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HOUSE BILL 1868

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State of Washington

62nd Legislature

2011 Regular Session

By Representative Sells

Read first time 02/07/11. 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, allowing  
4 a settlement option for injured workers age fifty-five and older,  
5 terminating pensions when the workplace residuals are not the  
6 predominant factor in a workers' inability to work or be retrained,  
7 creating the stay-at-work program, allowing wages for persons receiving  
8 long-term disability, and creating the safety and health projects  
9 program; amending RCW 51.04.110, 51.32.060, 51.32.067, 51.32.080, and  
10 51.32.160; reenacting and amending RCW 51.32.090; adding a new section  
11 to chapter 49.17 RCW; adding new sections to chapter 51.32 RCW;  
12 providing an effective date; providing an expiration date; and  
13 declaring an emergency.

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

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

17 (1) The director is authorized to provide funding from the medical  
18 aid fund established under RCW 51.44.020, by grant or contract, for  
19 safety and health investment projects for workplaces insured for

1 workers' compensation through the department's state fund. This shall  
2 include projects to: Prevent workplace injuries, illnesses, and  
3 fatalities; create early return-to-work programs; and to reduce long-  
4 term disability through the cooperation of employers and employees or  
5 their representatives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (~~(a)~~) (i) Exceed the applicable percentage of the average monthly  
29 wage in the state as computed under the provisions of RCW 51.08.018 as  
30 follows:

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

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

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

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

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

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

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

1       (b) The medical residuals of the industrial injury or occupational  
2 disease are the predominant factor when, considering the worker's  
3 entire circumstances, the worker would be able to perform employment or  
4 be retrained but for the medical residuals.

5       (9) The department shall develop rules as necessary to implement  
6 this section.

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

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

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

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

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

31       (c) **Option III.** An injured worker selecting this option shall  
32 receive an actuarially reduced benefit and, upon death, one-half of the  
33 reduced benefit shall be ~~((continued throughout the life of and))~~ paid  
34 to the surviving spouse, child, or other dependent as the worker has  
35 nominated by written designation duly executed and filed with the  
36 department. The benefit is payable to the designated beneficiary

1 through their life or through the period the injured worker would have  
2 been entitled to permanent total disability benefits, whichever ends  
3 first.

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

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

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

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

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

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

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

34 LOSS BY AMPUTATION

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



1	<u>Of index finger at proximal interphalangeal</u>	<u>\$25,296.00</u>
2	<u>joint.....</u>	
3	<u>Of index finger at distal interphalangeal</u>	<u>\$13,913.00</u>
4	<u>joint.....</u>	
5	<u>Of middle finger at metacarpophalangeal</u>	<u>\$25,296.00</u>
6	<u>joint or with resection of metacarpal</u>	
7	<u>bone.....</u>	
8	<u>Of middle finger at proximal interphalangeal</u>	<u>\$20,237.00</u>
9	<u>joint.....</u>	
10	<u>Of middle finger at distal interphalangeal</u>	<u>\$11,383.00</u>
11	<u>joint.....</u>	
12	<u>Of ring finger at metacarpophalangeal joint</u>	<u>\$12,648.00</u>
13	<u>or with resection of metacarpal bone.....</u>	
14	<u>Of ring finger at proximal interphalangeal</u>	<u>\$10,118.00</u>
15	<u>joint.....</u>	
16	<u>Of ring finger at distal interphalangeal</u>	<u>\$6,324.00</u>
17	<u>joint.....</u>	
18	<u>Of little finger at metacarpophalangeal joint</u>	<u>\$6,324.00</u>
19	<u>or with resection of metacarpal</u>	
20	<u>bone.....</u>	
21	<u>Of little finger at proximal interphalangeal</u>	<u>\$5,059.00</u>
22	<u>joint.....</u>	
23	<u>Of little finger at distal interphalangeal</u>	<u>\$2,530.00</u>
24	<u>joint.....</u>	
25	<u>MISCELLANEOUS</u>	
26	<u>Loss of one eye by enucleation.....</u>	<u>\$56,213.00</u>
27	<u>Loss of central visual acuity in one eye.....</u>	<u>\$46,844.00</u>
28	<u>Complete loss of hearing in both ears.....</u>	<u>\$86,482.00</u>
29	<u>Complete loss of hearing in one ear.....</u>	<u>\$14,414.00</u>

