ii) If a vocational plan is successfully completed on a claim  
40 which is thereafter reopened as provided in RCW 51.32.160, the cost

1 and duration available for any subsequent vocational plan is limited  
2 to that in subsection (3)(d) and (e) of this section, less that  
3 previously expended.

4 (b) Option 2: The worker declines further vocational services  
5 under the claim and receives an amount equal to nine months of  
6 temporary total disability compensation under RCW 51.32.090. The  
7 award must be reduced by the amount of any temporary total disability  
8 compensation paid for days starting with the first day of the  
9 academic quarter or three months' training and for any days through  
10 the date the department received the worker's written election of  
11 option 2. The award is payable in biweekly payments in accordance  
12 with the schedule of temporary total disability payments, until such  
13 award is paid in full. These payments may not include interest on the  
14 unpaid balance. However, upon application by the worker, and at the  
15 discretion of the department, the compensation may be converted to a  
16 lump sum payment. The vocational costs defined in subsection (3)(d)  
17 of this section must remain available to the worker less any amount  
18 expended for the worker's participation in the first academic quarter  
19 or three months' training, upon application to the department or  
20 self-insurer, for a period of five years. The vocational costs must,  
21 if expended, be available for programs or courses at any accredited  
22 or licensed institution or program from a list of those approved by  
23 the department for tuition, books, fees, supplies, equipment, and  
24 tools, without department or self-insurer oversight. Up to ten  
25 percent of the total funds available to the worker can be used for  
26 vocational counseling and job placement services. The department must  
27 issue an order as provided in RCW 51.52.050 confirming the option 2  
28 election, setting a payment schedule, and terminating temporary total  
29 disability benefits effective the date of the order confirming that  
30 election. The department must thereafter close the claim. A worker  
31 who elects option 2 benefits is not entitled to further temporary  
32 total, or to permanent total, disability benefits except upon a  
33 showing of a worsening in the condition or conditions accepted under  
34 the claim such that claim closure is not appropriate, in which case  
35 the option 2 selection must be rescinded and the amount paid to the  
36 worker must be assessed as an overpayment. A claim that was closed  
37 based on the worker's election of option 2 benefits may be reopened  
38 as provided in RCW 51.32.160, but cannot be reopened for the sole  
39 purpose of allowing the worker to seek vocational assistance.

1 (i) If, within five years from the date the option 2 order  
2 becomes final, the worker is subsequently injured or suffers an  
3 occupational disease or reopens the claim as provided in RCW  
4 51.32.160, and vocational rehabilitation is found both necessary and  
5 likely to enable the injured worker to become employable at gainful  
6 employment under RCW 51.32.095(1), the duration of any vocational  
7 plan under subsection (3)(e) of this section may not exceed fifteen  
8 months.

9 (ii) If the available vocational costs are utilized by the  
10 worker, any subsequent assessment of whether vocational  
11 rehabilitation is both necessary and likely to enable the injured  
12 worker to become employable at gainful employment under RCW  
13 51.32.095(1) must include consideration of the transferable skills  
14 obtained.

15 (iii) If the available vocational costs are utilized by the  
16 worker and the claim is thereafter reopened as provided in RCW  
17 51.32.160, the cost available for any vocational plan is limited to  
18 that in subsection (3)(d) of this section less that previously  
19 expended.

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

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

26 (5)(a) "Vocational plan interruption" for the purposes of this  
27 section means an occurrence which disrupts the plan to the extent the  
28 employability goal is no longer attainable. "Vocational plan  
29 interruption" does not include institutionally scheduled breaks in  
30 educational programs, occasional absence due to illness, or  
31 modifications to the plan which will allow it to be completed within  
32 the cost and time provisions of subsection (3)(d) and (e) of this  
33 section.

34 (b) When a vocational plan interruption is beyond the control of  
35 the worker, the department or self-insurer must recommence plan  
36 development. If necessary to complete vocational services, the cost  
37 and duration of the plan may include credit for that expended prior  
38 to the interruption. A vocational plan interruption is considered  
39 outside the control of the worker when it is due to the closure of  
40 the accredited institution, when it is due to a death in the worker's

1 immediate family, or when documented changes in the worker's accepted  
2 medical conditions prevent further participation in the vocational  
3 plan.

4 (c) When a vocational plan interruption is the result of the  
5 worker's actions, the worker's entitlement to benefits must be  
6 suspended in accordance with RCW 51.32.110, including the opportunity  
7 for the worker to demonstrate good cause. If plan development or  
8 implementation is recommenced, the cost and duration of the plan may  
9 not include credit for that expended prior to the interruption. A  
10 vocational plan interruption is considered a result of the worker's  
11 actions when it is due to the failure to meet attendance expectations  
12 set by the training or educational institution, failure to achieve  
13 passing grades or acceptable performance review, unaccepted or  
14 postinjury conditions that prevent further participation in the  
15 vocational plan, or the worker's failure to abide by the  
16 accountability agreement in subsection (3)(a) of this section.