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

33

LOSS BY AMPUTATION

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

1	Of thumb at interphalangeal joint . . . . .	9,720.00
2	Of index finger at metacarpophalangeal	12,150.00
3	joint or with resection of metacarpal	
4	bone . . . . .	
5	Of index finger at proximal	9,720.00
6	interphalangeal joint . . . . .	
7	Of index finger at distal interphalangeal	5,346.00
8	joint . . . . .	
9	Of middle finger at metacarpophalangeal	9,720.00
10	joint or with resection of metacarpal	
11	bone . . . . .	
12	Of middle finger at proximal	7,776.00
13	interphalangeal joint . . . . .	
14	Of middle finger at distal interphalangeal	4,374.00
15	joint . . . . .	
16	Of ring finger at metacarpophalangeal	4,860.00
17	joint or with resection of metacarpal	
18	bone . . . . .	
19	Of ring finger at proximal interphalangeal	3,888.00
20	joint . . . . .	
21	Of ring finger at distal interphalangeal	2,430.00
22	joint . . . . .	
23	Of little finger at metacarpophalangeal	2,430.00
24	joint or with resection of metacarpal	
25	bone . . . . .	
26	Of little finger at proximal interphalangeal	1,944.00
27	joint . . . . .	
28	Of little finger at distal interphalangeal	972.00
29	joint . . . . .	

MISCELLANEOUS

31	Loss of one eye by enucleation . . . . .	21,600.00
32	Loss of central visual acuity in one eye . . . . .	18,000.00
33	Complete loss of hearing in both ears . . . . .	43,200.00
34	Complete loss of hearing in one ear . . . . .	7,200.00

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

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

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

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

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

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

1 disabilities, the department shall enact rules having the force of law  
2 classifying such disabilities in the proportion which the department  
3 shall determine such disabilities reasonably bear to total bodily  
4 impairment. In enacting such rules, the department shall give  
5 consideration to, but need not necessarily adopt, any nationally  
6 recognized medical standards or guides for determining various bodily  
7 impairments.

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

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

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

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

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

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

37 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum

1 prescribed in ~~((b))~~ (c)(i) of this subsection shall be adjusted as  
2 provided in subsection (1)~~((b))~~ (c)(ii) of this section.

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

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

29 (6) When the compensation provided for in subsections (1) through  
30 (3) of this section exceeds three times the average monthly wage in the  
31 state as computed under the provisions of RCW 51.08.018, payment shall  
32 be made in monthly payments in accordance with the schedule of  
33 temporary total disability payments set forth in RCW 51.32.090 until  
34 such compensation is paid to the injured worker in full, except that  
35 the first monthly payment shall be in an amount equal to three times  
36 the average monthly wage in the state as computed under the provisions  
37 of RCW 51.08.018~~(, and interest shall be paid at the rate of eight  
38 percent on the unpaid balance of such compensation commencing with the~~

1 ~~second monthly payment. However,)).~~ Upon application of the injured  
2 worker or survivor the monthly payment may be converted, in whole or in  
3 part, into a lump sum payment, in which event the monthly payment shall  
4 cease in whole or in part. Such conversion may be made only upon  
5 written application of the injured worker or survivor to the department  
6 ((and)) or self-insurer. A decision to deny the application to the  
7 worker of a self-insurer, or to either grant or deny the application to  
8 the worker of an employer insured by the department, shall rest in the  
9 discretion of the department depending upon the merits of each  
10 individual application. Upon the death of a worker all unpaid  
11 installments accrued shall be paid according to the payment schedule  
12 established prior to the death of the worker to the widow or widower,  
13 or if there is no widow or widower surviving, to the dependent children  
14 of such claimant, and if there are no such dependent children, then to  
15 such other dependents as defined by this title.

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

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

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

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

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

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

36 (ii) For claims for injuries occurring on or after May 7, 1993,  
37 equal eighty percent of the actual difference between the worker's

1 present wages and earning power at the time of injury, but: (A) The  
2 total of these payments and the worker's present wages may not exceed  
3 one hundred fifty percent of the average monthly wage in the state as  
4 computed under RCW 51.08.018; (B) the payments may not exceed one  
5 hundred percent of the entitlement as computed under subsection (1) of  
6 this section; and (C) the payments may not be less than the worker  
7 would have received if (a)(i) of this subsection had been applicable to  
8 the worker's claim.

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

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

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

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



1 ~~nurse practitioner for the work, and begins the work with the employer~~  
2 ~~of injury. If)) stop effective the date the light duty or transitional~~  
3 ~~job starts. Temporary total disability payments shall resume if the~~  
4 ~~work ((thereafter)) comes to an end before the worker's recovery is~~  
5 ~~sufficient in the judgment of his or her physician or licensed advanced~~  
6 ~~registered nurse practitioner to permit him or her to return to his or~~  
7 ~~her usual job, or to perform other available work offered by the~~  
8 ~~employer of injury((, the worker's temporary total disability payments~~  
9 ~~shall be resumed)). Should the available work described, once~~  
10 ~~undertaken by the worker, impede his or her recovery to the extent that~~  
11 ~~in the judgment of his or her physician or licensed advanced registered~~  
12 ~~nurse practitioner he or she should not continue to work, the worker's~~  
13 ~~temporary total disability payments shall be resumed when the worker~~  
14 ~~ceases such work at the direction of the physician or licensed advanced~~  
15 ~~registered nurse practitioner.~~

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

33 (d) If an employer offers a worker work pursuant to this subsection  
34 (4) and the worker must be provided with training or instruction to be  
35 qualified to perform the offered work, the employer shall be eligible  
36 for a reimbursement from the department for any tuition, books, fees,  
37 and materials required for that training or instruction, up to a  
38 maximum of one thousand dollars. Reimbursing an employer for the costs

1 of such training or instruction does not constitute a determination by  
2 the department that the worker is eligible for vocational services  
3 authorized by RCW 51.32.095 and 51.32.099.

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

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

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

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

1 or licensed advanced registered nurse practitioner has restricted him  
2 or her from performing his or her usual work and the worker's physician  
3 or licensed advanced registered nurse practitioner has released him or  
4 her to perform the work offered.

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

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

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

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

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

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

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

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

16        ~~((+7+))~~ (9) In no event shall the monthly payments provided in this  
17 section:

18        (a) Exceed the applicable percentage of the average monthly wage in  
19 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%

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

1           (~~(+8)~~) (10) If the supervisor of industrial insurance determines  
2 that the worker is voluntarily retired and is no longer attached to the  
3 workforce, benefits shall not be paid under this section.

4           NEW SECTION. **Sec. 7.** A new section is added to chapter 51.32 RCW  
5 to read as follows:

6           (1)(a) In addition to the options listed in RCW 51.32.099(4), a  
7 worker who is found eligible for vocational plan development and who is  
8 age fifty-five or older on the date the vocational rehabilitation plan  
9 is submitted to the department or self-insurer, can select a disability  
10 settlement option. Under this option, the worker declines further  
11 vocational services under the claim and elects to receive a disability  
12 settlement in an amount equal to one-third of the value of the pension  
13 annuity. The pension annuity shall be calculated as if the worker had  
14 been found totally and permanently disabled effective the date the  
15 worker was found eligible for vocational plan development services.  
16 All prior permanent partial disability awards and any permanent partial  
17 disability award to be paid at claim closure shall be deducted from the  
18 pension annuity forming the basis of the disability settlement. For  
19 purposes of communicating this option to a worker, the department may  
20 estimate the amount of the permanent partial disability award. This  
21 estimate is not binding on any party.

22           (b) The disability settlement selection can be made by an eligible  
23 worker at any time during plan development services until the plan is  
24 submitted to the department. The worker will have a minimum of sixty  
25 days to make this selection. The worker's selection and award amount  
26 will be established by order of the department pursuant to RCW  
27 51.52.050. The department shall thereafter close the claim or claims  
28 including any permanent partial disability award to which the worker is  
29 entitled.