17 (6) Costs paid for vocational services and plans must be  
18 chargeable to the employer's cost experience or must be paid by the  
19 self-insurer, as the case may be. For state fund vocational plans  
20 implemented on or after January 1, 2008, the costs may be paid from  
21 the medical aid fund at the sole discretion of the director under the  
22 following circumstances:

23 (a) The worker previously participated in a vocational plan or  
24 selected a worker option as described in RCW 51.32.099(4) or in  
25 subsection (4) of this section;

26 (b) The worker's prior vocational plan or selected option was  
27 based on an approved plan or option on or after January 1, 2008;

28 (c) For state fund employers, the date of injury or disease  
29 manifestation of the subsequent claim is within the period of time  
30 used to calculate their experience factor;

31 (d) The subsequent claim is for an injury or occupational disease  
32 that resulted from employment and work-related activities beyond the  
33 worker's documented restrictions.

34 (7) The vocational plan costs payable from the medical aid fund  
35 must include the costs of temporary total disability benefits, except  
36 those payable from the supplemental pension fund, from the date the  
37 vocational plan is implemented to the date the worker completes the  
38 plan or ceases participation. The vocational costs paid from the  
39 medical aid fund may not be charged to the state fund employer's cost  
40 experience.

1       **Sec. 6.** RCW 51.44.040 and 2005 c 475 s 1 are each amended to  
2 read as follows:

3       (1) There (~~shall be~~) is in the office of the state  
4 treasurer(~~(7)~~) a fund to be known and designated as the "second  
5 injury fund," which (~~shall~~) may be used only for the purpose of  
6 defraying charges against (~~it~~) employers and for supporting return-  
7 to-work outcomes for injured workers as provided in RCW 51.16.120,  
8 51.32.095(3), and 51.32.250. The fund (~~shall~~) must be administered  
9 by the director. The state treasurer (~~shall~~) must be the custodian  
10 of the second injury fund and (~~shall be~~) is authorized to disburse  
11 moneys from it only upon written order of the director.

12       (2) Payments to the second injury fund from the accident fund  
13 (~~shall~~) must be made pursuant to rules adopted by the director.  
14 Costs of these payments may not affect the experience rating of  
15 employers insured by the state fund.

16       (3)(a) Assessments for the second injury fund (~~shall~~) must be  
17 imposed on self-insurers pursuant to rules adopted by the director.  
18 Such rules (~~shall~~) must provide for at least the following:

19       (i) Except as provided in (a)(ii) of this subsection, the amount  
20 assessed each self-insurer must be in the proportion that the  
21 payments made from the fund on account of claims made against self-  
22 insurers bears to the total sum of payments from the fund.

23       (ii) Except as provided in section 2, chapter 475, Laws of 2005,  
24 beginning with assessments imposed on or after July 1, 2009, the  
25 department (~~shall~~) must experience rate the amount assessed each  
26 self-insurer as long as the aggregate amount assessed is in the  
27 proportion that the payments made from the fund on account of claims  
28 made against self-insurers bears to the total sum of payments from  
29 the fund. The experience rating factor must provide equal weight to  
30 the ratio between expenditures made by the second injury fund for  
31 claims of the self-insurer to the total expenditures made by the  
32 second injury fund for claims of all self-insurers for the prior  
33 three fiscal years and the ratio of workers' compensation claim  
34 payments under this title made by the self-insurer to the total  
35 worker's compensation claim payments made by all self-insurers under  
36 this title for the prior three fiscal years. The weighted average of  
37 these two ratios must be divided by the latter ratio to arrive at the  
38 experience factor.

39       (b) For purposes of this subsection, "expenditures made by the  
40 second injury fund" mean the costs and charges described under RCW

1 51.32.250 and 51.16.120 (~~(3) and~~) (4), and the amounts assessed to  
2 the second injury fund as described under RCW 51.16.120(1). Under no  
3 circumstances does "expenditures made by the second injury fund"  
4 include any subsequent payments, assessments, or adjustments for  
5 pensions, where the applicable second injury fund entitlement was  
6 established outside of the three fiscal years.

7 NEW SECTION. **Sec. 7.** The department of labor and industries is  
8 authorized to establish and adopt rules governing the eligibility for  
9 and administration of benefits available under RCW 51.16.120,  
10 51.32.095, 51.32.099, 51.44.040, and section 5 of this act.

11 NEW SECTION. **Sec. 8.** The department of labor and industries  
12 must conduct a study of injured workers whose employers participate  
13 in the incentives provided in RCW 51.32.095(3) to determine the  
14 impact on return-to-work outcomes, long-term disability, and claim  
15 costs. By December 1, 2018, and in compliance with RCW 43.01.036, the  
16 department must submit a report to the appropriate committees of the  
17 legislature that details the results of the study conducted under  
18 this section.

19 NEW SECTION. **Sec. 9.** Sections 1, 2, and 6 of this act apply to  
20 all workers' compensation claims that are open on or after January 1,  
21 2016, without regard to the date of injury or occupational disease  
22 manifestation.

23 NEW SECTION. **Sec. 10.** Section 5 of this act applies to all  
24 claims commencing vocational plan development on or after July 31,  
25 2015, without regard to the date of injury or occupational disease  
26 manifestation.

--- END ---