30           (c) The worker will continue to receive temporary total disability  
31 benefits until this order and the order closing the claim become final  
32 and binding on all parties. The disability settlement award will be  
33 paid in a lump sum within ten days of these orders becoming final, less  
34 the amount paid in temporary total disability benefits after the date  
35 the disability settlement order was issued.

36           (i) A worker who has received disability settlement benefits can  
37 reopen the claim or claims for which the disability settlement was paid

1 upon a showing of worsening of the related medical conditions under RCW  
2 51.32.160 for medical treatment only. Further temporary total,  
3 temporary partial, permanent partial, or permanent total benefits are  
4 not payable under the same claim or claims for which a disability  
5 settlement was selected and paid.

6 (ii) If a worker who has received disability settlement benefits is  
7 subsequently injured or suffers an occupational disease, and vocational  
8 rehabilitation is found both necessary and likely to enable the injured  
9 worker to become employable at gainful employment under RCW  
10 51.32.095(1), vocational rehabilitation will only be provided at the  
11 discretion of the director or the director's designee.

12 (iii) If a worker who has received disability settlement benefits  
13 becomes entitled to total permanent disability benefits under another  
14 claim, the disability settlement benefits will be deducted from the  
15 pension annuity calculated under the subsequent claim and pension  
16 benefits reduced accordingly.

17 (iv) A disability settlement is not available to a worker who has  
18 suffered the loss of both legs, or arms, or one leg and one arm, total  
19 loss of eyesight, or paralysis.

20 (2) The provisions of subsection (1) of this section apply to all  
21 claims where the worker is age fifty-five or older and is found  
22 eligible for vocational plan development on or after July 1, 2011.

23 **Sec. 8.** RCW 51.32.160 and 1995 c 253 s 2 are each amended to read  
24 as follows:

25 (1)(a) If aggravation, diminution, or termination of disability  
26 takes place, the director may, upon the application of the beneficiary,  
27 made within seven years from the date the first closing order becomes  
28 final, or at any time upon his or her own motion, readjust the rate of  
29 compensation in accordance with the rules in this section provided for  
30 the same, or in a proper case terminate the payment: PROVIDED, That  
31 the director may, upon application of the worker made at any time,  
32 provide proper and necessary medical and surgical services as  
33 authorized under RCW 51.36.010. The department shall promptly mail a  
34 copy of the application to the employer at the employer's last known  
35 address as shown by the records of the department.

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

1 (c) Applications for benefits where the claim has been closed  
2 without medical recommendation, advice, or examination are not subject  
3 to the seven year limitation of this section. The preceding sentence  
4 shall not apply to any closing order issued prior to July 1, 1981.  
5 First closing orders issued between July 1, 1981, and July 1, 1985,  
6 shall, for the purposes of this section only, be deemed issued on July  
7 1, 1985. The time limitation of this section shall be ten years in  
8 claims involving loss of vision or function of the eyes.

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

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

22 (3) No act done or ordered to be done by the director, or the  
23 department prior to the signing and filing in the matter of a written  
24 order for such readjustment shall be grounds for such readjustment.

25 NEW SECTION. Sec. 9. A new section is added to chapter 51.32 RCW  
26 to read as follows:

27 Utilization, worker satisfaction and outcomes, and system and  
28 employer costs related to RCW 51.32.060, 51.32.080, and section 7 of  
29 this act will be studied and a report issued to the appropriate  
30 legislative committees, the department, and the workers' compensation  
31 advisory committee by December 1, 2014. The workers' compensation  
32 advisory committee shall recommend to the department any legislation  
33 needed to ensure the appropriate utilization of disability benefits at  
34 reasonable cost to the system.

35 NEW SECTION. Sec. 10. This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the  
2 state government and its existing public institutions, and takes effect  
3 July 1, 2011.

4 NEW SECTION. **Sec. 11.** Section 6 of this act expires July 1, 2016.

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